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# Contents

**Federal Register**

Vol. 75, No. 27

Wednesday, February 10, 2010

**Agency for Healthcare Research and Quality**
NOTICES
Meetings:
Measurement Criteria for Children's Health Insurance Program; Reauthorization Act Pediatric Quality Measures, 6673–6674

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Energy Policy and New Uses Office, Agriculture Department
*See* Forest Service
*See* Natural Resources Conservation Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6622
Privacy Act; Systems of Records, 6622–6624

**Air Force Department**
NOTICES
Meetings:
US Air Force Academy Board of Visitors, 6643

**Alcohol, Tobacco, Firearms, and Explosives Bureau**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6706–6709

**Animal and Plant Health Inspection Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Commercial Transportation of Equines for Slaughter, 6624–6625

**Antitrust Division**
NOTICES
Proposed Final Judgment and Competitive Impact Statement:
United States of America, et al. v. Ticketmaster Entertainment, Inc. and Live Nation, Inc., 6709–6728

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Centers for Disease Control and Prevention**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6670–6672
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 6675
Statement of Organization, Functions, and Delegations of Authority, 6677

**Coast Guard**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6677–6678
Meetings:
Merchant Marine Personnel Advisory Committee, 6680–6681

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
*See* National Telecommunications and Information Administration

**Commodity Futures Trading Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Registration Under the CEA – Proposed Questionnaire to Regulation 30.10 Relief Recipients, 6637–6639

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 6639

**Defense Department**
*See* Air Force Department
*See* Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6639–6641
Federal Acquisition Regulation:
Submission for OMB Review; Commercial Item Acquisitions, 6668–6669
Submission for OMB Review; Contractors' Purchasing Systems, 6669
Submission for OMB Review; Summary Subcontract Report, 6668

**Election Assistance Commission**
NOTICES
Publication of State Plan Pursuant to the Help America Vote Act, 6643–6650

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Meetings:
Biological and Environmental Research Advisory Committee, 6651
DOE/NSF Nuclear Science Advisory Committee, 6651–6652
High Energy Physics Advisory Panel, 6651

**Energy Policy and New Uses Office, Agriculture Department**

PROPOSED RULES
Designation of Biobased Items for Federal Procurement, 6796–6812

**Environmental Protection Agency**
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Louisiana; Baton Rouge 1-Hour Ozone Nonattainment Area; Determination of Attainment of the 1-Hour Ozone, 6570–6575
Exemption from the Requirement of a Tolerance; Technical Amendment, 6576

Pesticide Tolerances:
Acetamiprid, 6576–6583
Tolerance Exemptions:
Poly(oxy–1,2–ethanediyl), alpha–hydro–omega–hydroxy–, polymer with 1, 1'–methylene–bis–[4–isocyanatocyclohexane], 6583–6586
PROPOSED RULES
Determination to Approve Alternative Final Cover Request for the Lake County, Montana Landfill, 6597–6600
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6654–6655
Charter Renewal:
Local Government Advisory Committee, 6655
Disulfoton Registration Review Decision; Notice of Availability, 6655–6656
Meetings:
SFIREG Pesticide Operations and Management Working Committee, 6656
Pesticide Product; Registration Application, 6656–6657
Public Teleconference:
Health Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis, 6658
Requests to Amend Pesticide Registrations to Delete Uses in Certain Pesticide Registrations:
Malathion, Diquat Dibromide, Metam–potassium and Metam–sodium, 6658–6661

**Export–Import Bank**
NOTICES
Meetings; Sunshine Act, 6661

**Federal Aviation Administration**
PROPOSED RULES
Proposed Amendment of Class E Airspace:
Emmetsburg, IA, 6592–6593
Mapleton, IA, 6595–6596
Marion, IL, 6593–6594
Osceola, AR, 6594–6595

**Federal Communications Commission**
PROPOSED RULES
FM Table of Allotments:
Chester, GA; Dismissal, 6612–6613
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6661–6667

**Federal Deposit Insurance Corporation**
NOTICES
Update to Notice of Financial Institutions for Which FDIC has been Appointed Either Receiver, Liquidator, or Manager, 6667–6668

**Federal Election Commission**
PROPOSED RULES
Coordinated Communications, 6590–6592

**Federal Emergency Management Agency**
PROPOSED RULES
Proposed Flood Elevation Determinations, 6600–6612
NOTICES
National Disaster Recovery Framework, 6681–6682

**Federal Energy Regulatory Commission**
NOTICES
Combined Notice of Filings, 6652–6654

**Financial Crimes Enforcement Network**
RULES
Expansion of Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 6560–6570

**Fiscal Service**
NOTICES
Surety Companies Acceptable on Federal Bonds – Termination:
Trinity Universal Insurance Co., 6791–6792

**Fish and Wildlife Service**
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Listing with Designation of Critical Habitat for Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail, 6613–6616
NOTICES
Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement; Availability, etc.:
Lewis and Clark National Wildlife Refuge and Julia Butler Hansen Refuge for Columbian White-tailed Deer, 6694–6696
Draft Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California, 6696–6697
Endangered and Threatened Wildlife and Plants:
Draft Yuma Clapper Rail Rallus Longirostris Yumanensis Recovery Plan, First Revision, 6697–6698

**Foreign-Trade Zones Board**
NOTICES
Foreign-Trade Zone 33– Pittsburgh, Pennsylvania Expansion of Manufacturing Authority Subzone 33E:
DNP IMS America Corporation (Thermal Transfer Ribbon Printer Rolls), Mount Pleasant, PA, 6635–6636
Foreign-Trade Zone 77 – Memphis, Tennessee – Application for Subzone:
Cummins, Inc. (Engine Components Distribution) Memphis, TN, 6636

**Forest Service**
NOTICES
Environmental Impact Statements; Availability, etc.:
Dixie National Forest, Utah, Kitty Hawk Administrative Site Master Development Plan, 6625–6627
Meetings:
Ouachita–Ozark Resource Advisory Committee, 6627

**General Services Administration**
NOTICES
Federal Acquisition Regulation:
Submission for OMB Review; Commercial Item Acquisitions, 6668–6669
Submission for OMB Review; Contractors' Purchasing Systems, 6669
Submission for OMB Review; Summary Subcontract Report, 6668

**Health and Human Services Department**
*See* Agency for Healthcare Research and Quality
*See* Centers for Disease Control and Prevention
*See* Health Resources and Services Administration
*See* National Institutes of Health
NOTICES
Findings of Misconduct in Science; Correction, 6670

**Health Resources and Services Administration**
NOTICES
HIV/AIDS Bureau; Policy Notice 99–02 (Amendment ι1), 6672–6673

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency
*See* U.S. Customs and Border Protection

**Housing and Urban Development Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Comprehensive Needs Assessment, 6682–6683
Final Endorsement of Credit Instrument, 6682
Funds Authorization, 6684–6685
Monthly Report of Excess Income and Annual Report of Uses of Excess Income, 6685
Multifamily Housing Service Coordinator Grant, 6684
Technical Processing Requirements for Multifamily Project Mortgage Insurance, 6683
Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors (Fiscal Year 2010), 6685–6688
Section 8 Housing Assistance Payments Program—Renewal Funding Annual Adjustment Factors (Fiscal Year 2010), 6688–6689
Sustainable Communities Planning Grant Program; Advance Notice and Request for Comment, 6689–6693

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* National Indian Gaming Commission
*See* National Park Service
*See* Surface Mining Reclamation and Enforcement Office

**International Trade Administration**
NOTICES
Final Results of Antidumping Duty Administrative Review:
Stainless Steel Sheet and Strip in Coils from Japan, 6631–6634
Stainless Steel Sheet and Strip in Coils from Mexico, 6627–6631
Final Results of Countervailing Duty Administrative Review:
Polyethylene Terephthalate Film, Sheet, and Strip from India, 6634–6635

**International Trade Commission**
NOTICES
Investigations:
Certain Foldable Stools, 6706
Certain Liquid Crystal Display Modules and Products Containing Same, and Methods for Making Same, 6705–6706
Certain Mobile Telephones and Wireless Communication Device Featuring Digital Cameras, and Components, 6704–6705

**Justice Department**
*See* Alcohol, Tobacco, Firearms, and Explosives Bureau
*See* Antitrust Division

**Land Management Bureau**
NOTICES
Alaska Native Claims Selection, 6694
Environmental Impact Statements; Availability, etc.:
West Chocolate Mountains Renewable Energy Evaluation Area, Imperial County, California; Possible Land Use Plan Amendment, 6698–6699
Proposed Reinstatement of Terminated Oil and Gas Leases (NMNM 110795, NMNM 110797, and NMNM 110802), 6700
Public Land Order No. 6892:
Alaska; Proposed Withdrawal Extension and Opportunity for Public Meeting, 6700–6701
Realty Action:
Application for Recordable Disclaimer of Interest; Montana; Correction, 6702
Proposed Direct Sale of Public Land, Utah, 6701–6702
Recreation and Public Purposes Act Classification, California, 6702–6703

**Merit Systems Protection Board**
NOTICES
Opportunity to File Amicus Briefs:
Conyers v. Department of Defense and Northover v. Department of Defense, 6728–6729

**National Aeronautics and Space Administration**
NOTICES
Federal Acquisition Regulation:
Submission for OMB Review; Commercial Item Acquisitions, 6668–6669
Submission for OMB Review; Contractors' Purchasing Systems, 6669
Submission for OMB Review; Summary Subcontract Report, 6668

**National Archives and Records Administration**
NOTICES
Senior Executive Service Performance Review Board; Members, 6729

**National Credit Union Administration**
RULES
Unfair or Deceptive Acts or Practices, 6558–6560

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Humanities Panels, 6729–6730
National Council on the Humanities, 6729

**National Indian Gaming Commission**
NOTICES
Rights and Protections Available Under the Notification and Federal Employee Antidiscrimination and Retaliation Act (of 2002), 6703–6704

**National Institutes of Health**
NOTICES
Meetings:
Center for Scientific Review, 6674–6677
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6676
National Institute of Mental Health, 6675–6676

**National Oceanic and Atmospheric Administration**
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pollock for American Fisheries Act Catcher Vessels in the Inshore Open Access Fishery in the Bering Sea and Aleutian Islands Management Area, 6588–6589

Pollock in Statistical Area 630 in the Gulf of Alaska; Closure, 6589
Fisheries of the Northeastern United States:
Black Sea Bass Fishery; 2010 Black Sea Bass Specifications; Emergency Rule, 6586–6588
PROPOSED RULES
Endangered and Threatened Wildlife:
Finding on a Petition to List 83 Species of Corals as Threatened or Endangered Under the Endangered Species Act, 6616–6621
NOTICES
Meetings:
National Sea Grant Advisory Board, 6637
Western Pacific Fishery Management Council, 6636–6637

**National Park Service**
NOTICES
Meetings:
Boston Harbor Islands National Recreation Area Advisory Council, 6699
Denali National Park and Preserve Aircraft Overflights Advisory Council, 6699–6700
National Park Service Concessions Management Advisory Board Reestablishment, 6700

**National Telecommunications and Information Administration**

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Broadband Technology Opportunities Program, 6627

**Natural Resources Conservation Service**
RULES
Compliance with NEPA, 6553–6558
Healthy Forests Reserve Program, 6539–6553

**Navy Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6641–6642
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Naval Special Warfare Recruiting Directorate, 6642

**Nuclear Regulatory Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6730–6731
Consideration of Issuance of Amendment to Facility Operating License, etc:
Carolina Power & Light Co., 6731–6736
Environmental Assessment and Finding of No Significant Impact:
FirstEnergy Nuclear Operating Co. et al.; Beaver Valley Power Station (Unit Nos. 1 and 2), 6736–6737
Environmental Impact Statements; Availability, etc.:
FPL Energy Duane Arnold, LLC, 6737

**Postal Service**
RULES
Rules of Practice in Proceedings Relative to Mail Disputes, 6570

**Public Debt Bureau**
*See* Fiscal Service

**Securities and Exchange Commission**
PROPOSED RULES
Purchases of Certain Equity Securities by the Issuer and Others; Correction, 6596
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 6741–6743, 6762–6765, 6776–6777, 6779–6781
Chicago Board Options Exchange, Inc., International Securities Exchange, LLC, NYSE Amex LLC, and NYSE Arca, Inc., 6753–6756, 6773–6776
Chicago Stock Exchange, Inc., 6766–6767, 6781–6782
Depository Trust Co., 6751–6753
Financial Industry Regulatory Authority, Inc., 6769–6770
International Securities Exchange, LLC, 6743–6745, 6760–6762, 6767–6769, 6782–6784
NASDAQ OMX BX, Inc., 6746–6748
NASDAQ OMX PHLX, Inc., 6770–6772
NASDAQ Stock Market LLC, 6748–6750
NYSE Amex LLC, 6738–6739, 6745–6746, 6772–6773
NYSE Arca, Inc., 6740–6741, 6756–6760, 6778–6779
Options Clearing Corp., 6750–6751

**Small Business Administration**
NOTICES
Disaster Declarations:
North Carolina, 6737–6738

**State Department**
NOTICES
Bureau of Educational and Cultural Affairs Request for Grant Proposals:
Youth Exchange and Study (YES) Summer Academy, 6784–6790

**Surface Mining Reclamation and Enforcement Office**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6693–6694

**Surface Transportation Board**
NOTICES
Acquisition and Operation Exemption:
Nebraska Northwestern Railroad, Inc.; Dakota, Minnesota and Eastern Railroad Corp., 6790

**Thrift Supervision Office**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice, 6790–6791

**Transportation Department**
*See* Federal Aviation Administration
*See* Surface Transportation Board
NOTICES
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q), 6790

**Treasury Department**
*See* Financial Crimes Enforcement Network
*See* Fiscal Service
*See* Thrift Supervision Office
*See* United States Mint

**U.S. Customs and Border Protection**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Andean Trade Preferences, 6679–6680
Customs and Trade Partnership Against Terrorism, 6678–6679

**United States Mint**
**NOTICES**
Meetings:
Citizens Coinage Advisory Committee, 6791

**Veterans Affairs Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Insurance Survey, 6792–6793
Reasonable Accommodation, 6792
Rehabilitation Needs Inventory, 6793

**Separate Parts In This Issue**

**Part II**
Agriculture Department, Energy Policy and New Uses Office, Agriculture Department, 6796–6812

**Reader Aids**

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
625.....6539
650.....6553
**Proposed Rules:**
2902.....6796

**11 CFR**
**Proposed Rules:**
100.....6590
109.....6590

**12 CFR**
706.....6558

**14 CFR**
**Proposed Rules:**
71 (4 documents) ...6592, 6593, 6594, 6595

**17 CFR**
**Proposed Rules:**
240.....6596

**31 CFR**
103.....6560

**39 CFR**
965.....6570

**40 CFR**
52.....6570
180 (3 documents) .....6576, 6583
**Proposed Rules:**
258.....6597

**44 CFR**
**Proposed Rules:**
67.....6600

**47 CFR**
**Proposed Rules:**
73.....6612

**50 CFR**
648.....6586
679 (2 documents) .....6588, 6589
**Proposed Rules:**
17.....6613
223.....6616
224.....6616

# Rules and Regulations

Federal Register
Vol. 75, No. 27
Wednesday, February 10, 2010

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

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### 7 CFR Part 625

**RIN 0578–AA52**

## Healthy Forests Reserve Program

**AGENCY:** Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Natural Resources Conservation Service (NRCS) regulations for the Healthy Forests Reserve Program (HFRP). The Food, Conservation, and Energy Act of 2008 (the 2008 Act) amended provisions of HFRP that changed the duration, type, and funding allocation of program agreements, and NRCS published a proposed rule for these changes on January 14, 2009. This final rule responds to the comments received on the proposed rule and amends NRCS regulations for HFRP to incorporate changes associated with enactment of the 2008 Act.

**DATES:** *Effective Date:* This rule is effective February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** John Glover, Branch Chief, Easement Programs Branch, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6811 South Building, Washington, DC 20250; Telephone: (202) 720–5477; Fax: (202) 720–9689. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

**Regulatory Certifications**

*Executive Order 12866*

The Office of Management and Budget (OMB) determined that this final rule is not a significant regulatory action and a benefit cost assessment has not been undertaken.

*Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994*

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), the Department of Agriculture (USDA) classified this rule as non-major. Therefore, a risk analysis was not conducted.

*Regulatory Flexibility Act*

NRCS has determined that the Regulatory Flexibility Act is not applicable to this final rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final 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 the ability of United States-based companies to compete in domestic and export markets.

*Environmental Analysis*

The final rule for the HFRP amends the current regulation to include congressionally required statutory changes to the program as a result of the 2008 Act, Public Law 110–246. The 2008 Act changes the use of 30-year tribal contracts, allows NRCS to acquire permanent easements, and establishes limitations on the use of funds for cost-share agreements and easements. The final rule also amends the regulation in response to comments received by the agency on the proposed rule.

After review of the previous Environmental Assessment (EA) prepared in April 2006, it has been determined that the changes are minor and do not present significant new circumstances or new information relative to environmental issues from those analyzed in the 2006 EA. Accordingly, NRCS has determined and reaffirms that the previous EA and Finding of No Significant Impact have sufficiently analyzed the program's potential environmental impacts and are inclusive of the final rule.

Copies of the EA and the Finding of No Significant Impact may be obtained from the Healthy Forests Reserve Program Manager, Easements Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6813 South Building, Washington, DC 20250; or electronically on the Internet through the NRCS homepage at: *http://www.nrcs.usda.gov,* and by selecting "Programs," then "Healthy Forests Reserve Program."

*Paperwork Reduction Act*

The forms that will be utilized to implement this regulation have previously been approved for use and OMB assigned the control number 0578–0013. NRCS estimates that HFRP results in the following changes to the current package:

*Type of Request:* New Information Collection Package/form/etc.

- Increase of 26,020 respondents.
- Increase of 23,926.3 responses.
- Increase burden hours by 27,768.12.
- Increase in the average time to execute a form in the collection: 0.229 hours or 14.03 minutes.

*Government Paperwork Elimination Act*

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

*Civil Rights Impact Analysis*

NRCS has determined through a Civil Rights Impact Analysis that this final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The data presented indicates producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to

conclude that NRCS programs, including the HFRP, will continue to be administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. The HFRP applies to all persons equally. Therefore, this final rule portends no adverse civil rights implications for women, minorities, and persons with disabilities.

Copies of the Civil Rights Impact Analysis are available, and may be obtained from John Glover, Branch Chief, Easement Programs Branch, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250, or electronically at: *http://www.nrcs.usda.gov/programs/HFRP.*

*Civil Justice Reform*

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule is not retroactive and preempts State and local laws to the extent that such laws are inconsistent with this rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted.

*Executive Order 13132*

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that this final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, NRCS concludes that this final rule does not have Federalism implications. Moreover, § 625.5 of this final rule shows sensitivity to Federalism concerns by providing an option for the responsible official (State Conservationist) to obtain input from other agencies in proposal development.

*Unfunded Mandates Reform Act of 1995*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

NRCS has assessed the impact of this final rule on Indian tribal governments and has concluded that this rule will not negatively affect communities of Indian tribal governments. The statutory changes to the HFRP as a result of the 2008 Act created an option of offering 30-year contracts to encourage Indian tribal participation in the program. Section 625.12 of this final rule outlines the procedures for enrolling land in the program through the 30-year contract option. The rule will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

**Background**

America's forests provide a wide range of environmental, economic, and social benefits including timber, wilderness, minerals, recreation opportunities, and wildlife habitat. In addition, a healthy forest ecosystem provides habitat for endangered and threatened species, sustains biodiversity, protects watersheds, sequesters carbon, and helps purify the air. However, some forest ecosystems have had their ecological functions diminished by a number of factors including fragmentation, reduction in periodic fires, lack of proper management, or invasive species. Habitat loss has been severe enough in some circumstances to cause dramatic population declines such as in the case of the Ivory-billed Woodpecker. As a result of the pressures on forest ecosystems, many forests need active management and protection from development in order to sustain biodiversity and restore habitat for species that have suffered significant population declines. Active management and protection of forest ecosystems can also increase carbon sequestration and improve air quality.

Many forest ecosystems are located on private lands and provide habitat for species that have been listed as endangered or threatened under section 4 of the Endangered Species Act (ESA), 16 U.S.C. 1533 (listed species). Congress enacted the HFRP, Title V of the Healthy Forest Restoration Act of 2003 (Pub. L. 108–148, 16 U.S.C. 6571–6578) to provide financial assistance to private landowners to undertake projects that restore and enhance forest ecosystems to help promote the recovery of listed species, improve biodiversity, and enhance carbon sequestration.

The Secretary of Agriculture has delegated authority to implement HFRP to the NRCS Chief. In addition, technical support associated with forest management practices may also be provided by the U.S. Forest Service. Section 501 of Title V of the Healthy Forests Restoration Act of 2003 (Pub. L. 108–148) provides that the program will be carried out in coordination with the Secretary of Interior and the Secretary of Commerce. NRCS works closely with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to further the species recovery objectives of the HFRP and to help make available to HFRP participants safe harbor or similar assurances and protection under ESA section 7(b)(4) or section 10(a)(1), 16 U.S.C. 1536(b)(4), 1539(a)(1).

**Response to Comments and Changes to the Regulation**

On January 14, 2009, NRCS published in the **Federal Register** a proposed rule for the HFRP with a 30-day public comment period that ended on February 13, 2009 (74 FR 1954). On February 18, 2009, the agency reopened the public comment period for the HFRP proposed rule for an additional 30 days, which ended on March 20, 2009 (74 FR 7563). NRCS received 13 responses to the proposed rule, encompassing approximately 68 comments. The respondents included individuals representing eight different agricultural or environmental organizations, three private citizens, a Federal agency respondent, and an Indian tribe. This section discusses all of the relevant comments except for those that expressed agreement with provisions of the proposed rule.

*Purpose and Eligibility*

The statutory provisions at 16 U.S.C. 6571 state that the purpose of HFRP is to restore and enhance forest ecosystems in order to: (1) Promote the recovery of threatened and endangered species, (2) improve biodiversity, and (3) enhance carbon sequestration. Under 16 U.S.C. 6572(b), to be eligible for enrollment, land must be:

(1) Private land, the enrollment of which will restore, enhance, or otherwise measurably increase the likelihood of recovery of a species listed as endangered or threatened under 16 U.S.C. 1533; and

(2) Private land, the enrollment of which will restore, enhance, or

otherwise measurably improve the well-being of species that—

(a) Are not listed as endangered or threatened under 16 U.S.C. 1533; but

(b) Are candidates for such listing, State-listed species, or special concern species.

The authorizing statute further provides at 16 U.S.C. 6572(c) that the Secretary of Agriculture will give additional consideration to enrollment of eligible land that will improve biological diversity and increase carbon sequestration.

*Comment:* Three respondents recommended that the term native be used throughout the rule prior to the term forest ecosystem to focus attention on native forest ecosystems.

*Response:* No changes were made to the regulation based on these comments. As stated above, the statutory language does not restrict HFRP to native forest ecosystems. There are situations in which the native habitat has been destroyed, and threatened and endangered species have adapted to using non-native habitats as their primary habitat. The insertion of native would create a barrier for participation in those situations. Additionally, the FWS and NMFS are part of the consultation process and can provide guidance and assistance on a case-by-case basis.

*Comment:* One respondent recommended changing the definition of biodiversity to require organisms to be native to the ecological sub-region and ecological complex.

*Response:* NRCS made no changes to the regulation based on this comment. The definition of biodiversity in the proposed rule is consistent with the definitions used in other NRCS programs.

*Comment:* One respondent asserted that NRCS should clarify the extent of the access required in the rule to distinguish between public access and agency access.

*Response:* The regulation does not require HFRP participants to provide general public access. Based on the comment, NRCS inserted language at § 625.11 (b)(1) and § 625.12 (b)(1) to clarify that the right of access to the easement area is access for NRCS personnel or agency representatives.

*Priority for Enrollment*

The statutory provisions at 16 U.S.C. 6572(f) provides the following regarding enrollment priority:

(1) Species—The Secretary of Agriculture will give priority to the enrollment of land that provides the greatest conservation benefit to—

(a) Primarily, species listed as endangered or threatened under 16 U.S.C. 1533; and

(b) Secondarily, species that—

(i) Are not listed as endangered or threatened under 16 U.S.C. 1533; but

(ii) Are candidates for such listing, State-listed species, or special concern species.

(2) Cost-effectiveness—The Secretary of Agriculture will also consider the cost-effectiveness of each agreement or easement and associated restoration plans, so as to maximize the environmental benefits per dollar expended.

*Comment:* Two respondents requested additional clarity regarding the priority that will be given to enrolling projects that benefit wildlife species not listed under the ESA. They suggested defining State-listed species in the regulation.

*Response:* Based on the comments, the agency added a definition of State-listed species under § 625.2. NRCS has defined State-listed species as "a species listed as threatened or endangered under State endangered species laws, a candidate for such listing, or a species listed in a State Wildlife Action Plan as a species of greatest conservation need."

*Comment:* Two respondents recommended that only native species be identified by the Chief for special consideration for funding.

*Response:* No changes were made to the regulation based on these comments. While the rule allows the Chief to designate species of special concern, restricting this designation to only native species unnecessarily curtails the Chief's discretion and could serve as a barrier, preventing protection in areas where it is needed.

*Comment:* One respondent suggested that a dedicated amount of funds be set aside for family forest lands.

*Response:* No changes were made to the regulations based on this comment because NRCS determined there is no statutory basis supporting a set-aside for family forest lands. A separate set-aside for family forest lands creates a special priority category. As noted above, 16 U.S.C. 6572(f) sets forth the criteria for enrollment priority and no statutory authority exists to give priority to family forest lands eligible for participation in HFRP.

*Comment:* Two respondents suggested that priority be given to projects based on the priority forest areas identified in the State Forest Resource Assessment and Strategy required by section 8002 of the 2008 Act. Another respondent suggested that attention to forest resources should be immediate and not wait for the completion of the state-wide assessment.

*Response:* No changes were made to the regulation based on these comments. NRCS agrees that the concept of using the priority forest areas established by the report is a good concept. However, the report is currently underway and will not be complete until the end of fiscal year 2010. NRCS will incorporate guidance in policy on utilizing the information provided by the report once it is complete.

*Comment:* One respondent suggested that significant weight should be given to projects that increase carbon sequestration.

*Response:* No changes were made to the regulations based on this comment. Enhancing carbon sequestration is one of the purposes of the program which is detailed in the statute (16 U.S.C. 6571 and 6572). Under § 625.6 of the final rule, one of the ranking criteria is the extent to which projects have the potential for increased capability of carbon sequestration.

*Comment:* Two respondents asserted that the rule does not clearly articulate how cost-effectiveness will be estimated. Both suggested that the cost-effectiveness of the restoration cost-share agreement, contract, or easement and associated HFRP restoration plans be calculated by dividing the total expected environmental benefits by the total expected cost of the project.

*Response:* No changes were made to the regulation based on these comments. NRCS will address this issue in policy to provide the maximum flexibility. The State Conservationist needs the flexibility to determine how cost-effectiveness will be estimated due to the wide variability of environmental benefits and diverse habitats of land enrolled in the program.

*Comment:* One respondent suggested that NRCS use separate ranking pools to evaluate fairly the cost-effectiveness of short-term and long-term agreements. Another respondent suggested NRCS compare projects with other projects of similar ownership and size. The respondent was concerned that smaller projects are disadvantaged when compared with larger projects that appear more cost-effective.

*Response:* No changes were made to the regulation based on these comments. By policy, State Conservationists have the authority to create separate ranking pools for different types of agreements to ensure fair evaluation of projects.

*Comment:* Several respondents recommended that NRCS require State Conservationists to work with other agencies and organizations when developing proposals. One respondent suggested the requirement include State Foresters, State Technical Committees,

and State Forest Stewardship Committees; three respondents suggested the requirement include all local, State, and Federal agencies; and one respondent suggested the requirement include the appropriate State fish and wildlife agency.

*Response:* No changes were made to the regulation based on these comments. NRCS cannot require that the State Technical Committee be consulted because HFRP is not a program in the Conservation Title. The rule provides flexibility to the State Conservationists to determine with whom it is appropriate to work when developing proposals and implementing the program. The suggested changes would require consultation and limit the discretion and flexibility of the State Conservationist.

*Comment:* Two respondents suggested that the ranking considerations be developed with State fish and wildlife agencies and be separated into primary and secondary ranking considerations, similar to the statutory language. Another respondent suggested that all ranking considerations should be required to be considered.

*Response:* No changes were made to the regulation based on these comments. The required ranking considerations are found in the final rule at § 625.6. The associated weighting of the ranking considerations is the responsibility of the State Conservationist. The State Conservationist works with cooperating agencies, which may include the State fish and wildlife agencies, to obtain input and advice on weighting and applying the ranking factors. The ranking structure proposed by the respondents would require specific ranking criteria to be considered regardless of the local conditions. The current structure of the regulation allows State Conservationists to ensure that local conditions are considered in applying the ranking criteria.

*Term of Enrollment*

Statutory provisions at 16 U.S.C. 6572(e)(1) provide that land may be enrolled in the HFRP in accordance with:

- A 10-year cost-share agreement,
- A 30-year easement, or
- A permanent easement or an easement for the maximum duration allowed under State law.

Under the provisions of 16 U.S.C. 6572(e)(3), the statute allows acreage owned by Indian tribes to be enrolled into the program through the use of 30-year contracts or 10-year cost-share agreements, or a combination of the two.

*Comment:* NRCS specifically requested comments on the definition of "acreage owned by Indian tribes" and the accompanying requirements for 30-year contracts at § 625.12. In response, NRCS received one comment. The respondent suggested that NRCS revise the definition of "acreage owned by Indian tribes" to allow Indian lands held in trust to be eligible for the program.

*Response:* No changes were made to the regulation based on this comment. As stated in the preamble to the proposed rule, "The statement of managers (Conference Report H.R. 110–627 for H.R. 2419, pages 202 and 203, May 13, 2008) provided additional clarification of congressional intent by stating that "the managers intend that tribal land enrolled in the program should be land held in private ownership by a tribe or an individual tribal member. Tribal lands held in trust or reserved by the United States Government or restricted fee lands should not be enrolled in the program regardless of ownership." The managers' report language can be used to elucidate the meaning of the statute. Based on this language, NRCS interpreted the meaning of "acreage owned by Indian tribes" as including only land to which the title is held by individual Indians and Indian tribes, including Alaska Native Corporations. Lands held in Trust by the United States or allotted lands which contain restraints against alienation are not eligible under the definition of "acreage owned by Indian tribes." For purposes of clarity, NRCS removed the word "private" from this definition in the final rule because the inclusion of the word "private" was redundant and could create confusion when implemented. The definition of "private land" includes land that meets the definition of "acreage owned by Indian tribes." NRCS also revised the definition of "30-year contract" to include the term "acreage owned by Indian tribes" and to remove the reference to land held in private ownership and the reference to "individual tribal members" for the reasons listed above. Additionally, NRCS removed the phrase "including Alaska Native Corporations" from the definition because it was repetitive.

*Comment:* Two respondents suggested that NRCS require that direct benefits to the target species be realized during the contract period.

*Response:* No changes were made to the regulation based on these comments. Section 625.4 applies to all eligible land, including permanent easements. The change suggested by the respondents to include "within the contract period" would be confusing because this section addresses all enrollment options, and this phrase is not applicable to easements. Additionally, there are circumstances in which the desired benefits may not occur within the contract period, though such benefits will likely be obtained as a result of HFRP financial and technical assistance. For example, HFRP assistance through a 30-year easement may facilitate the establishment of a mature hardwood forest, though the trees planted with HFRP assistance will not have reached full maturity at the end of the 30-year easement period. The respondents proposed change would render such land ineligible for the program.

*Comment:* Two respondents asserted that NRCS should spend no less than 60 percent of HFRP funds on permanent easements. Another respondent suggested that NRCS favor shorter term easements and restoration cost-share agreements over permanent easements.

*Response:* No changes were made to the regulation based on these comments because the statutory requirements determine the allocation of funds. The original HFRP statutory language required that "the extent to which each enrollment method is used will be based on the approximate proportion of owner interest expressed in that method in comparison to the other methods." However, the 2008 Act amended the HFRP statute to include language specifying that 40 percent of program expenditures in any fiscal year be for restoration cost-share agreement enrollment and 60 percent of program expenditures in any fiscal year be for easement enrollment. The 2008 Act allows re-allocation if funds are not obligated by April 1 of the fiscal year in which the funds were made available.

*Comment:* One respondent asserted that NRCS should allow States the flexibility to allocate funds according to local needs under the re-pooling provision.

*Response:* No changes were made to the regulation based on this comment. The preamble of the proposed rule stated that "NRCS proposes to manage this process at the national level to ensure that the allocation of funds meets the statutory requirements." The agency will manage the re-pooling of funds at National Headquarters to ensure that the statutory requirements are met.

*Comment:* Two respondents suggested that NRCS limit the allocation of program resources to States that have developed proposals likely to result in the most significant and cost-effective benefits to the forest ecosystems and species.

*Response:* No changes were made to the regulation based on these comments. The respondents' suggestion limits HFRP enrollment to a select number of

States. NRCS does not believe Congress intended to limit the implementation of the program in this manner. The sign-up process, detailed in § 625.5(a), is designed to target funding to the most significant and cost-effective proposals.

*Restoration Plans*

As a condition of HFRP participation, a landowner must agree to the implementation of a HFRP restoration plan. The purpose of the restoration plan is to restore, protect, enhance, maintain, and manage the habitat conditions necessary to increase the likelihood of recovery of listed species under the ESA, or measurably improve the well-being of species that are not listed but are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding.

Under the provisions of 16 U.S.C. 6572, NRCS is to carry out the HFRP in coordination with FWS and NMFS. The provisions of § 625.13(c), which concern the HFRP restoration plan development, specify that NRCS, in coordination with the FWS, will determine the conservation practices and measures for the restoration plan.

*Comment:* Two respondents suggested including other agencies in the development of the restoration plan.

*Response:* No changes were made to the regulation based on these comments. The rule allows the State Conservationists to confer with FWS and NMFS in developing the restoration plan. The State Conservationists have the authority to consult with other agencies in the development of the restoration plan as necessary.

*Comment:* Three respondents suggested that NRCS reword § 625.13(c) to require that carbon sequestration management promote diverse and high quality native forest ecosystems to accomplish the goals of the restoration plan.

*Response:* Based on the comments, NRCS inserted the language suggested by the respondents in § 625.13(c). NRCS agrees with the respondents and is concerned that the most effective plants for sequestering carbon may be non-native species that may not be appropriate for maintaining habitat. NRCS agrees that for carbon sequestration purposes, the plants should be required to be native to the environment in which they are being planted.

*Comment:* One respondent recommended that restoration plans be tailored to help landowners adapt their management strategies in a changing climate.

*Response:* No changes were made to the regulation based on this comment. The planning process includes selecting plants that are widely adapted to tolerate changes in climate. The restoration plan may be modified by the parties to address changing circumstances, including changes to facilitate climate adaptation.

*Comment:* Two respondents suggested that the language in § 625.14 is inconsistent because the first sentence of the section says that modifications may be approved if they do not modify or void provisions of the easement, and later in the section the regulation says that modifications may require execution of an amended easement.

*Response:* Section 625.14 discusses modifications to the HFRP restoration plan; it is not discussing modification to an HFRP easement. There is no statutory authority for HFRP easements to be modified. In order for a restoration plan to be modified, the modification must meet HFRP program objectives and must result in equal or greater wildlife benefits and ecological and economic values to the United States. In order to avoid confusion regarding the modification of an HFRP restoration plan, NRCS has inserted the phrase "to the restoration plan" and removed the word "easement" from § 625.14.

*Comment:* One respondent suggested that any modification to an HFRP restoration plan should require agreement from the landowner, FWS, NMFS, or the State fish and wildlife agency.

*Response:* No changes were made to the regulation based on this comment. The final rule at § 625.14 affirms that NRCS will coordinate with the landowner, FWS, and NMFS to determine if a modification to the restoration plan is justified.

*Cost-Share Payments*

*Comment:* One respondent asserted that NRCS should use actual costs rather than average costs for determining cost-share assistance reimbursement rates. The HFRP statutory language allows for NRCS to reimburse a percentage of either the actual cost or the average cost of approved practices. The respondent asserted that average costs may be far lower than the actual cost and therefore, make full program implementation less likely where landowners do not receive reimbursement for their full expenses.

*Response:* No changes were made to the regulation based on this comment. Calculating actual costs would significantly increase the administrative workload and reduce the amount of financial assistance available to HFRP participants. Average costs, as determined on a regional basis, will be used to ensure that the average costs are close to actual costs in that area.

However, for purposes of clarity, NRCS revised § 625.3(d) and § 625.13(c) to establish that the State Conservationist will develop the list of eligible restoration practices, payment rates, and cost-share percentages. The State Conservationist will not determine the rates of compensation for an easement or 30-year contract because those rates will be established through the process outlined in § 625.8.

NRCS also revised § 625.10(g) to clarify that payments will not be made on components of a conservation practice or measure. This change was made to ensure consistency with other NRCS programs.

*Compensation*

The statutory provisions at 16 U.S.C. 6574 establish the requirements for easement compensation rates. Subsection (a) provides that the Secretary of Agriculture will pay a landowner for a permanent easement not less than 75 percent, nor more than 100 percent of the fair market value of the land enrolled during the period the land is subject to the easement, less the fair market value of the land encumbered by the easement (as determined by the Secretary). The statute provides that the Secretary will pay the same rate for easements that are for the maximum duration allowed under State law.

As stated in the preamble to the proposed rule, Federal agencies generally follow the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs (the Uniform Relocation Act), the Uniform Relocation Act's implementing regulations at 49 CFR part 24, and the Uniform Appraisal Standards for Federal Land Acquisitions (the Yellow Book). The Yellow Book requires that compensation be based upon the impact that the easement encumbrance will have on the value of the larger parcel, which includes all land owned by the landowner that may be impacted by the easement, as determined by the appraiser.

However, where agencies have statutory authority to waive general appraisal procedures, Federal agencies can develop alternative appraisal and valuation methodologies. Under the SAFE–TEA–LU Act, NRCS is exempt from the requirements of 49 CFR part 24. The HFRP language for permanent and maximum duration easements requires that compensation be based on the impact to the value of only the land

enrolled and encumbered by the easement. Thus, the Yellow Book requirement of appraising the larger parcel does not apply for permanent easements, or those of the maximum duration required by State law.

*Comment:* NRCS specifically requested comments on the language regarding the establishment of easement compensation rates at § 625.8. In response, NRCS received three comments. All respondents were in agreement that NRCS should not use the Yellow Book appraisal process.

*Response:* No changes were made to the regulation based on these comments. NRCS will use the Uniform Standards for Professional Appraisal Practice to determine easement compensation values under HFRP. NRCS will use the same methodology to determine compensation values for all HFRP easements, both permanent and 30-year, to reduce confusion and maintain consistency.

*Comment:* One respondent suggested that HFRP use the same appraisal process as the Wetlands Reserve Program (WRP).

*Response:* No changes were made to the regulation based on this comment. HFRP has different statutory requirements than the WRP. The statutory requirements of HFRP do not allow for the program to use the same method of compensation as the WRP.

*Comment:* NRCS also specifically requested comments on the language regarding ownership of ecosystem services credits at § 625.8(f). In response, the agency received three comments. All three respondents supported the ecosystem services credits language.

*Response:* No changes were made to the regulation as a result of these comments. However, minor changes were made to the language in § 625.8 to ensure consistency across all NRCS programs.

*Landowner Protections and Safe Harbor Agreements*

The 2006 HFRP interim final rule (71 FR 28557) included a definition of Landowner Protections as part of § 625.2 and the preamble to that rule described those protections and how program participants obtain them (71 FR 28548–28550). Landowner Protections were defined in the 2006 interim final rule as:

"* * * protections and assurances made available to HFRP participants whose voluntary conservation activities result in a net conservation benefit for listed, candidate, or other species. Landowner Protections made available by the Secretary of Agriculture to HFRP participants may be provided under section 7(b)(4) or section 10(a)(1) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1536(b)(4), 1539(a)(1)). These Landowner Protections may be provided by NRCS in conjunction with meeting its responsibilities under section 7 of the ESA, or by FWS or NFMS through section 10 of the ESA. These Landowner Protections include a permit providing coverage for incidental take of species listed under the ESA. Landowner Protections also include assurances related to potential modifications of HFRP restoration plans and assurances related to the potential (unlikely) termination of Landowner Protections and any 10-year cost share agreement."

Landowner Protections are contingent upon the HFRP restoration plan and associated cost-share agreement or easement being properly implemented. There is no requirement that HFRP participants obtain any Landowner Protections. Generally, the three elements of Landowner Protections are: (1) Authorization for the take of endangered or threatened species when conducting management activities under a HFRP restoration plan and when returning to the baseline conditions at the end of the cost-share agreement or easement period (whichever is longer), (2) assurance that the landowner will not be required to undertake additional or different management activities without the consent of the landowner, and (3) limitations on the possibility of termination of a HFRP restoration plan that is being properly implemented by the landowner.

The definition of Landowner Protections in the interim final rule (and text in the preamble) included a description of two approaches that the Secretary of Agriculture may use to make Land Protections available to HFRP participants. The regulation at § 625.13(d) specifies the two ways that NRCS can make Landowner Protections available to HFRP participants upon request. The first approach involves NRCS and the HFRP participant, and does not require the HFRP participant to have direct involvement with FWS or NMFS. Under this approach, NRCS will extend to participants the incidental take authorization received by NRCS from FWS or NMFS through biological opinions issued as part of the interagency consultation process under section 7(a)(2) of the ESA.

Under the second approach for Landowner Protections, NRCS will provide technical assistance to help participants design and use their HFRP restoration plan for the dual purposes of qualifying for HFRP financial assistance, and as a basis for entering into a Safe Harbor Agreement (SHA) or Candidate Conservation Agreement with Assurances (CCAA) with the FWS or NMFS under section 10(a)(1)A of the ESA. SHAs are voluntary arrangements between either the FWS or NMFS and cooperating participants who agree to adopt practices and measures, or refrain from certain activities in order to achieve net conservation benefits, i.e., a contribution to the recovery of listed species.

A CCAA is a voluntary agreement between the FWS or NMFS and cooperating participants whereby landowners who voluntarily agree to manage their lands or waters to remove threats to species at risk of becoming listed under the ESA as threatened or endangered receive assurances that their conservation efforts will not result in future regulatory obligations in excess of those they agree to at the time they enter into the Agreement. CCAAs are intended to help conserve proposed and candidate species, and species likely to become candidates by giving private, non-Federal landowners incentives to implement conservation measures for declining species. The primary incentive for CCAAs is an assurance that no further additional land, water, or resource use restrictions would be imposed should the species later become listed under the ESA.

There is no requirement that HFRP participants enter into a SHA or a CCAA. All SHAs are subject to the SHA policy jointly adopted by FWS and NMFS (Announcement of Final Policy, 64 FR 32717, June 17, 1999), and SHAs with the FWS also are subject to regulations at 50 CFR part 17, and specifically 50 CFR 17.22(c) for endangered species or 17.32(c) for threatened species. All CCAAs are subject to the CCAA policy jointly adopted by FWS and NMFS (Announcement of Final Policy, 64 FR 32726, June 17, 1999), and CCAAs with the FWS are also subject to regulations at 50 CFR part 17, and specifically 50 CFR 17.22(d) for endangered species or 17.32(d) for threatened species.

*Comment:* One Federal agency respondent suggested that the regulation clarify the landowner protection section to include a return to baseline conditions at the end of the easement, contract, or agreement. The respondent suggested that NRCS do this in one of two ways, either in the definition of landowner protection or in the landowner protections section of the regulation.

*Response:* NRCS has decided that this clarification is needed, and that the issue will be better clarified in the landowner protections section of the regulation. Based on this comment, NRCS added § 625.13(d)(1)(iii) to the Incidental Take section and

§ 625.13(d)(2)(iv) to the SHA or CCAA section to include a return to baseline conditions at the end of the applicable period.

*Comment:* Two respondents recommended that NRCS modify § 625.13(d) to clarify that the Landowner Protections discussed in that section are intended to apply to HFRP participants.

*Response:* Based on these comments, NRCS corrected § 625.13(d) by inserting a comma after "species," removing the words "a participant," and removing the period at the end of the sentence. These changes help clarify that Landowner Protections are available to HFRP participants.

*Comment:* One respondent suggested that NRCS provide landowners with an assurance that they will not be found in violation of the ESA or other environmental laws.

*Response:* No changes were made to the regulation based on this comment. NRCS cannot offer this type of assurance to landowners. A landowner may be in violation of the ESA if they are acting outside of the SHA/CCAA agreement. It is the responsibility of the landowner to ensure that actions outside of the landowner protections provided by NRCS are consistent with all applicable Federal and State laws. NRCS does not have the authority to provide any assurances regarding compliance with other applicable environmental laws.

*Compatible Use Authorizations*

*Comment:* Two respondents suggested that it may be more important to address the issue of compatible uses in the context of 10-year agreements than in the context of easements. The respondents felt that compatible use agreements should not be needed for properties subject to easements since the easement specifically prohibits certain uses and allows all others.

*Response:* No changes were made to the regulation based on these comments. The purpose of a compatible use agreement is to allow a landowner to conduct a prohibited activity on the easement if it will benefit the functions and values of the easement. A compatible use agreement is necessary in the context of an easement, particularly a permanent easement, which is a recorded property right and cannot be changed. However, a compatible use agreement is not necessary for a 10-year restoration cost-share agreement because the agreement itself can be altered to permit the activity that will benefit the land.

*Comment:* Two respondents recommended that NRCS include a definition of the term "compatible use" in the rule.

*Response:* NRCS did not make any changes to the regulation based on these comments. Although the term is used in the rule, the types of activities that may be considered compatible may change depending on the circumstances. In order to allow for flexibility, NRCS will define the term compatible use in the policy consistent with other NRCS programs that allow compatible use authorizations.

*Comment:* Three respondents asserted that NRCS does not have the authority to regulate hunting and fishing as compatible uses because they are a reserved right of the landowner.

*Response:* Although undeveloped recreational hunting and fishing is identified in the deed as a reserved right to the landowner, any activity above and beyond undeveloped recreational use may only be authorized by NRCS through the compatible use process. The HFRP deed does not reserve to the landowner an unfettered right to hunt and fish as suggested by the respondents. In order to clarify this issue, the agency removed language from § 625.11(b)(2) which gave examples of what types of activities may be granted a compatible use agreement. NRCS removed the compatible use paragraph from § 625.11(b)(2) and combined it with § 625.11(b)(3). The new combined paragraph at § 625.11(b)(2) now allows NRCS the right to determine and permit compatible uses on the easement area and specify the amount, timing, method, intensity, and duration of the compatible use, if such use is consistent with the long-term protection and enhancement of the purposes for which the easement was established. This new paragraph avoids confusion over what activities may be granted a compatible use, and instead focuses on the standard an activity must meet in order for a compatible use to be granted.

*Comment:* Three respondents suggested that NRCS should add prescribed fire, grazing, and silviculture practices as compatible uses which are consistent with the long-term protection and enhancement of the purposes for which the easement was established.

*Response:* No changes were made to the regulation as a result of these comments. As mentioned above, whether or not these activities will be considered compatible uses will depend on site-specific circumstances. In addition, the change made in response to the comments regarding hunting and fishing at § 625.11(b)(2) will provide additional clarity on this issue. The HFRP deed allows landowners to conduct routine forestry operations and management practices as long as such activities are consistent with the terms of the deed and the restoration plan. If the activity is allowed by the deed and consistent with the terms of the deed and the restoration plan, no compatible use authorization is required.

*Termination of Landowner Protections*

As provided for in this final rule in the definition of Landowner Protections in § 625.2 and the associated provision at § 625.13(d), all appropriate options will be pursued with the participant to avoid termination of the landowner protections in the case of landowner non-compliance or changed conditions. If the participant has entered into a SHA or CCAA with the FWS or NMFS (the Services) based on a HFRP restoration plan, NRCS will work with the participant and the Services to seek appropriate means of avoiding revocation of a permit issued under section 10(a)(1) of the ESA by FWS or NMFS to implement the SHA or CCAA. However, in the event of a termination, any requested assurances from NRCS will be voided, and the landowner will be responsible to FWS or NMFS for any violations of the ESA.

The SHA policy regarding revocation of a permit issued in association with a SHA is: "The Services are prepared as a last resort to revoke a permit implementing a Safe Harbor Agreement where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit. Prior to taking such a step, however, the Services would first have to exercise all possible means to remedy such a situation" (64 FR 32724). Regulations pertaining to SHA permits issued by FWS have a similar provision (50 CFR 17.22(c)(7) and 17.32(c)(7)) for endangered and threatened wildlife.

*Comment:* One respondent suggested that NRCS require the landowner to coordinate with all parties to the agreement if there is termination or transfer of a SHA or a CCAA.

*Response:* The proposed rule at § 625.13(d)(2)(iv) required landowners to notify and coordinate with FWS and NMFS, as appropriate, in the event of a termination of the agreement. NRCS agrees that the landowner should be responsible for coordinating with any party to the specific SHA or CCAA, as applicable, such as State fish and wildlife agencies. Based on this comment, NRCS inserted language at § 625.13(d)(2)(v) to require landowners to notify and coordinate with any relevant party to the specific SHA or CCAA.

*Tribal Consultation*

*Comment:* One respondent suggested that the regulations should require consultation with Indian tribes to discuss impacts and evaluate the effectiveness of the program over time.

*Response:* No changes were made to the regulation based on this comment. Participation in HFRP is voluntary, and the proposed rule did not meet the threshold for requiring consultation as specified by Executive Order 13175. However, NRCS remains committed to seeking advice, guidance, and counsel from Indian tribes in regard to natural resource concerns and issues. Indian tribes interested in providing input regarding HFRP policies may submit their request directly to the Chief.

**Miscellaneous Changes for Clarification and Improved Program Administration**

NRCS removed the definition of "contract or agreement" for clarity because each of the possible contracts or agreements under HFRP are defined specifically so a general definition is not necessary and may create confusion.

NRCS removed the term "option agreement to purchase" throughout the document and replaced the term with "agreement to purchase" to reflect more accurately the way the document is used and to allow for consistency with other easement programs.

NRCS made other non-substantive changes for the purpose of clarity and consistency with other NRCS programs. These changes are set forth in the text portion of this document.

**List of Subjects in 7 CFR Part 625**

Administrative practice and procedure, Agriculture, Soil conservation, and Forestry.

■ For the reasons stated in the preamble, NRCS revises 7 CFR part 625 to read as follows:

## PART 625—HEALTHY FORESTS RESERVE PROGRAM

Sec.

625.1 Purpose and scope.
625.2 Definitions.
625.3 Administration.
625.4 Program requirements.
625.5 Application procedures.
625.6 Establishing priority for enrollment in HFRP.
625.7 Enrollment of easements, contracts, and agreements.
625.8 Compensation for easements and 30-year contracts.
625.9 10-year restoration cost-share agreements.
625.10 Cost-share payments.
625.11 Easement participation requirements.
625.12 30-year contracts.
625.13 The HFRP restoration plan development and Landowner Protections.
625.14 Modification of the HFRP restoration plan.
625.15 Transfer of land.
625.16 Violations and remedies.
625.17 Payments not subject to claims.
625.18 Assignments.
625.19 Appeals.
625.20 Scheme and device.

**Authority:** 16 U.S.C. 6571–6578.

### § 625.1 Purpose and scope.

(a) The purpose of the Healthy Forests Reserve Program (HFRP) is to assist landowners, on a voluntary basis, in restoring, enhancing, and protecting forestland resources on private lands through easements, 30-year contracts, and 10-year cost-share agreements.

(b) The objectives of HFRP are to:

(1) Promote the recovery of endangered and threatened species under the Endangered Species Act of 1973 (ESA);

(2) Improve plant and animal biodiversity; and

(3) Enhance carbon sequestration.

(c) The regulations in this part set forth the policies, procedures, and requirements for the HFRP as administered by the Natural Resources Conservation Service (NRCS) for program implementation and processing applications for enrollment.

(d) The Chief may implement HFRP in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

### § 625.2 Definitions.

The following definitions will be applicable to this part:

*30-year Contract* means a contract that is limited to acreage owned by Indian tribes. The 30-year contract is not eligible for use on tribal lands held in trust or subject to Federal restrictions against alienation.

*Acreage Owned by Indian Tribes* means lands to which the title is held by individual Indians and Indian tribes. This term does not include land held in trust by the United States or lands where the fee title contains restraints against alienation.

*Biodiversity (Biological Diversity)* means the variety and variability among living organisms and the ecological complexes in which they live.

*Candidate Conservation Agreement with Assurances (CCAA)* means a voluntary arrangement between the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), and cooperating non-Federal landowners under the authority of section 10(a)(1) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1). Under the CCAA and an associated enhancement of survival permit, the non-Federal landowner implements actions that are consistent with the conditions of the permit. CCAA with FWS are also subject to regulations at 50 CFR 17.22(d) for endangered species or 50 CFR 17.32(d) for threatened species, or applicable subsequent regulations.

*Carbon sequestration* means the long-term storage of carbon in soil (as soil organic matter) or in plant material (such as in trees).

*Chief* means the Chief of the Department of Agriculture (USDA) NRCS, or designee.

*Confer* means to discuss for the purpose of providing information; to offer an opinion for consideration; or to meet for discussion, while reserving final decision-making authority with NRCS.

*Conservation practice* means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that benefit the eligible land and optimize environmental benefits, planned and applied according to NRCS standards and specifications.

*Conservation treatment* means any and all conservation practices, measures, activities, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities, including the restoration, enhancement, maintenance, or management of habitat conditions for HFRP purposes.

*Coordination* means to obtain input and involvement from others while reserving final decision-making authority with NRCS.

*Cost-share agreement* means a legal document that specifies the rights and obligations of any participant accepted into the program. A HFRP cost-share agreement is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation. A cost-share agreement under HFRP has a duration of 10-years.

*Cost-share payment* means the payment made by NRCS to a program participant or vendor to achieve the restoration, enhancement, and protection goals of enrolled land in accordance with the HFRP restoration plan.

*Easement* means a conservation easement, which is an interest in land defined and delineated in a deed

whereby the landowner conveys certain rights, title, and interests in a property to the United States for the purpose of protecting the forest ecosystem and the conservation values of the property.

*Easement area* means the land encumbered by an easement.

*Easement payment* means the consideration paid to a landowner for an easement conveyed to the United States under the HFRP.

*Fish and Wildlife Service* is an agency of the Department of Interior.

*Forest Service* is an agency of USDA.

*Forest ecosystem* means a dynamic set of living organisms, including plants, animals, and microorganisms interacting among themselves and with the environment in which they live. A forest ecosystem is characterized by predominance of trees, and by the fauna, flora, and ecological cycles (energy, water, carbon, and nutrients).

*HFRP restoration plan* means the document that identifies the conservation treatments that are scheduled for application to land enrolled in HFRP in accordance with NRCS standards and specifications.

*Indian tribe* means any Indian tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Landowner* means an individual or entity having legal ownership of land. The term landowner may also include all forms of collective ownership including joint tenants, tenants in common, and life tenants.

*Landowner protections* means protections and assurances made available by NRCS to HFRP participants, when requested, and whose voluntary conservation activities result in a net conservation benefit for listed, candidate, or other species and meet other requirements of the program. These Landowner Protections are subject to a HFRP restoration plan and associated cost-share agreement, 30-year contract, or easement being properly implemented. Landowner protections made available by the Secretary of Agriculture to HFRP participants may include an incidental take authorization received by NRCS from FWS or NMFS, or may be provided by a Safe Harbor Agreement (SHA) or CCAA directly between the HFRP participant and FWS or NMFS, as appropriate.

*Liquidated damages* means a sum of money stipulated in the HFRP restoration agreement that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the restoration agreement. The sum represents an estimate of the expenses incurred by NRCS to service the restoration agreement, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Maintenance* means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

*Measure* means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

*National Marine Fisheries Service* is an agency of the United States Department of Commerce.

*Natural Resources Conservation Service* is an agency of USDA which has the responsibility for administering HFRP.

*Participant* means a person, entity, or Indian tribe who is a party to a 10-year cost share agreement, 30-year contract, or an agreement to purchase an easement.

*Private land* means land that is not owned by a local, State, or Federal governmental entity, and includes land that meets the definition of "acreage owned by Indian tribes."

*Restoration* means implementing any conservation practice (vegetative, management, or structural) or measure that improves forest ecosystem values and functions (native and natural plant communities).

*Restoration agreement* means a cost-share agreement between the program participant and NRCS to restore, enhance, and protect the functions and values of a forest ecosystem for the purposes of HFRP under either an easement, 30-year contract, or a 10-year cost-share agreement enrollment option.

*Safe Harbor Agreement* means a voluntary arrangement between FWS or NMFS and cooperating non-Federal landowners under the authority of section 10(a)(1) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1). Under the SHA and an associated enhancement of survival permit, the private property owner implements actions that are consistent with the conditions of the permit. SHAs with FWS are also subject to regulations at 50 CFR 17.22(c) for endangered species or 50 CFR 17.32(c) for threatened species, or applicable subsequent regulations.

*State-listed species* means a species listed as threatened or endangered under State endangered species laws, a candidate for such listing, or a species listed in a State Wildlife Action Plan as a Species of Greatest Conservation Need.

*Sign-up notice* means the public notification document that NRCS provides to describe the particular requirements for a specific HFRP sign-up.

*State Conservationist* means the NRCS employee authorized to implement HFRP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Islands Area.

*Technical service provider* means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants in lieu of or on behalf of NRCS.

**§ 625.3 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) No delegation in this part to lower organizational levels will preclude the Chief from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(d) The State Conservationist will develop a list of eligible restoration practices, payment rates and cost-share percentages, a priority ranking process, and any related technical matters.

(e) NRCS will coordinate with FWS and NMFS in the implementation of the program and in establishing program policies. In carrying out this program, NRCS may confer with private forest landowners, including Indian tribes, the Forest Service and other Federal agencies, State fish and wildlife agencies, State forestry agencies, State environmental quality agencies, other State conservation agencies, and nonprofit conservation organizations. No determination by the FWS, NMFS, Forest Service, any Federal, State, or

tribal agency, conservation district, or other organization will compel NRCS to take any action which NRCS determines will not serve the purposes of the program established by this part.

**§ 625.4 Program requirements.**

(a) *General.* Under the HFRP, NRCS will purchase conservation easements from, or enter into 30-year contracts or 10-year cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of forestlands and associated lands. To participate in HFRP, a landowner will agree to the implementation of a HFRP restoration plan, the effect of which is to restore, protect, enhance, maintain, and manage the habitat conditions necessary to increase the likelihood of recovery of listed species under the ESA, or measurably improve the well-being of species that are not listed as endangered or threatened under the ESA but are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding. NRCS may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of forest ecosystem functions and values. Specific restoration, protection, enhancement, maintenance, and management activities may be undertaken by the landowner or other NRCS designee.

(1) Of the total amount of funds expended under the program for a fiscal year to acquire easements and enter into 10-year cost-share agreements, not more than 40 percent will be used for cost-share agreements, and not more than 60 percent will be used for easements.

(2) The Chief may use any funds that are not obligated by April 1 of the fiscal year for which the funds are made available to carry out a different method of enrollment during that fiscal year.

(b) *Landowner eligibility.* To be eligible to enroll an easement in the HFRP, an individual or entity must:

(1) Be the landowner of eligible land for which enrollment is sought; and

(2) Agree to provide such information to NRCS, as the agency deems necessary or desirable, to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(c) *Eligible land.*

(1) NRCS, in coordination with FWS or NMFS, will determine whether land is eligible for enrollment and whether once found eligible, the lands may be included in the program based on the likelihood of successful restoration, enhancement, and protection of forest ecosystem functions and values when considering the cost of acquiring the easement, 30-year contract, or 10-year cost share agreement, and the restoration, protection, enhancement, maintenance, and management costs.

(2) Land will be considered eligible for enrollment in the HFRP only if NRCS determines that:

(i) Such private land will contribute to the restoration or enhancement of the habitat or otherwise measurably increase the likelihood of recovery for a selected species listed under section 4 of the ESA; and

(ii) Such private land will contribute to the restoration or enhancement of the habitat or otherwise measurably improve the well-being of a selected species not listed under section 4 of the ESA but is a candidate for such listing, or the selected species is a State-listed species, or is a species identified by the Chief for special consideration for funding.

(3) NRCS may also enroll land adjacent to eligible land if the enrollment of such adjacent land would contribute significantly to the practical administration of the easement area, but not more than it determines is necessary for such contribution.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(5) In the case of acreage owned by an Indian tribe, NRCS may enroll acreage into the HFRP which is privately owned by either the tribe or an individual.

(d) *Ineligible land.* The following land is not eligible for enrollment in the HFRP:

(1) Land owned by the United States, States, or units of local government;

(2) Land subject to an easement or deed restriction that already provides for the protection of fish and wildlife habitat or that would interfere with HFRP purposes, as determined by NRCS; and

(3) Land that would not be eligible for HFRP under paragraphs (c)(1) through (c)(5).

**§ 625.5 Application procedures.**

(a) *Sign-up process.* As funds are available, the Chief will solicit project proposals from the State Conservationist. The State Conservationist may consult with other agencies at the State, Federal, and local levels to develop proposals. The State Conservationist will submit the proposal(s) to the Chief for funding selection. Upon selection for funding, the State Conservationist will issue a public sign-up notice which will announce and explain the rationale for decisions based on the following information:

(1) The geographic scope of the sign-up;

(2) Any additional program eligibility criteria that are not specifically listed in this part;

(3) Any additional requirements that participants must include in their HFRP applications that are not specifically identified in this part;

(4) Information on the priority order of enrollment for funding;

(5) An estimate of the total funds NRCS expects to obligate during a given sign-up; and

(6) The schedule for the sign-up process, including the deadline(s) for applying.

(b) *Application for participation.* To apply for enrollment through an easement, 30-year contract, or 10-year cost-share agreement, a landowner must submit an application for participation in the HFRP during an announced period for such sign-up.

(c) *Preliminary agency actions.* By filing an application for participation, the applicant consents to an NRCS representative entering upon the land for purposes of determining land eligibility, and for other activities that are necessary or desirable for NRCS to make offers of enrollment. The applicant is entitled to accompany an NRCS representative on any site visits.

(d) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in HFRP, an applicant may voluntarily offer to accept a lesser payment than is being offered by NRCS. Such offer and subsequent payments may not be less than those rates set forth in § 625.8 and § 625.10 of this part.

**§ 625.6 Establishing priority for enrollment in HFRP.**

(a) *Ranking considerations.* Based on the specific criteria set forth in a sign-up announcement and the applications for participation, NRCS, in coordination FWS and NMFS, may consider the following factors to rank properties:

(1) Estimated conservation benefit to habitat required by threatened or endangered species listed under section 4 of the ESA;

(2) Estimated conservation benefit to habitat required by species not listed as endangered or threatened under section 4 of the ESA but that are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding;

(3) Estimated improvement of biological diversity, if enrolled;

(4) Potential for increased capability of carbon sequestration, if enrolled;

(5) Availability of contribution of non-Federal funds;

(6) Significance of forest ecosystem functions and values;

(7) Estimated cost-effectiveness of the particular restoration cost-share agreement, contract, or easement, and associated HFRP restoration plan; and

(8) Other factors identified in a HFRP sign-up notice.

(b) NRCS may place higher priority on certain forest ecosystems based regions of the State or multi-State area where restoration of forestland may better achieve NRCS programmatic and sign-up goals and objectives.

(c) Notwithstanding any limitation of this part, NRCS may enroll eligible lands at any time in order to encompass project areas subject to multiple land ownership or otherwise to achieve program objectives. Similarly, NRCS may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the forest ecosystem and those adjacent landowners are unwilling to participate.

(d) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, NRCS may select a lower ranked application that can be fully funded. In cases where HFRP funds are not sufficient to cover the costs of an application selected for funding, the applicant may lower the cost of the application by changing the duration of the easement or agreement or reducing the acreage offered, unless these changes result in a reduction of the application ranking score below that of the score of the next available application on the ranking list.

**§ 625.7 Enrollment of easements, contracts, and agreements.**

(a) *Offers of enrollment.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program. This notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in HFRP, nor does it bind the landowner to convey an easement, or to contract or agree to HFRP activities. The letter notifies the landowner that NRCS intends to continue the enrollment process on their land unless otherwise notified by the landowner.

(b) *Acceptance of offer of enrollment.* An agreement to purchase or a restoration cost-share agreement or contract will be presented by NRCS to the landowner which will describe the easement, agreement, or contract area; the easement, agreement, or contract terms and conditions; and other terms and conditions for participation that may be required by NRCS.

(c) *Effect of the acceptance of the offer.* After the agreement to purchase or restoration cost-share agreement or contract is executed by NRCS and the landowner, the land will be considered enrolled in the HFRP. For easements, NRCS will proceed with various easement acquisition activities, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the HFRP, as appropriate for the enrollment option being considered. For restoration cost-share agreements and contracts, the landowner will proceed to implement the restoration plan with technical assistance and cost-share from NRCS.

(d) *Withdrawal of offers.* Prior to execution of an agreement to purchase, a restoration cost-share agreement, or contract between the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, or other reasons. An agreement to purchase will be void, and the offer withdrawn, if not executed by the landowner within the time specified.

**§ 625.8 Compensation for easements and 30-year contracts.**

(a) *Determination of easement payment rates.*

(1) NRCS will offer to pay not less than 75 percent, nor more than 100 percent of the fair market value of the enrolled land during the period the land is subject to the easement, less the fair market value of the land encumbered by the easement for permanent easements or easements for the maximum duration allowed under State law.

(2) NRCS will offer to pay not more than 75 percent of the fair market value of the enrolled land, less the fair market value of the land encumbered by the easement for 30-year easements or 30-year contracts.

(b) *Acceptance and use of contributions.* NRCS may accept and use contributions of non-Federal funds to make payments under this section.

(c) *Acceptance of offered easement or 30-year contract compensation.*

(1) NRCS will not acquire any easement or 30-year contract unless the landowner accepts the amount of the payment that is offered by NRCS. The payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement or 30-year contract. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) Payments may be made in a single payment or no more than 10 annual payments of equal or unequal size, as agreed to between NRCS and the landowner.

(d) If a landowner believes they may be eligible for a bargain sale tax deduction that is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner, it is the landowner's responsibility to discuss those matters with the Internal Revenue Service. NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(e) *Per acre payments.* If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

(f) *Ecosystem Services Credits for Conservation Improvements.* USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through HFRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a HFRP easement, 30-year contract, or restoration cost-share agreement. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure the requirements of a HFRP easement, contract, cost-share agreement, or restoration plan are met consistent with §§ 625.9 through 625.13 of this part. Where activities required under an environmental credit agreement may affect land covered under a HFRP easement, restoration cost-share agreement, or 30-year contract, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

**§ 625.9 10-year restoration cost-share agreements.**

(a) The restoration plan developed under § 625.13 forms the basis for the 10-year cost-share agreement and its terms are incorporated therein.

(b) A 10-year cost-share agreement will:

(1) Incorporate all portions of a restoration plan;

(2) Be for a period of 10 years;

(3) Include all provisions as required by law or statute;

(4) Specify the requirements for operation and maintenance of applied conservation practices;

(5) Include any participant reporting and recordkeeping requirements to determine compliance with the agreement and HFRP;

(6) Be signed by the participant;

(7) Identify the amount and extent of cost-share assistance that NRCS will provide for the adoption or implementation of the approved conservation treatment identified in the restoration plan; and

(8) Include any other provision determined necessary or appropriate by the NRCS representative.

(c) Once the participant and NRCS have signed a 10-year cost-share agreement, the land will be considered enrolled in HFRP.

(d) The State Conservationist may, by mutual agreement with the parties to the 10-year cost-share agreement, consent to the termination of the restoration agreement where:

(1) The parties to the 10-year cost-share agreement are unable to comply with the terms of the restoration agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the 10-year cost-share agreement would work a severe hardship on the parties to the agreement; or

(3) Termination of the 10-year cost-share agreement would, as determined by the State Conservationist, be in the public interest.

(e) If a 10-year cost-share agreement is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the 10-year cost-share agreement where forces beyond the participant's control prevented compliance with the agreement.

**§ 625.10 Cost-share payments.**

(a) NRCS may share the cost with landowners of restoring land enrolled in HFRP as provided in the HFRP restoration plan. The HFRP restoration plan may include periodic manipulation to maximize fish and wildlife habitat and preserve forest ecosystem functions and values, and measures that are needed to provide the Landowner Protections under section 7(b)(4) or section 10(a)(1) of the ESA, including the cost of any permit.

(b) Landowner Protections may be made available to landowners enrolled in the HFRP who agree, for a specified period, to restore, protect, enhance, maintain, and manage the habitat conditions on their land in a manner that is reasonably expected to result in a net conservation benefit that contributes to the recovery of listed species under the ESA, candidate, or other species covered by this regulation. These protections operate with lands enrolled in the HFRP and are valid for as long as the landowner is in compliance with the terms and conditions of such assurances, any associated permit, the easement, contract, or the restoration agreement.

(c) If the Landowner Protections, or any associated permit, require the adoption of a conservation practice or measure in addition to the conservation practices and measures identified in the applicable HFRP restoration plan, NRCS and the landowner will incorporate the conservation practice or measure into the HFRP restoration plan as an item eligible for cost-share assistance.

(d) Failure to perform planned management activities can result in violation of the easement, 10-year cost-share agreement, or the agreement under which Landowner Protections have been provided. NRCS will work with landowners to plan appropriate management activities.

(e) The amount and terms and conditions of the cost-share assistance will be subject to the following restrictions on the costs of establishing or installing NRCS approved conservation practices or implementing measures specified in the HFRP restoration plan:

(1) On enrolled land subject to a permanent easement or an easement for the maximum duration allowed under State law, NRCS will offer to pay not less than 75 percent nor more than 100 percent of the average cost, and;

(2) On enrolled land subject to a 30-year easement or 30-year contract, NRCS will offer to pay not more than 75 percent of the average cost.

(f) On enrolled land subject to a 10-year cost-share agreement without an associated easement, NRCS will offer to pay not more than 50 percent of the average costs.

(g) Cost-share payments may be made only upon a determination by NRCS that an eligible conservation practice or measure has been established in compliance with appropriate standards and specifications. Identified conservation practices and measures may be implemented by the landowner or other designee.

(h) Cost-share payments may be made for the establishment and installation of additional eligible conservation practices and measures, or the maintenance or replacement of an eligible conservation practice or measure, but only if NRCS determines the practice or measure is needed to meet the objectives of HFRP, and the failure of the original conservation practices or measures was due to reasons beyond the control of the landowner.

**§ 625.11 Easement participation requirements.**

(a) To enroll land in HFRP through a permanent easement, an easement for the maximum duration allowed under State law, or 30-year enrollment option, a landowner will grant an easement to the United States. The easement deed will require that the easement area be maintained in accordance with HFRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of habitat and forest ecosystem functions and values.

(b) For the duration of its term, the easement will require, at a minimum, that the landowner and the landowner's heirs, successors, and assignees, will cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the easement and with the terms of the HFRP restoration plan. In addition, the easement will grant to the United States, through NRCS:

(1) A right of access to the easement area by NRCS or its representative;

(2) The right to determine and permit compatible uses on the easement area and specify the amount, method, timing, intensity, and duration of the compatible use, if such use is consistent with the long-term protection and enhancement of the purposes for which the easement was established;

(3) The rights, title, and interest to the easement area as specified in the conservation easement deed; and

(4) The right to perform restoration, protection, enhancement, maintenance, and management activities on the easement area.

(c) The landowner will convey title to the easement which is acceptable to NRCS. The landowner will warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title which are deemed acceptable by NRCS.

(d) The landowner will:

(1) Comply with the terms of the easement;

(2) Comply with all terms and conditions of any associated agreement or contract;

(3) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(4) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area; and

(5) Agree that each person who is subject to the easement will be jointly and severally responsible for compliance with the easement and the provisions of this part, and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

**§ 625.12 30-year contracts.**

(a) To enroll land in HFRP through the 30-year contract option, a landowner will sign a 30-year contract with NRCS. The contract will require that the contract area be maintained in accordance with HFRP goals and objectives for the duration of the term of the contract, including the restoration, protection, enhancement, maintenance, and management of habitat and forest ecosystem functions and values.

(b) For the duration of its term, the 30-year contract will require, at a minimum, that the landowner and the landowner's assignees, will cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the contract and with the terms of the HFRP restoration plan. In addition, the contract will grant to the United States through NRCS:

(1) A right of access to the contract area by NRCS or its representative;

(2) The right to allow such activities by the landowner as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the purposes for which the contract was established;

(3) The right to specify the amount, method, timing, intensity, and duration of the activities listed in paragraph (b)(2) of this section, as incorporated into the terms of the contract; and

(4) The right to perform restoration, protection, enhancement, maintenance, and management activities on the contract area.

(c) The landowner will:

(1) Comply with the terms of the contract;

(2) Comply with all terms and conditions of any associated agreement or contract; and

(3) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the contract area in accordance with the terms of the contract and related agreements.

(d) A 30-year contract will:

(1) Be signed by the participant;

(2) Identify the amount and extent of cost-share assistance that NRCS will provide for the adoption or implementation of the approved conservation treatment identified in the restoration plan; and

(3) Include any other provision determined necessary or appropriate by the NRCS representative.

(e) Once the landowner and NRCS have signed a 30-year contract, the land will be considered enrolled in HFRP.

**§ 625.13 The HFRP restoration plan development and Landowner Protections.**

(a) The development of the HFRP restoration plan will be made through an NRCS representative, who will confer with the program participant and with the FWS and NMFS, as appropriate.

(b) The HFRP restoration plan will specify the manner in which the enrolled land under easement, 30-year contract, or 10-year cost-share agreement will be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program.

(c) Eligible restoration practices and measures may include land management, vegetative, and structural practices and measures that will restore and enhance habitat conditions for listed species, candidate, State-listed, and other species identified by the Chief for special funding consideration. To the extent practicable, eligible practices and measures will improve biodiversity and optimize the sequestration of carbon through management that maintains diverse and high quality native forests to accomplish the goals of the restoration plan. NRCS, in coordination with FWS and NMFS, will determine the conservation practices and measures. The State Conservationist will develop and make available to the public a list of eligible practices, and will determine payment rates and cost-share percentages within statutory limits.

(d) Landowner Protections. An HFRP participant who enrolls land in HFRP and whose conservation treatment results in a net conservation benefit for listed, candidate, or other species, may request such Landowner Protections as follows:

(1) Incidental Take Authorization.

(i) NRCS will extend to participants the incidental take authorization received by NRCS from FWS or NMFS through biological opinions issued as part of the interagency cooperation process under section 7(a)(2) of the ESA;

(ii) NRCS will provide assurances, as a provision of the restoration plan, that when a participant is provided authorization for incidental take of a listed species, NRCS will not require management activities related to that species to be undertaken in addition to or different from those specified in the restoration plan without the participant's consent;

(iii) The program participant will be covered by the authorization to NRCS for incidental take associated with restoration actions or management activities. The incidental take may include a return to baseline conditions at the end of the applicable period, if the landowner so desires.

(iv) Provided the landowner has acted in good faith and without intent to violate the terms of the HFRP restoration plan, NRCS will pursue all appropriate options with the participant to avoid termination in the event of the need to terminate an HFRP restoration plan that is being properly implemented; and

(v) If the 30-year contract or 10-year restoration cost-share agreement is terminated, any requested assurances, including an incidental take authorization under this section, provided by NRCS will be voided. As such, the landowner will be responsible to FWS or NMFS for any violations of the ESA.

(2) SHA or CCAA.

(i) NRCS will provide technical assistance to help participants design and use their HFRP restoration plan for the dual purposes of qualifying for HFRP financial assistance and as a basis for entering into a SHA or CCAA with FWS or NMFS and receiving an associated permit under section 10(a)(1)(a) of the ESA.

(ii) In exchange for a commitment to undertake conservation measures, the landowner may receive a permit under section 10 of the ESA from FWS or NMFS authorizing incidental take of species covered by the SHA or CCAA that may occur as a result of restoration actions, management activities, and for a listed species covered by a SHA, a return to baseline conditions at the end of the applicable period.

(iii) All SHAs and associated permits issued by FWS or NMFS are subject to the Safe Harbor Policy jointly adopted by FWS and NMFS according to the regulations at 64 FR 32717 or applicable subsequently adopted policy, and SHAs with FWS also are subject to regulations at 50 CFR 17.22(c) for endangered species or 50 CFR 17.32(c) for threatened species, or applicable subsequent regulations.

(iv) All CCAAs and associated permits issued by FWS or NMFS are subject to the CCAAs policy jointly adopted by FWS and NMFS according to the

regulations at 64 FR 32706 or applicable subsequently adopted policy, and CCAAs with FWS also are subject to regulations at 50 CFR 17.22(d) for endangered species or 50 CFR 17.32(d) for threatened species, or applicable subsequent regulations.

(v) If the 30-year contract or 10-year restoration cost-share agreement is terminated, the landowner will be responsible to notify and coordinate with FWS and NMFS or any other relevant party to the specific SHA or CCAA, as appropriate, for any modifications related to the SHA or CCAA.

**§ 625.14 Modification of the HFRP restoration plan.**

The State Conservationist may approve modifications to the HFRP restoration plan that do not modify or void provisions of the easement, contract, restoration agreement, or Landowner Protections, and are consistent with applicable law. NRCS may obtain and receive input from the landowner and coordinate with FWS and NMFS to determine whether a modification to the restoration plan is justified. Any HFRP restoration plan modification must meet HFRP program objectives, and must result in equal or greater wildlife benefits and ecological and economic values to the United States. Modifications to the HFRP restoration plan which are substantial and affect provisions of the contract, restoration cost-share agreement, or Landowner Protections will require agreement from the landowner, any relevant party to a specific SHA or CCAA, FWS, or NMFS, as appropriate, and may require execution of an amended contract or 10-year restoration cost-share agreement and modification to the Landowner Protection provisions.

**§ 625.15 Transfer of land.**

(a) *Offers voided prior to enrollment.* Any transfer of the property prior to the applicant's acceptance into the program will void the offer of enrollment. At the option of the State Conservationist, an offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement, agreement, and contract terms and conditions.

(b) *Actions following transfer of land.*

(1) For easements or 30-year contracts with multiple annual payments, any remaining payments will be made to the original landowner unless NRCS receives an assignment of proceeds.

(2) Eligible cost-share payments will be made to the new landowner upon presentation of an assignment of rights or other evidence that title has passed.

(3) Landowner protections will be available to the new landowner, and the new landowner will be held responsible for assuring completion of all measures and conservation practices required by the contract, deed, and incidental take permit.

(4) If a SHA or CCAA is involved, the previous and new landowner may coordinate with FWS or NMFS, as appropriate, to transfer the agreement and associated permits and assurances.

(5) The landowner and NRCS may agree to transfer a 30-year contract. The transferee must be determined by NRCS to be eligible to participate in HFRP and must assume full responsibility under the contract, including operation and maintenance of all conservation practices and measures required by the contract.

(c) *Claims to payments.* With respect to any and all payments owed to a person, the United States will bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

**§ 625.16 Violations and remedies.**

(a) *Easement Violations.*

(1) In the event of a violation of the easement or any associated agreement involving a landowner, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important listed species, candidate species, and forest ecosystem functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owed to landowners at any time there is a material breach of the easement covenants, associated restoration agreement, or any associated contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(4) The United States will be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(b) *30-year Contract and 10-year Cost-Share Agreement Violations.*

(1) If NRCS determines that a participant is in violation of the terms of a 30-year contract, or 10-year cost-share agreement, or documents incorporated by reference into the 30-year contract or 10-year cost-share agreement, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation. If the violation continues, the State Conservationist may terminate the 30-year contract or 10-year cost-share agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a 10-year cost-share agreement or 30-year contract termination is effective immediately upon a determination by the State Conservationist that the participant has: submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(3) If NRCS terminates a 10-year cost-share agreement or 30-year contract, the participant will forfeit all rights for future payments under the 10-year cost-share agreement or 30-year contract, and must refund all or part of the payments received, plus interest, and liquidated damages.

(4) When making any 30-year contract or 10-year cost-share agreement termination decisions, the State Conservationist may provide equitable relief in accordance with 7 CFR part 635.

**§ 625.17 Payments not subject to claims.**

Any cost-share, contract, or easement payment or portion thereof due any person under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

**§ 625.18 Assignments.**

Any person entitled to any cash payment under this program may assign

the right to receive such cash payments in whole or in part.

**§ 625.19 Appeals.**

(a) A person participating in the HFRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(b) Before a person may seek judicial review of any administrative action concerning eligibility for program participation under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property value are considered confidential information, and will only be disclosed as determined at the sole discretion of NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by NRCS in furtherance of its federally held property rights are under the jurisdiction of the Federal District Court, and are not subject to review under administrative appeal regulations.

**§ 625.20 Scheme and device.**

(a) If it is determined by NRCS that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for 10-year cost-share agreements, contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A person who succeeds to the responsibilities under this part will report in writing to NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

Signed this 4th day of February, 2010, in Washington, DC.

**Dave White,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 2010–2812 Filed 2–9–10; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### 7 CFR Part 650

**RIN 0578–AA55**

## Compliance With NEPA

**AGENCY:** Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) published an interim final rule on July 13, 2009, that identified additional categorical exclusions, which are actions that NRCS has determined do not individually or cumulatively have a significant effect on the human environment and, thus, should not require preparation of an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act (NEPA). This final rule responds to comments received on the interim final rule and makes final the provisions set forth in the interim final rule. NRCS' categorical exclusions encompass actions that promote restoration and conservation activities related to past natural or human induced damage, or alteration of floodplains and watershed areas. For projects being funded under the American Recovery and Reinvestment Act of 2009 (ARRA), this final rule will assist NRCS in meeting mandates set forth in ARRA for undertaking actions in the most expeditious manner and in compliance with NEPA.

**DATES:** *Effective Date:* The rule is effective February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6158 South Building, Washington, DC 20250; Telephone: (202) 720–4925; Fax: (202) 720–2646; or e-mail *NEPA2008@wdc.usda.gov,* and identify in the subject line, "Information Requested." This final rule may be accessed via Internet. Users can access the final rule at: *http://www.nrcs.usda.gov/programs/Env_Assess/index.html.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

**Regulatory Certifications**

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this final rule is a non-significant regulatory action under Executive Order 12866.

*Regulatory Flexibility Act*

Pursuant to 5 U.S.C. 605(c) of the Regulatory Flexibility Act, NRCS has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this final rule.

*Environmental Analysis*

This final rule amends the procedures for implementing NEPA at 7 CFR part 650 and will not directly impact the environment. An agency's NEPA procedures are guidance to assist the agency in its fulfillment of responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular action. The Council for Environmental Quality (CEQ) set forth the requirements for establishing agency NEPA procedures in its regulations at 40 CFR 1505.1 and 1507.3. The CEQ regulations do not require agencies to conduct NEPA analyses or prepare NEPA documentation when establishing their NEPA procedures. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v *U.S. Forest Service,* 230 F.3d 947, 954–55 (7th Cir. 2000).

*Paperwork Reduction Act*

There are no requirements for information collection associated with this final rule that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Unfunded Mandates Reform Act of 1995*

NRCS assessed the effects of this rulemaking action on State, local, or tribal governments and the public. This action does not compel the expenditure of $100 million or more in any one year (adjusted for inflation) by any State, local, or tribal governments or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

*Executive Order 13175*

This final rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with

Indian tribal governments. NRCS has assessed the impact of this final rule on Indian tribal governments, and has concluded that this rule will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. As a result, the rule did not meet the threshold for requiring consultation as specified by Executive Order 13175. NRCS remains committed to seeking advice, guidance, and counsel from Indian tribes in regard to natural resource concerns and issues.

*Civil Rights Impact Analysis*

In accordance with OMB's determination that this final rule is deemed non-significant, NRCS was not required to conduct a Civil Rights Impact Analysis. However, the NRCS Civil Rights Division reviewed the final rule and determined through a Civil Rights assessment that NEPA's final rule imposes no disproportionately adverse impacts for women, minorities, or persons with disabilities. On July 13, 2009, NRCS published an interim final rule that identified additional categorical exclusions, which are actions that NRCS has determined do not individually or cumulatively have a significant effect on the human environment and, thus, they should not require preparation of an EA or an EIS under NEPA. NRCS' categorical exclusion actions promote restoration and conservation activities related to past natural or human induced damage, or alteration of floodplains and watershed areas. For projects being funded under the ARRA, this final rule will assist NRCS in meeting mandates set forth in ARRA for undertaking actions in the most expeditious manner and in compliance with NEPA. The changes included in this regulation address the identified 21 new categorical exclusions and are applicable to all persons regardless of race, color, national origin, gender, sex, or disability status. Therefore, the NEPA final rule portends no adverse civil rights implications for women, minorities, or persons with disabilities.

*Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final rule: (1) All State and local laws and regulations that conflict with this rule, or that would impede full implementation of this rule, will be preempted, and (2) no retroactive effect would be given to this final rule.

*Executive Order 13132*

NRCS has considered this final rule in accordance with Executive Order 13132, issued August 4, 1999. NRCS has determined that the rule conforms to the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this rule does not have Federalism implications.

*Energy Effects*

NRCS has determined that this final rule does not constitute a significant energy action as defined in Executive Order 13211.

*Background*

On July 13, 2009, NRCS published an interim final rule that amended 7 CFR 650.6 to identify an additional 21 actions that can, in the absence of extraordinary circumstances, be categorically excluded from further review in an EA or an EIS. NRCS determined that the new categorical exclusions routinely do not individually or cumulatively have a significant effect on the human environment. The statement supporting the categorical exclusions is available for review at the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess/index.html* or upon request from Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6158 South Building, Washington, DC 20250.

NRCS provided a 60-day comment period to solicit responses from the public regarding the identification of the 21 new categorical exclusions. NRCS received 16 substantive and timely filed letters containing approximately 25 comments. Respondents included nine non-governmental organizations, one Federal government agency, one State agency, one local government agency, three individuals, and one tribal agency. Comments were received from Georgia, Iowa, Kansas, Kentucky, Maryland, Mississippi, New Mexico, Oklahoma, Rhode Island, South Dakota, Texas, and Washington, DC. The discussion that follows is a summarized version of the comments and the agency's responses.

*Discussion of Comments*

The comments received focused on the following issues: (1) Support for the expanded list of categorical exclusions; (2) clarification on compliance with other environmental laws and permitting requirements when invoking a categorical exclusion; (3) assessment of tribal implications and consultation; and (4) clarification on certain terms and conditions under which a categorical exclusion may be used.

Eleven of the 16 sets of comments received expressed support for the expanded list of categorical exclusions.

*Compliance With Other Environmental Laws*

*Comment:* One respondent asked whether other potentially applicable environmental laws, such as section 404 of the Clean Water Act, would require NRCS to prepare an EA or EIS if the Environmental Protection Agency (EPA) or the United States Army Corps of Engineers (USACE) determined that there were significant impacts or extraordinary circumstances associated with a project.

*Response:* NRCS uses its site-specific environmental evaluation (EE) process and assessment to make the appropriate determination of whether extraordinary circumstances exist which require preparing an EA or EIS. However, NRCS will consider any input received from EPA or USACE when determining the need for an EA or EIS.

*Comment:* The respondent also questioned whether there would be a lessening of the environmental studies needed to proceed with the implementation of conservation practices and queried whether recommended mitigation by outside regulatory agencies, such as EPA or USACE, would require more in-depth analysis under NEPA.

*Response.* NRCS will still undertake an EE for all projects and determine whether there is a need to prepare an EA or EIS. Appropriate environmental reviews would be undertaken, and there would be no less stringent environmental review performed regardless of any recommendation received from regulatory agencies.

The conservation planning and EE process is designed to minimize any adverse impacts to resources. Thus, any mitigation that is proposed as an integral part of the project, whether that mitigation is recommended by NRCS as part of the planning process or an outside regulatory agency, is considered during preparation of the EE which is used to determine if there are extraordinary circumstances and the appropriate level of environmental review. The proposed action and all its integral parts will be reviewed, and if approved, implemented.

*Comment:* Several comments were received requesting clarification on how NRCS will determine any extraordinary circumstances and the need for an EA or EIS. Also, a comment was raised that extraordinary circumstances were being referenced in the interim final rule and whether the list of extraordinary circumstances could be provided in the final rule.

*Response.* As described in the preamble language of the interim final rule, NRCS prepares an EE for all assistance actions. Through this EE, NRCS assesses the project and any alternatives to the project as proposed. Specifically, a determination is made regarding whether there are extraordinary circumstances that may be present for a proposed action, and if any extraordinary circumstances exist, then a determination is made on the need to prepare an EA or EIS.

NRCS evaluates each action using its list of special environmental concerns, along with the significance factors listed by the CEQ at 40 CFR 1508.27, to determine whether an action has extraordinary circumstances. NRCS has included the list of extraordinary circumstances in this rule at § 650.6(c)(2).

*Comment:* Four respondents commented that the final regulation should include language that specifies NRCS will comply with other applicable environmental laws and executive orders when categorical exclusions under NEPA are applied. The specific comments focused on the compliance for the National Historic Preservation Act (NHPA), Native American Graves and Repatriation Act, and the Archaeological and Historic Preservation Act.

*Response.* NRCS has modified the regulatory language to include the following statement into the NEPA regulation language of § 650.6(d): "The use of the following categorical exclusions for a proposed action does not waive NRCS compliance with any applicable legal requirement including, but not limited to, the National Historic Preservation Act or the Endangered Species Act."

*Comment:* One respondent commented that the EE process and documentation was not explained in great detail in the interim final rule and requested that clarification be provided.

*Response.* The interim final rule indicated and referred the public to 7 CFR 650.5 which provides detailed information on the process and documentation required for an EE. The reference to 7 CFR 650.5 is considered sufficient because it requires the following:

"§ 650.5 Environmental evaluation in planning.

(a) General. The EE integrates environmental concerns throughout the planning, installation, and operation of NRCS-assisted projects. The EE applies to all assistance provided by NRCS, but planning intensity, public involvement, and documentation of actions vary according to the scope of the action. NRCS begins consideration of environmental concerns when information gathered during the EE is used:

(1) To identify environmental concerns that may be affected, gather baseline data, and predict effects of alternative courses of actions;

(2) To provide data to applicants for use in establishing objectives commensurate with the scope and complexity of the proposed action;

(3) To assist in the development of alternative courses of action (40 CFR part 1502.14). In NRCS-assisted project actions, nonstructural, water conservation, and other alternatives that are in keeping with the Water Resources Council's Principles and Standards are considered, if appropriate;

(4) To perform other related investigations and analyses, as needed, including economic evaluation, engineering investigations, *etc.;* and

(5) To assist in the development of detailed plans for implementation and operation and maintenance."

*Comment:* One respondent stated that several of the categorical exclusions may have the potential to affect cultural resources and queried whether those actions should be listed as categorical exclusions.

*Response.* NRCS prepared an extensive supporting document citing previous environmental reviews and experience with the actions listed as categorical exclusions and believes that the actions are appropriate as categorical exclusions. A copy of the supporting document can be reviewed on the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess/index.html*. NRCS will also prepare a site-specific EE which assesses whether the proposed action meets the agency's criteria to be categorically excluded, or if an EA or EIS should be prepared. NRCS will not consider an action to be categorically excluded if the EE reveals that there may be extraordinary circumstances which entails an assessment of impacts to resource issues, including cultural resources. Furthermore, the regulation at 7 CFR part 650.6(c)(2)(B) stipulates that the proposed action cannot significantly affect cultural resources.

*Comment:* NRCS received a comment disagreeing with the NRCS determination that there would not be any compliance costs imposed on States. The respondent stated that there could be an increase in the workload for State Historic Preservation Office (SHPO) staff related to educating NRCS on the differences between NEPA and NHPA because of the increase in categorical exclusions.

*Response:* The increased number of categorical exclusions will not increase the workload on SHPOs since the magnitude of projects would not change. All projects will still be evaluated to determine the need to comply with NHPA, in addition to NEPA, for documenting the use of categorical exclusions. The project action being evaluated determines the level of work and consultation under section 106 of NHPA, not the level of NEPA documentation. Therefore, we disagree with the comment and believe that there would not be any compliance costs incurred by States.

NRCS has extensive on-line and field classes on NHPA and NEPA for NRCS staff. In addition, NRCS has an annual training plan to educate State and field offices on all environmental laws. NRCS also has held five training sessions across the Nation to educate staff on the new categorical exclusions and sent out bulletins to field offices. NRCS has planned an additional five training sessions for fiscal year 2010 to further educate field offices on the utilization of these categorical exclusions.

*Comment:* NRCS received a comment that NRCS did not consult or coordinate with tribal governments during the process of developing the interim final rule and requested that the regulation be withdrawn.

*Response:* NRCS remains committed to seeking advice, guidance, and counsel from Indian tribes in regard to natural resource concerns and issues. Indian tribes interested in providing input regarding conservation program policies may submit their request directly to the Chief of NRCS. As part of this rulemaking, NRCS has assessed the impact of the interim final rule and this final rule on Indian tribal governments, and has concluded that these rulemakings will not have substantial direct effects on 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. The rule affects NRCS' administrative procedures for preparing environmental reviews of NRCS actions that provide restoration and conservation assistance to

landowners, applicants, tribal governments, and others. Specifically, the rule provides for an expanded list of categorical exclusions which should assist the agency in funding and implementing proposed conservation actions for landowners, applicants, Indian tribal governments, and others. As a result, the rule does not meet the threshold for requiring consultation as specified by Executive Order 13175. NRCS remains committed to seeking advice, guidance, and counsel from Indian tribes in regard to natural resource concerns and issues.

*Comment:* NRCS received a comment requesting clarification of the term adapted species. The respondent noted that adapted species could connote the use of invasive and noxious species. The respondent also requested that the categorical exclusion in § 650.6(d)(1) concerning planting of vegetation be modified to remove the term adapted species and replaced with "native species."

*Response:* NRCS' General Manual Title 190 part 414 subpart D does not allow the agency to utilize invasive or noxious species in conservation actions. While NRCS promotes the use of native species, it is not always feasible or practicable to utilize native species in some NRCS activities; therefore, NRCS is not making changes to the rule in response to this comment. However, the categorical exclusion in § 650.6(d)(1) has been modified to state only appropriate herbaceous and woody vegetation will be used which does not include invasive or noxious weeds.

*Comment:* One respondent commented that vegetating disturbed areas should not result in conversion of native forest or grassland.

*Response:* The areas to which the categorical exclusion will apply have already been disturbed or were in prior agricultural use. All categorical exclusions are intended to maintain or restore ecological functions and do not include conversion of native vegetation. The exception might be small areas requiring stabilization, but conversion in these cases would not be extensive. The categorical exclusion in section 650.6(d)(1) requires that the established vegetative community maintain the sites ecological functions and services, which could not be accomplished by converting native forests or grasslands.

*Comment:* NRCS received a comment recommending that a condition be placed on the use of categorical exclusions. Specifically, the respondent suggested that categorical exclusions should not result in increased threats to populations of at risk-species. Further, the respondent recommended including the following in the definition of at-risk species: species listed as endangered or threatened under the Endangered Species Act (ESA); proposed or candidate species for listing under the ESA; species likely to become candidates in the near future; species listed as endangered or threatened (or similar classification) under State law; and State species of conservation concern.

*Response:* Significant adverse effects to threatened and endangered species as defined by the ESA is one of the extraordinary circumstances listed in § 650.6(c). Therefore, the use of a categorical exclusion is conditioned on no significant effects to threatened and endangered species.

Although non-ESA-listed species do not constitute extraordinary circumstances, NRCS does take into consideration species which have been identified as at risk or as "species of concern" by tribal, State, or other entities in its conservation planning and EE processes. Specifically, NRCS works with partners at the State and local levels to set priorities for conservation of species and habitats of special conservation concern. As part of the conservation planning process, the presence of priority "species of concern" is evaluated, and any potential impacts or risks to such species or their habitats would be determined. NRCS General Manual Title 190 part 410 provides guidance on consultation and coordination procedures, and defines "species of concern" as "any species officially designated by law or administrative rule by a State or tribe as endangered, threatened, rare, declining, sensitive, or otherwise at risk."

Although NRCS is not adding effects on these species of concern as a condition to whether an action can be considered eligible for a categorical exclusion, NRCS, in accordance with its conservation planning process, ensures that implementation of conservation practices are protective of these species.

If a protected species or designated critical habitat were present in the proposed action area and would potentially be adversely affected, then the appropriate consultation with the Department of Interior's Fish and Wildlife Service, the Department of Commerce's National Marine Fisheries Service, or State or tribal agency with jurisdiction for such species would be initiated to ensure limited effects to species and habitats in the area.

*Comment:* One respondent noted that the categorical exclusions in §§ 650.6(d)(8) and 650.6(d)(11) should ensure consistency with efforts to restore, maintain, or enhance ecosystem functions and values.

*Response:* NRCS believes that the identification of these categorical exclusions in the interim final rule for lands disturbed by human alteration or by natural disasters accomplishes the results desired by the respondent. The agency mission and policies encompass restoring, maintaining, and enhancing ecosystem functions and values. Accordingly, NRCS has not modified the language for these categorical exclusions.

*Changes to Final Rule Based on Comments*

The interim final rule amended 650.6(b) and added a new section 650.6(c) that expanded the agency's list of categorical exclusions. Based on public comments expressing the need for the agency to add a list of conditions under which a proposed action would not be eligible for a categorical exclusion, the final rule has amended section 650.6(c) to add in the list of extraordinary circumstances at 650.6(c)(2) that outlines the conditions under which a categorical exclusion may make a proposed action not eligible for a categorical exclusion. The final rule has also added language at 650.6(c)(3) which outlines certain additional criteria that a proposed action must satisfy to be eligible for a categorical exclusion even when no extraordinary circumstances are present.

In this final rule, the list of 21 categorical exclusions was moved from section 650.6(c) in the interim final rule to a new section 650.6(d). Based on public comments, NRCS added language in 650.6(d) to specify that categorical exclusions under NEPA do not waive NRCS compliance with any applicable legal requirement including, but not limited to, the NHPA or the ESA.

**List of Subjects in 7 CFR Part 650**

Environmental impact statements, and Flood plains.

■ For the reasons stated in the preamble, NRCS adopts the interim rule published on July 13, 2009 (74 FR 33319) as final and further amends Title 7 CFR part 650 as set forth below:

■ 1. The authority citation for Title 7 CFR part 650 is amended to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.;* Executive Order 11514 (Rev.); 7 CFR 2.62, unless otherwise noted.

■ 2. Section 650.6 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 650.6 Categorical exclusions.**

* * * * *

(c)(1) The NRCS restoration and conservation actions and activities identified in paragraph (d) of this section are eligible for categorical exclusion and require the RFO to document a determination that a categorical exclusion applies. Agency personnel will use the EE review process detailed in § 650.5 to evaluate proposed activities for extraordinary circumstances and document the determination that the categorical exclusion applies. The extraordinary circumstances address the significance criteria provided in 40 CFR 1508.27.

(2) The extraordinary circumstances identified in paragraph (c)(1) of this section include:

(i) The proposed action cannot cause significant effects on public health or safety.

(ii) The proposed action cannot significantly affect unique characteristics of the geographic area such as proximity to historic properties or cultural resources, park lands, prime farmlands, floodplains, wetlands, wild and scenic rivers, or ecologically critical areas.

(iii) The effects of the proposed action on the quality of the human environment cannot be highly controversial.

(iv) The proposed action cannot have highly uncertain effects, including potential unique or unknown risks on the human environment.

(v) The proposed action cannot include activities or conservation practices that establish a potential precedent for future actions with significant impacts.

(vi) The proposed action is known to have or reasonably cannot be expected to have potentially significant environment impacts to the quality of the human environment either individually or cumulatively over time.

(vii) The proposed action cannot cause or promote the introduction of invasive species or have a significant adverse effect on any of the following special environmental concerns not previously identified in paragraph (c)(2)(B) of this section, such as: endangered and threatened species, environmental justice communities as defined in Executive Order 12898, wetlands, other waters of the United States, wild and scenic rivers, air quality, migratory birds, and bald and golden eagles.

(viii) The proposed action will not violate Federal or other applicable law and requirements for the protection of the environment.

(3) In the absence of any extraordinary circumstances as determined through NRCS' EE review process, the activities will be able to proceed without preparation of an EA or EIS. Where extraordinary circumstances are determined to exist, the categorical exclusion will not apply, and the appropriate documentation for compliance with NEPA will be prepared. Prior to determining that a proposed action is categorically excluded under paragraph (d) of this section, the proposed action must:

(i) Be designed to mitigate soil erosion, sedimentation, and downstream flooding;

(ii) Require disturbed areas to be vegetated with adapted species that are neither invasive nor noxious;

(iii) Be based on current Federal principals of natural stream dynamics and processes, such as those presented in the Federal Interagency Stream Corridor Restoration Working Group document, "Stream Corridor Restoration, Principles, Processes, and Practices;"

(iv) Incorporate the applicable NRCS conservation practice standards as found in the Field Office Technical Guide;

(v) Not require substantial dredging, excavation, or placement of fill; and

(vi) Not involve a significant risk of exposure to toxic or hazardous substances.

(d) The use of the following categorical exclusions for a proposed action does not waive NRCS compliance with any applicable legal requirement including, but not limited to, the National Historical Preservation Act or the Endangered Species Act. The following categorical exclusions are available for application to proposed actions provided the conditions described in paragraph (c) of this section are met:

(1) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services;

(2) Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances;

(3) Plugging and filling excavated drainage ditches to allow hydrologic conditions to return to pre-drainage conditions to the extent practicable;

(4) Replacing and repairing existing culverts, grade stabilization, and water control structures and other small structures that were damaged by natural disasters where there is no new depth required and only minimal dredging, excavation, or placement of fill is required;

(5) Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes;

(6) Removing or relocating residential, commercial, and other public and private buildings and associated structures constructed in the 100-year floodplain or within the breach inundation area of an existing dam or other flood control structure in order to restore natural hydrologic conditions of inundation or saturation, vegetation, or reduce hazards posed to public safety;

(7) Removing storm debris and sediment following a natural disaster where there is a continuing and eminent threat to public health or safety, property, and natural and cultural resources and removal is necessary to restore lands to pre-disaster conditions to the extent practicable. Excavation will not exceed the pre-disaster condition;

(8) Stabilizing stream banks and associated structures to reduce erosion through bioengineering techniques following a natural disaster to restore pre-disaster conditions to the extent practicable, *e.g.,* utilization of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, rip-rap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods);

(9) Repairing or maintenance of existing small structures or improvements (including structures and improvements utilized to restore disturbed or altered wetland, riparian, in stream, or native habitat conditions). Examples of such activities include the repair or stabilization of existing stream crossings for livestock or human passage, levees, culverts, berms, dikes, and associated appurtenances;

(10) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats. Examples of activities include installation of fences and construction of small berms, dikes, and associated water control structures;

(11) Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition;

(12) Repairing or maintenance of existing constructed fish passageways, such as fish ladders or spawning areas impacted by natural disasters or human alteration;

(13) Repairing, maintaining, or installing fish screens to existing structures;

(14) Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the existing footprint of the dam, and no major change in reservoir or downstream operations will result;

(15) Repairing or improving (deepening/widening/armoring) existing auxiliary/emergency spillways associated with dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the dam or abutment areas, and no major change in reservoir or downstream operation will result;

(16) Repairing embankment slope failures on structures, originally built to NRCS standards, where the work is confined to the embankment or abutment areas;

(17) Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards. The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped which may result in a catastrophic failure. Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the existing dam and abutment areas, and no major change in reservoir operations will result. Examples of work may include the addition of fill material such as earth or gravel or placement of parapet walls;

(18) Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards;

(19) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration. Examples of these practices include: mowing, haying, grazing, fencing, off-stream watering facilities, and invasive species control which are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes;

(20) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting; and

(21) Implementing water conservation activities on existing agricultural lands, such as minor irrigation land leveling, irrigation water conveyance (pipelines), irrigation water control structures, and various management practices.

Signed this 4th day of February, 2010, in Washington, DC.

**Dave White,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 2010–2815 Filed 2–9–10; 8:45 am]

BILLING CODE 3410–16–P

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 706

**RIN 3133–AD47**

## Unfair or Deceptive Acts or Practices

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule; withdrawal.

**SUMMARY:** On January 29, 2009, jointly with the Federal Reserve System Board of Governors (FRB) and the Office of Thrift Supervision (OTS), the NCUA Board (Board) published a final rule and staff commentary amending its credit practices regulations (UDAP Rule). The UDAP Rule also included technical clarifications and was scheduled to become effective on July 1, 2010. The Board is now revising the UDAP Rule because its stipulations became unnecessary due to the enactment of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act) on May 22, 2009, and amendments to Regulation Z implementing the Credit CARD Act that will become effective on February 22, 2010. For procedural reasons, the substantive requirements of the UDAP Rule will be removed effective July 1, 2010, but it is the Board's intent that only the technical clarifications become effective and that the substantive requirements will not take effect. This final rule applies only to the NCUA Board's regulations and does not affect the rules issued by the OTS and FRB.

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

**FOR FURTHER INFORMATION CONTACT:** Moisette I. Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:** On December 18, 2008, NCUA, along with the Federal Reserve Board (FRB) and the Office of Thrift Supervision, exercised its authority under the Federal Trade Commission Act (FTC Act) to issue a final rule prohibiting unfair acts or practices regarding consumer credit card accounts. The rule was published in the **Federal Register** on January 29, 2009, and the effective date for the amendments was July 1, 2010. 74 FR 5498 (January 29, 2009) (UDAP Rule).

The Credit CARD Act, enacted on May 22, 2009, amended the Truth in Lending Act (TILA) and established new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans, including credit card accounts. Public Law 111–24, 123 Stat. 1734 (2009). After consultation with NCUA and other Federal financial regulators, the FRB amended 12 CFR Part 226 and the staff commentary (Regulation Z) to implement the Credit CARD Act. The Credit CARD Act and Regulation Z cover the practices regulated in the UDAP Rule, and in some instances, expand the UDAP Rule's requirements or consumer protections. For example, the UDAP Rule prohibited the financing of security deposits and fees for the availability of a credit card account in excess of 50% of the initial credit limit and limited how fees that did not exceed the 50% limit could be financed. The Credit CARD Act prohibits financing any fees charged within the first year an open-end credit plan in excess of 25% of the credit limit from the available credit. In as much as the UDAP Rule duplicates, overlaps, or conflicts with the Credit CARD Act and recent amendments to Regulation Z, the NCUA Board believes the recent amendments to Part 706 are unnecessary and is withdrawing the substantive requirements of the UDAP Rule. Accordingly, the Board is amending Part 706 to remove the substantive requirements and retain the clarifying technical amendments in the UDAP Rule, such as the addition of an authority, purpose, and scope section and, the removal of the provision for State exemptions.

This revision is applicable only to NCUA's portion of the UDAP Rule. For procedural reasons, the substantive

requirements of the UDAP Rule will be removed effective July 1, 2010. It is the Board's intent, however, that the substantive requirements on the UDAP Rule will not take effect. Additionally, the Board does not intend to finalize the proposed amendments to the UDAP Rule. 74 FR 20804 (May 5, 2009).

**List of Subjects in 12 CFR Part 706**

Credit, Credit unions, Deception, Intergovernmental relations, Trade practices, Unfairness.

■ For the reasons set forth in the preamble, NCUA revises 12 CFR Part 706 to read as follows:

## PART 706—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Sec.
706.0 Purpose and scope.
706.1 Definitions.
706.2 Unfair credit practices.
706.3 Unfair or deceptive cosigner practices.
706.4 Late charges.

**Authority:** 15 U.S.C. 57a(f).

### § 706.0 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). The prohibitions in this part do not limit NCUA's authority to enforce the Federal Trade Commission Act with respect to any other unfair or deceptive acts or practices.

(b) *Scope.* This part applies to Federal credit unions.

### § 706.1 Definitions.

(a) *Person.* An individual, corporation, or other business organization.

(b) *Consumer.* A natural person member who seeks or acquires goods, services, or money for personal, family, or household use.

(c) *Obligation.* An agreement between a consumer and a Federal credit union.

(d) *Debt.* Money that is due or alleged to be due from one to another.

(e) *Earnings.* Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(f) *Household goods.* Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

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

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

(g) *Antique.* Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(h) *Cosigner.* A natural person who renders himself or herself liable for the obligation of another person without receiving goods, services, or money in return for the credit obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the obligation. The term includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to State law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

### § 706.2 Unfair credit practices.

In connection with the extension of credit to consumers, it is an unfair act or practice for a Federal credit union, directly or indirectly, to take or receive from a consumer an obligation that:

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

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

(c) Constitutes or contains an assignment of wages or other earnings unless:

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

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

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

(d) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

### § 706.3 Unfair or deceptive cosigner practices.

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a Federal credit union, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice for a Federal credit union, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated, which in the case of open-end credit means prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as cosigner.

(b) *Disclosure requirement.* (1) To comply with the cosigner information requirement of paragraph (a)(2) of this section, a clear and conspicuous disclosure statement shall be of this section given in writing to the cosigner prior to becoming obligated. The disclosure statement will contain only the following statement, or one which is substantially equivalent, and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

**Notice to Cosigner**

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

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

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

This notice is not the contract that makes you liable for the debt.

(2) If the notice to cosigner is a separate document, nothing other than the following items may appear with the notice. The following paragraphs (b)(2)(i) through (v) may not be part of

the narrative portion of the notice to cosigner.

(i) The name and address of the Federal credit union;

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

(iii) The amount of the loan;

(iv) The date of the loan;

(v) A signature line for a cosigner to acknowledge receipt of the notice; and

(vi) To the extent permitted by State law, a cosigner notice required by State law may be included in the notice in paragraph (b)(1) of this section.

(3) To the extent the notice to cosigner specified in paragraph (b)(1) of this section refers to an action against a cosigner that is not permitted by State law, the notice to cosigner may be modified.

**§ 706.4 Late charges.**

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

(b) For purposes of this section, "collecting a debt" means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

By the National Credit Union Administration Board, on January 29, 2010.

**Mary F. Rupp,**

*Secretary of the Board.*

[FR Doc. 2010–2311 Filed 2–9–10; 8:45 am]

**BILLING CODE 7535–01–P**

## DEPARTMENT OF THE TREASURY

## 31 CFR Part 103

**RIN 1506–AB04**

## Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing this final rule to amend the relevant Bank Secrecy Act ("BSA") information sharing rules to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to submit requests for information to financial institutions. The rule also clarifies that FinCEN itself, on its own behalf and on behalf of other appropriate components of the Department of the Treasury ("Treasury"), may submit such requests. Modification of the information sharing rules is a part of Treasury's continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

**DATES:** *Effective Date:* February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949–2732 and select Option 2.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Statutory Provisions*

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT ACT"), Public Law 107–56 ("the Act"). Title III of the Act amends the anti-money laundering provisions of the BSA, codified at 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Part 103. The authority of the Secretary of the Treasury ("the Secretary") to administer the BSA has been delegated to the Director of FinCEN.

Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged Treasury with promulgating regulations to implement these information-sharing provisions.

Subsection 314(a) of the Act states in part that:

> [t]he Secretary shall * * * adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.

*B. Overview of the Current Regulatory Provisions Regarding the 314(a) Program*

On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the Act.[1] That rule ("the 314(a) rule") allows FinCEN to require financial institutions to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is suspected based on credible evidence of engaging in terrorist activity or money laundering.[2] Before processing a request from a Federal law enforcement agency, FinCEN also requires the requesting agency to certify that, in the case of money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use this authority ("the 314(a) program").

Since its inception, the 314(a) program has yielded significant investigative benefits to Federal law enforcement users in terrorist financing and major money laundering cases. Feedback from the requesters and illustrations from sample case studies consistently demonstrate how useful the program is in enhancing the scope and expanding the universe of investigations. In view of the proven success of the 314(a) program, FinCEN is broadening access to the program as outlined in the following paragraphs.

*C. Objectives of Changes*

1. Allowing Certain Foreign Law Enforcement Agencies To Initiate 314(a) Queries

In order to satisfy the United States' treaty obligation with certain foreign governments, FinCEN is extending the use of the 314(a) program to include foreign law enforcement agencies. On June 25, 2003, the Agreement on Mutual Legal Assistance between the United States and the European Union ("EU") (hereinafter, the "U.S.–EU MLAT") was signed. In 2006, the U.S.–EU MLAT, along with twenty-five bilateral instruments, were submitted to the U.S. Senate for its advice and consent for

[1] Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 FR 60,579 (Sept. 26, 2002).

[2] 31 CFR 103.100.

ratification. The U.S.–EU MLAT and all twenty-seven bilateral instruments were ratified by the President on September 23, 2008, upon the advice and consent of the U.S. Senate.[3]

Article 4 of the U.S.–EU MLAT (entitled "Identification of Bank Information") obligates a requested Signatory State to search on a centralized basis for bank accounts within its territory that may be important to a criminal investigation in the requesting Signatory State. Article 4 also contemplates that Signatory States may search for information in the possession of a non-bank financial institution. Under Article 4, a Signatory State receiving a request may limit the scope of its obligation to provide assistance to terrorist activity and money laundering offenses, and many did so in their respective bilateral instruments with the United States.[4] In negotiating the terms of Article 4, the United States expressly envisioned that EU member States would be able to access the 314(a) program. Expanding that process to include certain foreign law enforcement requesters will greatly benefit the United States by granting law enforcement agencies in the United States reciprocal rights to obtain information about matching accounts in EU member States.

Foreign law enforcement agencies will be able to use the 314(a) program in a way analogous to how Federal law enforcement agencies currently access the program. Thus, a foreign law enforcement agency, prior to initiating a 314(a) query, will have to certify that, in the case of a money laundering investigation, the matter is significant, and that it has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program. A Federal law enforcement official serving as an attaché to the requesting jurisdiction will be notified of and will review the foreign request prior to its submission to FinCEN. The application of these internal procedures will help ensure that the 314(a) program is utilized only in significant situations, thereby minimizing the cost to reporting financial institutions. Comments addressed to the expansion of the 314(a) program to include foreign law enforcement agencies will be discussed below.

2. Allowing State and Local Law Enforcement Agencies To Initiate 314(a) Queries

Money laundering and terrorist-related financial crimes are not limited by jurisdiction or geography. Detection and deterrence of these crimes require information sharing across all levels of investigative authorities, to include State and local law enforcement, to ensure the broadest U.S. Government defense.

Access to the 314(a) program by State and local law enforcement agencies will provide them a platform from which they can more effectively and efficiently fill information gaps, including those connected with multi-jurisdictional financial transactions, in the same manner as Federal law enforcement agencies. This expansion of the 314(a) program, in certain limited circumstances, to include State and local law enforcement authorities, will benefit overall efforts to ensure that all law enforcement resources are made available to combat money laundering and terrorist financing.

As is the case currently with requesting Federal law enforcement agencies, State and local law enforcement, prior to initiating a 314(a) query, will have to certify that, in the case of a money laundering investigation, the matter is significant, and that it has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program. The application of these internal procedures will help ensure that the 314(a) program will be utilized only in the most compelling situations, thereby minimizing the cost incurred by reporting financial institutions. Comments addressed to the expansion of the 314(a) program to allow State and local law enforcement participation will be discussed below.

3. Clarifying That FinCEN, on Its Own Behalf and on Behalf of Appropriate Components of the Department of the Treasury, May Initiate 314(a) Queries

FinCEN's statutory mandate includes working to identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies, and to support ongoing criminal financial investigations and prosecutions.[5] FinCEN also routinely assists the law enforcement community through proactive analyses to discover trends, patterns, and common activity in the financial information contained in BSA reports. FinCEN's use of the 314(a) program will enhance the scope and utility of its case support efforts, including insights provided from BSA data, thereby delivering critical information about significant criminal activity on a timelier basis.

FinCEN assists law enforcement by providing advanced or specialized analysis of BSA data on significant investigations involving offenses of money laundering or terrorist financing. These investigations often involve multiple locations or are otherwise linked to other investigations. A single 314(a) request issued by FinCEN can more efficiently coordinate and simultaneously support several investigations, thereby eliminating the need for separate requests from each investigating agency or jurisdiction.

There also are instances in which FinCEN's analytical products will benefit from access to the 314(a) program by providing a more complete picture of financial transactions and mechanisms, as well as interrelationships among investigative subjects and financial transactions or entities. In addition, other appropriate components of Treasury that provide analytical support in areas such as Treasury's counter-terrorist financing and anti-money laundering efforts will be better equipped to fulfill their missions with access to the 314(a) program. It is anticipated that the findings from the use of the 314(a) program will reveal additional insights and overall patterns of suspicious financial activities. Comments addressed to the expansion of the 314(a) program to allow FinCEN to self-initiate requests will be discussed below.

## II. Notice of Proposed Rulemaking

The final rule contained in this document is based on the Notice of Proposed Rulemaking published in the **Federal Register** on November 16, 2009 ("Notice").[6] With the intent of broadening access to the 314(a) program, the Notice proposed to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to initiate 314(a) queries. In addition, the Notice proposed to clarify that FinCEN, on its own behalf and on behalf of appropriate components of Treasury, may initiate 314(a) queries.

## III. Comments on the Notice—Overview and General Issues

The comment period for the Notice ended on December 16, 2009. We

[3] An additional two bilateral instruments, with Romania and Bulgaria, were concluded and submitted to the Senate in 2007, following those countries' accession to the EU.

[4] In addition, Article 4 makes clear that the United States and the EU are under an obligation to ensure that the application of Article 4 does not impose extraordinary burdens on States that receive search requests.

[5] *See* 31 U.S.C. 310.

[6] *See* 74 FR 58926 (Nov. 16, 2009).

received a total of 13 comment letters from 14 entities and individuals.[7] Of these, 7 were submitted by trade groups or associations, 4 were submitted by individuals, 2 were submitted by Federal law enforcement agencies, and 1 was submitted by an individual financial institution.[8]

Comments on the Notice focused on the following matters: (1) Requirements for foreign, State, and local law enforcement 314(a) requests; (2) Confidentiality and privacy concerns regarding information provided to foreign, State, and local law enforcement; (3) Requirements for FinCEN self-initiated 314(a) requests; (4) FinCEN's authority to expand the 314(a) rule; (5) The 314(a) statutory goal of sharing information with financial institutions; and (6) Estimate of burden.

*A. Requirements for Foreign, State, and Local Law Enforcement 314(a) Requests*

Some commenters requested that FinCEN clarify what the requirements are for foreign, State, and local law enforcement to submit 314(a) requests. In addition, those commenters asked FinCEN to clarify how the requests will be monitored to ensure that regulatory and procedural requirements are met. For example, some commenters requested clarification as to how FinCEN will determine whether a money laundering investigation is "significant" and that more traditional means of investigation have been exhausted. FinCEN will require these law enforcement agencies to certify that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist financing, or money laundering. As discussed above, FinCEN will require these law enforcement agencies to certify that, in the case of money laundering, the matter is significant, and the requesting agency has been unable to locate the information sought through traditional methods of investigation before attempting to make a 314(a) request. In addition, foreign, State, and local law enforcement agencies making 314(a) requests are required to include the following information in their certification request: A citation of the relevant statutory provisions; a description of the suspected criminal conduct; for money laundering cases, a description as to why the case is significant, and a list of the traditional methods of investigation and analysis which have been conducted prior to making the request. Factors that contribute towards evaluating the significance of a money laundering case include, for example: The seriousness and magnitude of suspected criminal conduct; the dollar amount involved; whether the analysis is being conducted as part of a multi-agency task force; the importance of analysis to agency program goals; criminal organization involvement; and multi-regional and/or cross border implications.

All requests made by foreign, State, and local law enforcement agencies will be submitted to FinCEN for review and approval. With regard to a request made by a foreign law enforcement agency, the request will be submitted to a Federal law enforcement attaché. The attaché will review the request to ensure that the request is from a legitimate entity. The attaché will then forward the request to FinCEN for review. Following FinCEN's approval, the request will be made available to financial institutions via the 314(a) Secure Information Sharing System. The financial institutions may contact FinCEN's 314 Program Office with any questions regarding a foreign law enforcement request. With regard to a State or local law enforcement request, the financial institution may contact FinCEN, or the State or local law enforcement agency with any questions regarding its request. FinCEN's determination to subject foreign, State, and local law enforcement requests to the same procedural review and vetting process imposed upon Federal law enforcement requests goes directly to the recommendations offered by many commenters.

One commenter asked whether foreign, State, or local law enforcement will be identified as the requester on 314(a) requests sent by FinCEN to financial institutions. Currently, in a request made by a Federal law enforcement agency, the request made available by FinCEN to financial institutions only includes the name and contact number of the agency representative making the request. The Federal law enforcement agency making the request is not identified on 314(a) requests sent by FinCEN to financial institutions. For a request made by a State or local law enforcement agency, the request made available by FinCEN to financial institutions also will include the name and contact number of the agency representative making the request. For a request made by a foreign law enforcement agency, the request made available by FinCEN to financial institutions will include the contact number for FinCEN's 314 Program Office. This decision was made to alleviate the need for financial institutions to call overseas.

One commenter asked for clarification as to whether foreign, State, and local law enforcement requests could be made independent of a Federal investigation. There is no obligation that requests from these agencies be linked to a Federal investigation. However, with regard to State and local law enforcement requests, the law enforcement agency must include in the certification the identity of any Federal law enforcement agency with whom they have consulted. In addition, for terrorism cases FinCEN will review the request with the FBI liaison to FinCEN prior to further processing the request.

A few commenters suggested that FinCEN should limit access to those countries that cooperate with the United States via a treaty or other bilateral agreement. As we discuss above, only foreign law enforcement agencies with criminal investigative authority that are from a jurisdiction that is a party to a treaty that provides for, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtainable under section 103.100 will be allowed to access the 314(a) program. Some commenters suggested that FinCEN should clarify which State and local law enforcement agencies will be allowed to access the 314(a) program. All State and local law enforcement agencies with criminal investigative authority will be allowed to access the 314(a) program.

One association suggested that before any expansion in the proposal is considered, the current internal controls over the 314(a) program should be incorporated into the rule. FinCEN is not inclined to incorporate its internal operating procedures into the regulation, as this would not allow us sufficient latitude to revise our internal operating procedures as needed.

A few commenters asked for clarification as to what steps foreign, State, and local law enforcement will be required to take to obtain information from a financial institution if a match to their request is identified. The steps required to be taken by one of these law enforcement agencies to obtain information from a financial institution once a match has been confirmed is not addressed within the 314(a) rule. These law enforcement agencies will have to follow the standard procedures that they currently follow in order to obtain financial information from financial

[7] All comments to the Notice are available for public viewing at *www.regulations.gov.*

[8] One comment letter was submitted on behalf of two entities.

institutions, for example through issuance of a subpoena, a letter rogatory, or national security letter.

Two commenters noted that Federal law enforcement is required to track their use of the 314(a) data to provide feedback, demonstrate program value, and maintain accountability. FinCEN routinely provides feedback and data to the regulated public as to the effectiveness of the 314(a) program (*e.g.,* SAR Activity Review articles [9]) and will continue to do so in the future. The commenters suggested that the data reporting requirements be made explicit in the implementing regulations and the same data reporting requirements should apply to foreign, State, and local law enforcement. As noted above, FinCEN is not inclined to incorporate its internal operating procedures into the regulation. However, the same data reporting requirements will apply to foreign, State, and local law enforcement.

One commenter asked how FinCEN would address overlapping interests of different law enforcement agencies pursuing the same subject. With regard to foreign requests, while processing the request, any existing cases the 314(a) subject(s) hits against will be brought to the immediate attention of FinCEN's 314 Team Leader to determine what further action will take place. FinCEN will automatically network (*i.e.,* notify) all international terrorism-related requests with the FBI only, and will automatically network all international money laundering requests with both Federal and non-Federal law enforcement agencies, as applicable. With regard to State and local law enforcement requests, the law enforcement agency must include in the certification the identity of any Federal law enforcement agency with whom they have consulted. For State and local law enforcement requests related to terrorism cases, FinCEN will review the request with the FBI liaison to FinCEN prior to further processing the request. In addition, it is FinCEN's policy to network different requesters that have submitted requests for information to FinCEN on the same subject. Networking gives requesters the opportunity to coordinate their efforts with U.S. law enforcement and other international entities on matters of mutual interest. Networking will apply to requests made by foreign, State, and local law enforcement.

A few commenters suggested that FinCEN provide training to foreign, State, and local law enforcement regarding the proper procedures for utilizing the 314(a) program. While a formal process has not been instituted at this point, FinCEN's intention is to provide outreach to the new law enforcement users.

Another commenter suggested that instead of allowing all State and local law enforcement agencies to access the 314(a) program, a 2-year pilot program allowing access to two or three large State and local law enforcement agencies be implemented instead. The commenter noted that FinCEN could monitor the results of the pilot program and report the results to Congress and the public. While FinCEN will monitor the effectiveness of the program's expansion, arbitrarily limiting access to certain large local jurisdictions would deny potential access to smaller communities confronting serious criminal threats.

One commenter suggested that local law enforcement agencies be required to enter into a memorandum of understanding with FinCEN in order to access the 314(a) program. FinCEN has an active cooperative relationship with law enforcement at every level in the country, and expanding the 314(a) program to allow local law enforcement access is part of the ongoing support FinCEN provides to law enforcement. This support includes, for example, providing access to BSA data, fostering information exchange with international counterparts, and offering financial subject matter knowledge in key realms.

*B. Confidentiality and Privacy Concerns Regarding Information Provided to Foreign, State, and Local Law Enforcement*

A few commenters expressed concern about the confidentiality of information that financial institutions would provide to FinCEN as a result of the rule, particularly when such information is shared by FinCEN with requesting foreign, State and local law enforcement agencies. At least one commenter drew an analogy between section 314(a) "hit" information and information in suspicious activity reports ("SARs") to argue that section 314(a) information should be accorded the same protections and assurances of confidentiality when such information is shared with foreign law enforcement agencies.

FinCEN believes these concerns are unfounded. Section 314(a) information is extremely limited. Unlike SAR information, section 314(a) information will continue to consist of only a confirmation that a matching account or transaction exists. Also unlike the documentation supporting the filing of a SAR, the underlying account and transaction information relating to a 314(a) hit that contains sensitive customer financial information is not deemed to be part of the 314(a) response, and can only be obtained by the requesting agency through appropriate legal process, such as a subpoena. FinCEN is not part of that legal process to obtain the underlying information; its involvement ends at informing requesting agencies that a match exists. In addition, unlike with SARs, the personally-identifiable information (*e.g.,* subject names, aliases, dates of birth, and social security numbers) that a financial institution uses to conduct a section 314(a) search is provided not by the institution, but by the requesting agency.

Another commenter questioned whether sharing section 314(a) information with foreign law enforcement agencies may run afoul of the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. 3401 *et seq.,* or any other Federal or state privacy law. Because any hit information provided to FinCEN would be reported pursuant to a Federal rule, the reporting of such information to FinCEN would fall within an exception to the RFPA.[10] FinCEN is not aware of any other Federal or state law that would prohibit a financial institution from reporting section 314(a) information to FinCEN in response to a foreign law enforcement agency's request or that would prevent FinCEN from sharing such information with the foreign requester.

*C. Requirements for FinCEN Self-Initiated 314(a) Requests*

Some commenters requested that FinCEN clarify the reason FinCEN needs access to expand the 314(a) program to allow it to make self-initiated requests, how FinCEN will use the information, the procedures that will apply to initiating the requests, the parties who will screen such requests, and any limitations that will apply to FinCEN's self-initiated requests. FinCEN self-initiated requests will be for the purpose of conducting analysis to deter and detect terrorist financing activity or money laundering. These requests will be made in order to increase the value of analytical support to law enforcement. FinCEN or the appropriate Treasury component making the request shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or

[9] *See, e.g.,* "BSA Records, 314(a) Request Assists Investigation of International Money Laundering Using Stored Value Cards," SAR Activity Review—Trends, Tips & Issues, Issue 12, October 2007, *http://www.fincen.gov/law_enforcement/ss/html/008.html.*

[10] 12 U.S.C. 3413(d).

organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. FinCEN or the other appropriate Treasury component making the request shall also certify that, in the case of money laundering, the matter is significant, and the requesting agency has been unable to locate the information sought through traditional methods of analysis before attempting to make a 314(a) request. In addition, FinCEN or the appropriate Treasury component making the 314(a) request is required to include information such as the following in their certification request: For money laundering cases, a description as to why the case is significant, and a list of the traditional methods of analysis which have been conducted prior to making the request. If FinCEN uses the 314(a) process in support of proactive target development, FinCEN will first brief law enforcement to ensure that the analysis is of interest to law enforcement and to ensure de-confliction with any ongoing investigation. In addition, FinCEN self-initiated 314(a) requests will be independently reviewed and approved by multiple offices within FinCEN.

In addition, some commenters requested that FinCEN clarify the components of Treasury that will have access to the 314(a) program and under what circumstances. The components of Treasury that will have access to the 314(a) program will be those components that provide analytical support, such as those providing support to Treasury's counter-terrorist financing and anti-money laundering efforts. The components of Treasury which submit 314(a) requests will be required to comply with the same procedures and certification requirements as FinCEN self-initiated requests.

Two commenters noted that permitting FinCEN and other components of Treasury to self-initiate 314(a) requests may be detrimental to law enforcement and may cause many unnecessary searches by banks. The same commenters noted that it appears that FinCEN is lowering the threshold as to when FinCEN can initiate 314(a) requests. The commenters explained that law enforcement must exhaust all traditional methods of investigation before they can initiate a 314(a) request. Because FinCEN is not a law enforcement agency, FinCEN cannot exhaust all traditional methods of investigation, and therefore FinCEN will be held to a much lower threshold than law enforcement. In addition, the commenters are concerned that law enforcement may be precluded from making a 314(a) request on a subject, at a crucial point of an investigation, if FinCEN has previously conducted a self-initiated request on the same subject, because this would create a duplicative search, something that has been discouraged by FinCEN. The commenters also are concerned that a FinCEN or Treasury 314(a) request may be submitted on a subject who is already under investigation by law enforcement, because the broad audience that receives these requests could cause operational concerns for the investigation. In addition, the commenters noted that it is not clear what FinCEN will do with the information once it learns of a previously unknown bank account through the 314(a) process if FinCEN does not have subpoena or summons authority to pursue the lead any further. Finally these commenters noted that FinCEN's requests will be competing with law enforcement for access to the limited number of 314(a) requests that can be made, due to the need not to overburden financial institutions.

FinCEN will be implementing review procedures to ensure that any request it intends to make will not conflict with ongoing law enforcement efforts. As noted above, in the certification FinCEN or other components of Treasury will submit for a 314(a) request, they must certify that to ensure de-confliction with any possible on-going investigation within the Federal law enforcement community, they have consulted with FinCEN's Federal law enforcement liaisons. In addition, FinCEN must also certify that they have been unable to locate the information sought through traditional methods of analysis, and they must list the type of analysis they have conducted. It is anticipated that any direct use by FinCEN of the 314(a) program will not cause any significant increase in the amount of case requests going to the industry. The primary scenarios in which we would envision FinCEN making a 314(a) request are as follows: (1) A request could be made for FinCEN to serve as a conduit in issuing a consolidated 314(a) request on behalf of a multi-agency task force investigation. In this instance, it might actually reduce/preclude an otherwise larger number of separate requests emanating from individual agencies. FinCEN would request that these agencies conduct the subpoena/investigative followup on any positive hits received from the industry. (2) FinCEN may occasionally develop significant, multi-state proactive targets/leads which might be appropriate for a 314(a) request. These are typically long-term selective efforts and therefore not likely to constitute any significant increase in the number of 314(a) requests. In addition, FinCEN would first brief the law enforcement community on the target package before deciding to issue a 314(a) request to ensure it is of substantial interest to law enforcement agencies and also to ensure an opportunity for de-confliction. If positive hits occur, FinCEN would collaborate with law enforcement on any subpoena/investigative follow-up. Furthermore, for any FinCEN self-initiated 314(a) requests, the same parameters will exist for justifying the significance of the 'case request' which, in turn, will also likely limit the number of such requests.

*D. FinCEN's Authority To Expand the 314(a) Rule*

A few commenters questioned FinCEN's authority to expand the section 314(a) program to include requesters other than Federal law enforcement agencies. Section 314(a) authorizes Treasury to adopt regulations to encourage further cooperation among "financial institutions, their regulatory authorities, and law enforcement authorities." Nowhere in section 314(a) is the term "law enforcement" limited to just Federal law enforcement agencies. That FinCEN initially included only Federal law enforcement agencies when it first established the section 314(a) program in 2002 was never meant to suggest a limitation on FinCEN's authority. On the contrary, the section 314(a) program began with Federal law enforcement because of uncertainty about how the program would work in practice and uncertainty about the resulting burden to financial institutions. FinCEN has had almost eight years of experience in administering the section 314(a) program, and for the reasons outlined elsewhere in this rulemaking, believes that its expansion to include other requesters will reap benefits that far outweigh the additional obligations on financial institutions. This is particularly true in the case of foreign requesters because law enforcement agencies in the United States, as a result of FinCEN accommodating foreign requesters, now will have the opportunity to obtain information about matching accounts and transactions in those EU jurisdictions that have signed the U.S.-EU MLAT. FinCEN therefore believes that its expansion of the section 314(a) program is entirely consistent with the stated goals of section 314(a) of

encouraging cooperation between financial institutions and law enforcement agencies.

FinCEN received another comment questioning its "expansion" of the term "money laundering," as that term is used in the rule. Currently, that term is defined to mean activity criminalized by 18 U.S.C. 1956 or 1957. The one change to the definition of the term "money laundering" would be to clarify that the term includes activity that would be criminalized by 18 U.S.C. 1956 or 1957 if such activity occurred in the United States. The change is necessary because of the addition of foreign law enforcement agencies as an authorized requester. Aside from making the provisions of the rule relevant to foreign requesters, the change is not intended and should not be viewed as expanding the scope of activity for which the section 314(a) program may be used.

One commenter also expressed concern about the pace at which FinCEN is seeking to amend the section 314(a) process, given its belief that section 314(a) information may be obtained through existing processes. As was explained in the Notice and elsewhere in this rulemaking, FinCEN is seeking to finalize a rule as quickly as possible so that the U.S. Government can comply with its obligations under the U.S.-E.U. MLAT and related bilateral instruments. Those treaties enter into force on February 1, 2010. Contrary to that commenter's belief, there is no current mechanism available to State, local and foreign law enforcement agencies that would allow those agencies to ascertain quickly whether financial institutions throughout the United States have established an account or conducted a transaction for a particular person or entity.

*E. 314(a) statutory goal of sharing information with financial institutions*

A few commenters noted that the proposed rule sets forth additional reporting requirements for the industry, but does not address how this furthers the statutory goal of sharing information with financial institutions. One of these commenters noted that FinCEN should develop mechanisms, in addition to its bi-annual SAR Activity Review publication, that will help share information with financial institutions. The overarching policy directive of the Act generally, and section 314 in particular, is that more information sharing will better enable the Federal Government and financial institutions to guard against money laundering and terrorist financing. This rule supports the policy directive of the Act. FinCEN recognizes the importance of providing financial institutions information to assist them in identifying and reporting suspected terrorist activity and money laundering. For this reason, FinCEN regularly provides sample case feedback studies to the industry which illustrate how the use of 314(a) has often made a 'breakthrough' difference in terrorist financing and significant money laundering cases. The studies also convey insight on related trends and patterns. FinCEN also has posted several Federal law enforcement informational alerts on the 314(a) Secure Information Sharing System, which has provided for enhanced sharing of information between the financial industry and law enforcement in a secure environment. In addition, the final rule does not preclude law enforcement, when submitting a list of suspects to FinCEN, from providing additional information relating to suspicious trends and patterns, and FinCEN specifically will encourage law enforcement to share such information with the financial community.

*F. Estimate of burden*

Refer to section V–Administrative Matters, item D—Paperwork Reduction Act for details regarding comments on the estimate of burden.

## IV. Section-by-Section Analysis

*A. Section 103.90(a)*

FinCEN proposed to amend 31 CFR 103.90(a) by changing the definition of the term "money laundering" to include activity that would be criminalized by 18 U.S.C. 1956 or 1957 if such activity occurred in the United States.[11] The change will allow the term to be applied to information requests by foreign law enforcement agencies. State and local law enforcement requesters will be subject to the same definition of money laundering that currently applies to Federal law enforcement agencies—*i.e.,* activity that is criminalized by 18 U.S.C. 1956 or 1957. Thus, in the case of a significant money laundering matter, a State or local law enforcement agency seeking information under the section 314(a) program will have to certify that it is investigating activity that would be criminalized under 18 U.S.C. 1956 or 1957. Such activity could include, for example, conducting a financial transaction with proceeds of murder, kidnapping, or dealing in a controlled substance (as defined in section 102 of the Controlled Substances Act), which is punishable as a felony under State law.[12] FinCEN is adopting this amendment as proposed.

*B. Section 103.100(a)(4)*

FinCEN proposed to add 31 CFR 103.100(a)(4), which will define a "law enforcement agency" to include a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that the foreign law enforcement agency is from a jurisdiction that is a party to a treaty that provides, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States with reciprocal access to information comparable to that obtainable under section 103.100. The addition of foreign law enforcement agencies will enable the United States to be compliant with its obligations under the U.S.-EU MLAT, thereby providing law enforcement agencies in the United States with the benefit of reciprocal access to information in EU member States.[13]

The addition of State and local law enforcement agencies, as discussed above, will provide a platform for such agencies to deal more effectively with multi-jurisdictional financial transactions in the same manner as Federal law enforcement agencies. Access to the 314(a) program will provide State and local law enforcement agencies with another resource to aid in discovering the whereabouts of stolen proceeds. FinCEN is adopting these amendments as proposed.

*C. Section 103.100(b)(1)*

FinCEN proposed, for the reasons discussed above, to amend section 103.100(b)(1) to make conforming changes to reflect the addition of State and local law enforcement agencies, and foreign law enforcement agencies, as potential requesters of information.[14]

[11] Two commenters noted that they are opposed to redefining what constitutes money laundering for 314(a) information sharing purposes by incorporating guidance that was issued in 2009 under the companion statutory provision, section 314(b), that allows U.S. financial institutions to share information. The commenters noted that broadening the scope improperly sends a signal that serious money-laundering and terrorist financing crimes have no greater priority than standard financial fraud or other criminal cases. FinCEN has not expanded the definition of the term "money laundering" beyond the change noted above.

[12] *See* 18 U.S.C. 1956(c)(7) (defining the term "specified unlawful activity" to include, *inter alia,* an offense listed in 18 U.S.C. 1961(1)).

[13] The U.S.-EU MLAT, and 27 bilateral instruments with EU Member States implementing its terms, require each EU member State to be able to search for the kind of information covered by 31 CFR 103.100 and to report to the requesting State the results of such a search promptly.

[14] Two Federal law enforcement agencies noted that the NPRM's appeal to add the EU countries as well as state and local law enforcement to the

Continued

FinCEN adopts this amendment as proposed.

*D. Section 103.100(b)(2)*

FinCEN proposed to add a new 31 CFR 103.100(b)(2) which will clarify that FinCEN may request directly, on its own behalf and on behalf of appropriate components of Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, specified individuals, entities, or organizations. Comments directed to this amendment were discussed above and FinCEN has reviewed and weighed the concerns expressed by some commenters. FinCEN, however, continues to hold that expanding the 314(a) program to allow itself, and acting on behalf of other appropriate Treasury components, to initiate search requests for the purpose of conducting analyses to deter and detect terrorist financing activity or money laundering will enhance Treasury's ability to fulfill its collective mission. FinCEN, therefore, adopts the amendments as proposed.

**V. Administrative Matters**

*A. Executive Order 12866*

It has been determined that this rule is a significant regulatory action for purposes of Executive Order 12866 because it raises a novel policy issue. However, a regulatory impact analysis was not required.

*B. Unfunded Mandates Act of 1995 Statement*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by that State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202.

*C. Regulatory Flexibility Act*

When an agency issues a final rule, the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.*), requires the agency to prepare either a final regulatory flexibility analysis, which will "describe the impact of the rule on small entities," or to certify that the final rule is not expected to have a significant economic impact on a substantial number of small entities. For the reasons stated below, FinCEN certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

*Estimate of the number of small entities to which the rule will apply:*

The proposed rule applies to all financial institutions of which FinCEN estimates there are 55,000. However, FinCEN has limited its inquiries to banks,[15] broker-dealers in securities, future commission merchants, trust companies, and life insurance companies ("Covered Institutions"). Because entities of all sizes are vulnerable to abuse by money launderers and financers of terrorism, the final rule will apply to all Covered Institutions regardless of size. As discussed below, FinCEN acknowledges that the final rule will affect a substantial number of small entities.

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $175 million in assets.[16] Of the estimated 8,000 banks, 80% have less than $175 million in assets and are considered small entities.[17] Of the estimated 7,000 credit unions, 90% have less than $175 million in assets.[18] A broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital.[19] Of the estimated 5,000 broker-dealers, 15% are small entities.[20] FinCEN estimates that the majority of the remaining 250 affected Covered Institutions are small entities. Therefore, FinCEN acknowledges that the rule will affect a substantial number of small entities.

*Description of the projected reporting and recordkeeping requirements of the rule:*

Currently, Covered Institutions are already subject to the reporting requirements of section 314 of the USA PATRIOT Act and FinCEN's implementing regulation.[21] However, FinCEN estimates that the final amendment may potentially increase the cost of reporting. Under the 314(a) program, Covered Institutions are provided a list of individuals and entities that are subjects of significant money laundering or terrorist financing investigations. The list is primarily provided bi-weekly. Covered Institutions are required to review their records to determine whether the institutions currently maintain, or have maintained, an account for a named subject during the preceding 12 months, or have conducted any transactions involving any named subjects during the previous six months.[22] Covered Institutions are required to report any positive matches to FinCEN.[23] Currently, only Federal law enforcement agencies participate in the 314(a) program. The final rule will allow State and local law enforcement, as well as certain foreign law enforcement agencies, and FinCEN, as well as other Treasury components, to add subjects to this list. This expansion will most likely result in additional requests for information from Covered Institutions.

As discussed in the Paperwork Reduction Act analysis below, FinCEN estimates 120 search requests[24] per year associated with the recordkeeping requirement in this rule and 9 subjects (including aliases) per request, resulting in an estimated 1,080 subjects per year. The estimated burden associated with searching and identifying each subject is 4 minutes per subject.[25] FinCEN

314(a) program is understandable, because these elements are all law enforcement entities.

[15] 31 CFR 103.11(c).

[16] U.S. Small Business Administration, "Table of Small Business Size Standards Matched to North American Industry Classification System Codes" at 28 (Aug. 22, 2008).

[17] *See* FDIC, Bank Find (Number of Banks), *http://www2.fdic.gov/idasp/main_bankfind.asp* (last visited Mar. 24, 2009).

[18] See also NCUA, Credit Union Data (Number of Credit Unions), *http://webapps.ncua.gov/customquery/* (last visited Mar. 24, 2009).

[19] 17 CFR 240.0–10.

[20] *See* 73 FR 13692, 13704 (Mar. 13, 2008) (The Securities and Exchange Commission ("SEC") reports from commission records that there are 6016 broker-dealers, 894 of which are small businesses. FinCEN only sends 314(a) requests to an estimated 5,000 broker-dealers; however we rely on the SEC numbers to estimate that 15% are small businesses).

[21] 31 CFR 103.100.

[22] 31 CFR 103.100(b)(2).

[23] 31 CFR 103.100(b)(2)(ii).

[24] Estimated requests per annum subject to the Paperwork Reduction Act include 10 from FinCEN, 50 from State/local law enforcement, and 60 from foreign law enforcement agencies, for a total of 120 requests.

[25] FinCEN based its estimate on experience and contact with the regulated industries. However, due to one of the comments received on the proposed rule, FinCEN re-assessed this original estimate. For example, FinCEN considered the time necessary for a depository institution to process basic customer transactions. These types of transactions are similar to searching and identifying the subject of a 314(a) request because, in order to process a transaction for a customer, a depository institution teller must confirm that a customer maintains an account with the depository institution. In many cases, this requires the customer to provide some sort of identifying information to the depository institution teller, such as a driver's license, which contains specific identifying information, including name, address, and date of birth. When a 314(a) request is submitted to a Covered Institution, the request includes the following identification information for a subject: name, address, date of birth, and social security number. Therefore, an employee of

therefore estimates that each recordkeeper will, on average, spend approximately 4,320 minutes, or roughly 72 hours per year to comply with the recordkeeping requirement in this rule. According to the Bureau of Labor Statistics, a compliance officer's mean hourly wage is $24.47. This would equate to a cost of $1,761.84 per year for a financial institution to comply with this recordkeeping requirement.[26] Because this is a minimal increase to the annual payroll of small businesses within the regulated industries, FinCEN does not expect the impact of the rule to be significant. FinCEN was unable to quantify an exact number of this effect due to a lack of available information specific to the regulated industries.

In the proposed rule, FinCEN requested comment on whether 4 minutes to search and identify each subject that is part of a 314(a) request was an accurate estimate. A few commenters stated that this estimate may be low, however only one association offered an alternative estimate. The association suggested that the estimate of time to search and identify each subject be increased to more than 30 minutes per subject. In describing this estimate, the association explained that it included the time required to verify a positive match and to determine whether a Covered Institution should file a SAR. FinCEN disagrees with the reasoning behind the association's increased estimate. Including the time necessary to conduct additional due diligence to confirm a positive match in the estimate of researching each subject overstates the time required to search and identify a positive match. Based upon the experience of FinCEN's 314(a) program office, the average Covered Institution will experience a positive hit on a subject only a handful of times per year. In addition, incorporating the time necessary to conduct due diligence on a positive match to a subject to determine whether filing a SAR is necessary also overstates the time required to search and identify a positive match. Conducting research to determine whether to file a SAR on a customer who is a positive match to a 314(a) request is not required by this rule. A financial institution's determination as to whether to research a customer and file a SAR is based upon its own policies and procedures to identify suspicious activity. Additionally, this time is already reflected in FinCEN's burden estimates for filing a SAR. The association's estimate relies on time spent outside the scope of the regulation, and the association did not provide a breakdown of the time required to search and identify a match to a 314(a) request in their suggested estimate of over 30 minutes. For these reasons, along with the fact that FinCEN received no other comments providing an alternative estimate to 4 minutes per subject, FinCEN will continue to rely on this estimate.

Certification

As acknowledged above, the final rule will impact a substantial number of small entities. However, as also discussed above, FinCEN estimates that the impact from these requirements will not be significant. Accordingly, FinCEN certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

The collection of information contained in this rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0049. The collection of information in this final rule is in 31 CFR 103.100. The information will be used by Federal[27] and State and local law enforcement agencies, as well as certain foreign law enforcement agencies, and FinCEN and other appropriate components of Treasury, in the conduct of investigating money laundering and terrorist financing activity. The collection of information is mandatory.

*International Requests:* FinCEN estimates that there will be no more than 60 requests for research submitted to the 314(a) program by foreign law enforcement agencies annually.[28]

*State and Local Requests:* While there are more than 18,000 State and local law enforcement agencies, FinCEN estimates that the number of cases that will meet the stringent 314(a) submission criteria will be relatively few. The majority of significant money laundering and terrorist financing related cases are worked jointly with Federal investigators and are thus already eligible for 314(a) request submission. FinCEN estimates that there will be no more than 50 State and local cases per annum of 314(a) requests that meet submission criteria.

*FinCEN and appropriate components of Treasury Requests:* FinCEN estimates that the 314(a) program will be used by FinCEN and other appropriate Treasury components in fewer than 10 cases per annum. Taking into consideration the estimated number of potential use cases that will fit recommended internal 314(a) criteria, FinCEN does not believe that this expansion will be a significant strain on existing program resources.

*Description of Recordkeepers:* Covered financial institutions as defined in 31 CFR 103.100.

*Estimated Number of Recordkeepers:* On an annual basis, there are approximately 20,134 covered financial institutions, consisting of 15,106 commercial banks, savings associations, and credit unions, 4,793 securities broker-dealers, 139 future commission merchants, 79 trust companies, and 17 life insurance companies.

*Estimated Average Annual Burden Hours per Recordkeeper:* FinCEN estimates 120 search requests[29] per year associated with the recordkeeping requirement in this rule and 9 subjects (including aliases) per request, resulting in an estimated 1,080 subjects per year. The estimated average burden associated with searching each subject is 4 minutes per subject. FinCEN therefore estimates that each recordkeeper will, on average, spend approximately 4,320 minutes, or roughly 72 hours per year to comply with the recordkeeping requirement in this rule.

*Estimated Total Annual Recordkeeping Burden:* 1,449,648 annual burden hours (20,134

a Covered Institution researching the subject of a 314(a) request, has the same type of information available to them, as a depository institution teller processing a customer transaction. In addition, they both, most likely, will be accessing similar systems to confirm whether the individual maintains an account with the depository institution. These types of depository institution transactions can be processed in a matter of a few minutes regardless of institution size.

[26] *See* Bureau of Labor Statistics, "Occupational Employment and Wages, May 2006," *http://www.bls.gov/oes/2006/may/oes131041.htm.*

[27] The Paperwork Reduction Act does not apply to the requirement in section 103.100(b)(2) concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency. *See* 5 CFR 1320.4(a)(2).

[28] These calculations were based on previous requests for information. A review of incoming requests from European Union countries revealed an average of about 350 cases per year from 2006–2008. Of these, approximately 75% (an average of 269) were money laundering and/or terrorism related, however, the majority were not identified as complex cases. Conversations with FinCEN personnel responsible for European Union countries indicated not more than 10% of the money laundering and/or terrorism related cases will be significant enough to meet 314(a) use criteria, however, it is anticipated that there may be additional requests that will be submitted outside of the normal Financial Intelligence Unit channels.

[29] Estimated requests per annum subject to the Paperwork Reduction Act include 10 from FinCEN, 50 from State/local law enforcement, and 60 from foreign law enforcement agencies, for a total of 120 requests.

recordkeepers × 72 average annual burden hours per recordkeeper).

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 BSA must be retained for five years.

In the Notice, FinCEN specifically invited comments on: (a) Whether the recordkeeping requirement is necessary for the proper performance of the mission of the Financial Crimes Enforcement Network, and whether the information shall have practical utility; (b) the accuracy of our estimate of the burden of the recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, 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 maintain the information. With regard to item (a), two commenters noted that this recordkeeping requirement does further the mission and goals of FinCEN. With regard to item (c), two commenters suggested that it would be helpful if financial institutions had a standardized form to complete when sharing information with law enforcement. The same process by which a financial institution confirms a positive match to a 314(a) request, made by a Federal law enforcement agency, via the 314(a) Secure Information Sharing System, will apply to requests made by all other requesting agencies. In addition, the same commenters suggested that law enforcement utilize a standardized form to request information from financial institutions when a match to a 314(a) request is identified. The underlying account and transaction information related to a positive 314(a) match is not deemed to be part of the 314(a) response, and can only be obtained by the requesting agency through appropriate legal processes, such as a subpoena. FinCEN is not part of that legal process to obtain the underlying information; its involvement ends at informing requesting agencies that a match exists. Therefore, each requesting agency is responsible for determining the method by which they will request additional transaction information related to a 314(a) match. With regard to items (d) and (e), two commenters noted that the recordkeeping requirement should not place any additional burden or start-up costs on financial institutions, because the 314(a) program is already in place and financial institutions should have procedures in place to process these requests.

With regard to our request for comment on the accuracy of our estimate of the burden of the recordkeeping requirement, we received a variety of different comments. A few commenters suggested that expanding access to the 314(a) program would increase the volume of inquiries to an unmanageable level for financial institutions, which would be disproportionate to the benefits obtained by law enforcement. Other commenters suggested that increasing the volume of 314(a) requests would substantially increase financial institutions' employee-hours required to complete searches, increase the cost to financial institutions, and may lead to the inability of financial institutions conducting manual searches to provide timely responses. Other commenters noted that the proposal would exponentially increase the burden on financial institutions, FinCEN, and the 314(a) program. However, these commenters did not provide any alternative estimates of the increase in the volume of inquiries to support their concerns. On the other hand, as noted above, two other commenters noted that the recordkeeping requirement should not place any additional burden or start-up costs on financial institutions, because the 314(a) program is already in place, and financial institutions should have procedures in place to process these requests. Two commenters suggested that FinCEN engage in additional industry outreach beyond the comment period to better gauge the impact on the industry.

Some commenters felt that the estimates that only 60 foreign law enforcement requests, 50 State and local law enforcement requests, and 10 FinCEN requests would occur annually were low estimates. FinCEN's estimates are extrapolated from an analysis of the volume and type of information requests it has received in past years from foreign as well as State and local law enforcement agencies. Additionally, FinCEN's internal review process is stringent and also will serve as a buffer to an unreasonable increase in the volume of 314(a) requests. Other commenters suggested that FinCEN should track the increase in requests in order to verify the estimates in the proposal. FinCEN already monitors the volume of requests and will continue to do so after this final rule goes effective. Another commenter asked how FinCEN would control the number of requests from foreign, State, and local law enforcement if they exceed the estimates in the proposal. As discussed above, FinCEN has internal procedures that will help ensure that the 314(a) program will be utilized only in compelling situations, thereby minimizing the burden on financial institutions.

A few commenters noted that they felt FinCEN's estimate of 4 minutes to research each subject was low, but only one commenter offered an alternative figure for us to consider, as noted above. The commenters explained that some small financial institutions conduct searches manually. In addition, although most larger financial institutions are likely to conduct automated searches, there is still a manual element to their research. Further, financial institutions have to access a variety of internal systems to research subjects, such as commercial and consumer loan systems. Also, financial institutions of all sizes manually review matches to ensure accuracy. As described above, one of these commenters suggested that to reflect the time needed to research a subject more accurately, the estimate be increased to more than 30 minutes per subject. The commenter did not offer sufficient evidence to support the suggestion. The same commenter noted that the estimate misses the most burdensome element, which is responding to law enforcement requests when there has been a data match to a 314(a) request. The commenter noted that while an accurate estimate of this aspect of the research is difficult to identify, it should be factored into the estimate of burden. As noted above, section 314(a) information will continue to consist of only a confirmation that a matching account or transaction exists. The underlying account and transaction information relating to a 314(a) match is not deemed to be part of the 314(a) response, and can only be obtained by the requesting agency through appropriate legal process, such as a subpoena. FinCEN is not part of that legal process to obtain the underlying information; its involvement ends at informing requesting agencies that a match exists. Any interaction between a requesting law enforcement agency and a financial institution subsequent to a 314(a) match occurs outside the context of this rule and this analysis and should not be factored into our burden estimates.

One commenter suggested that requests from foreign, State, and local law enforcement be submitted to financial institutions on the same schedule as requests from Federal law enforcement currently are, in order to keep the number of searches to a

minimum. FinCEN intends to submit requests from all agencies on the same schedule. Another commenter suggested that 314(a) requests made by foreign, State, and local law enforcement be limited to terrorist financing investigations, initially, in order to minimize the number of requests. While FinCEN will monitor the effectiveness of the program's expansion, limiting access to terrorist financing investigations would deny these law enforcement agencies the ability to confront serious money laundering investigations which they are pursuing.

*E. Effective Date*

Publication of a substantive rule not less than 30 days before its effective date is required by the Administrative Procedure Act except as otherwise provided by the agency for good cause.[30] In order to satisfy the United States' treaty obligation with certain foreign governments to provide access to the 314(a) program within the deadline to comply with the U.S.–EU MLAT, FinCEN finds that there is good cause for making this amendment effective on February 10, 2010. In finding good cause, FinCEN considered the possible effect of providing less than 30 days notice to affected persons. FinCEN determined that immediate implementation would not unfairly burden these persons because, as explained above, persons affected by the rule have already implemented the procedures necessary to comply with the 314(a) rule since its original implementation on September 26, 2002.

**List of Subjects in 31 CFR Part 103**

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

**Authority and Issuance**

For the reasons set forth above, FinCEN is amending 31 CFR Part 103 as follows:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

[30] 5 U.S.C. 553(d).

■ 2. Section 103.90(a) is revised to read as follows:

**§ 103.90 Definitions.**

* * * * *

(a) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957, or an activity that would be criminalized by 18 U.S.C. 1956 or 1957 if it occurred in the United States.

* * * * *

■ 3. Section 103.100 is amended by—
■ a. Adding new paragraph (a)(4);
■ b. Revising paragraph (b)(1);
■ c. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5);
■ d. Adding new paragraph (b)(2);
■ e. Revising newly redesignated paragraph (b)(3)(i) introductory text;
■ f. Revising newly redesignated paragraph (b)(3)(iv)(B)(*1*);
■ g. Revising newly redesignated paragraph (b)(3)(iv)(B)(*2*);
■ h. Revising newly redesignated paragraph (b)(3)(iv)(C);
■ i. Revising newly redesignated paragraph (b)(4); and
■ j. Revising newly redesignated paragraph (b)(5).

The revisions and additions read as follows:

**§ 103.100 Information sharing between government agencies and financial institutions.**

(a) * * *

(4) *Law enforcement agency* means a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that in the case of a foreign law enforcement agency, such agency is from a jurisdiction that is a party to a treaty that provides, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtainable under this section.

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering—(1) In general.* A law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe. At a minimum, such certification must: state that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Requests from FinCEN.* FinCEN may solicit, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization. Before an information request under this section is made to a financial institution, FinCEN or the appropriate Treasury component shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. The certification also must include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names, and identify one person at FinCEN or the appropriate Treasury component who can be contacted with any questions relating to its request.

(3) *Obligations of a financial institution receiving an information request—(i) Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the law enforcement agency, FinCEN or requesting Treasury component representative, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which

has been named in the information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

* * * * *

(iv) * * *

(B)(*1*) A financial institution shall not disclose to any person, other than FinCEN or the requesting Treasury component, the law enforcement agency on whose behalf FinCEN is requesting information, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(*2*) Notwithstanding paragraph (b)(3)(iv)(B)(*1*) of this section, a financial institution authorized to share information under § 103.110 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(3)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

* * * * *

(4) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(3)(ii) of this section is information required to be reported in accordance with a federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(5) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal, State or local law enforcement agency or officer, or FinCEN or another component of the Department of the Treasury, to obtain information directly from a financial institution.

Dated: February 4, 2010.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2010–2928 Filed 2–9–10; 8:45 am]

**BILLING CODE 4810–02–P**

## POSTAL SERVICE

## 39 CFR Part 965

## Rules of Practice in Proceedings Relative to Mail Disputes

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This document revises the rules of practice of the Postal Service's Office of the Judicial Officer to allow qualified persons licensed to practice law to be designated by the Judicial Officer as presiding officers in proceedings relating to mail disputes.

**DATES:** *Effective Date:* March 1, 2010.

**ADDRESSES:** Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

**FOR FURTHER INFORMATION CONTACT:** Administrative Judge Gary E. Shapiro, (703) 812–1910.

**SUPPLEMENTARY INFORMATION:**

### A. Executive Summary

39 CFR Part 965 contains the rules governing proceedings involving Mail Disputes. Only one change is made. Paragraph (a) of section 965.4 of the rules has defined the "presiding officer" as an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The revised rule expands the definition of presiding officer to include any other qualified person licensed to practice law designated by the Judicial Officer to preside over a proceeding conducted pursuant to this part.

### B. Summary of Change

Expanding the definition of presiding officer in Part 965 is intended to permit qualified staff counsel employed in the Office of the Judicial Officer to be designated as the initial presiding official authorized to conduct proceedings and issue Initial Decisions in the resolution of mail disputes. Administrative Law Judges and Administrative Judges qualified in accordance with law will continue to be designated as presiding officers in such matters. The appellate procedure is unchanged.

### C. Effective Dates and Applicability

These revised rules will govern proceedings under Part 965 docketed on or after March 1, 2010.

### List of Subjects in 39 CFR Part 965

Administrative practice and procedure, Mail disputes, Postal Service.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR Part 965 as set forth below:

■ 1. The authority citation for part 965 continues to read as follows:

**Authority:** 39 U.S.C. 204, 401.

■ 2. In § 965.4, paragraph (a) is revised to read as follows:

**§ 965.4 Presiding officers.**

(a) The presiding officer shall be an Administrative Law Judge, an Administrative Judge qualified in accordance with law, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a proceeding conducted pursuant to this part. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his or her own initiative or for good cause found, preside at the reception of evidence.

* * * * *

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 2010–2844 Filed 2–9–10; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2009–0014; FRL–9113–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Baton Rouge 1-Hour Ozone Nonattainment Area; Determination of Attainment of the 1-Hour Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA has determined that the Baton Rouge (BR) 1-hour ozone nonattainment area has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This

determination is based upon three years of complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2006–2008 monitoring period. Preliminary data for 2009 also indicate the area continues to attain the 1-hour ozone NAAQS.

The requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plan (SIP) requirements related to attainment of the 1-hour ozone NAAQS, are suspended for so long as the area continues to attain the 1-hour ozone NAAQS.

**DATES:** This final rule is effective March 12, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2009–0014. 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.,* Confidential Business Information (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 *www.regulations.gov* or in hard copy at the Air Planning Section (6PDL), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays.

Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367, fax (214) 665–7263, e-mail address *rennie.sandra@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" means EPA. This supplementary information section is arranged as follows:

I. What Action Is EPA Taking?
II. What Is the Effect of This Action?
III. Responses to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

## I. What Action Is EPA Taking?

We are determining that the BR 1-hour ozone nonattainment area is currently attaining the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2006–2008 monitoring period. Preliminary data for 2009 also indicate that the area continues to attain the 1-hour ozone NAAQS and there were no monitored exceedances of the 1-hour standard at any monitor for this time period. Based on this determination, EPA is also determining that the requirements for this area to submit a severe attainment demonstration, a severe reasonable further progress plan (RFP), applicable contingency measures plans, and other planning State Implementation Plan (SIP) requirements related to attainment of the 1-hour ozone NAAQS, are suspended for so long as the area continues to attain the 1-hour ozone NAAQS.

The rationale for our action is explained in the Notice of Proposed Rulemaking (NPR) published on March 26, 2009 (74 FR 13166) and elaborated upon below in today's rulemaking. We received comments on the proposal which are addressed in this action.

## II. What Is the Effect of This Action?

Pursuant to our determination of attainment and in accordance with the interpretation of the Clean Air Act (CAA) set forth in our Clean Data Policy,[1] the effect of the determination is that the following requirements to submit SIP measures under the 1-hour anti-backsliding provisions, addressed in 40 CFR 51.905 and in the Court's ruling in the *South Coast* case (*See South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), are suspended for so long as the area continues to attain the 1-hour standard: a severe area attainment demonstration with its RACM demonstration and other associated elements; the severe RFP plan requirements; and serious and severe area contingency measures under sections 172(c)(9) and 182(c)(9).

If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the BR area has violated the 1-hour ozone NAAQS, the basis for the suspension of the requirements would no longer exist, and EPA would take action to withdraw the determination and direct the area to address the suspended requirements.

This action is limited to a determination that the BR area has attained the 1-hour ozone NAAQS, and the effect of such a determination on the obligation to submit specified 1-hour anti-backsliding requirements. It does not formally determine whether the area has attained the 8-hour ozone NAAQS. Nor does it address the 1-hour ozone anti-backsliding requirement for section 185 penalty fees or severe nonattainment new source (NNSR) review. In our proposal, we stated that EPA would address separately the status of 1-hour ozone anti-backsliding requirements for section 185 penalty fees, based on the outcome of a future rulemaking in response to the *South Coast* decision. EPA has issued final guidance on 185 fees entitled "Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS" (January 5, 2010). However, in today's rulemaking proceedings, EPA has not proposed and is not finalizing any action regarding the status of 1-hour section 185 fees requirements. As appropriate, EPA will undertake a separate action to address the status of 1-hour anti-backsliding requirements for section 185 fees program in the BR area. Regarding severe nonattainment new source review, the requirement may change after the area is redesignated and has an approved maintenance plan. Please note that the Louisiana PSD (Prevention of Significant Deterioration) SIP requirements would apply in the BR ozone area only upon the effective date of an EPA action approving the removal of the NNSR SIP program from the BR ozone SIP.

## III. Responses to Comments

EPA received five comment letters in response to the proposed rulemaking. The comment letters are available for review in the docket for this rulemaking. These comment letters were submitted by Tulane University's Environmental Law Clinic on behalf of the Louisiana Environmental Action Network (LEAN) (hereinafter LEAN), Louisiana Chemical Association (LCA),

[1] Our Clean Data Policy is set forth in a May 10, 1995 EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard."

BASF the Chemical Company (BASF), Shell Chemical Company (Shell), and the Baton Rouge Area Chamber (BRAC). LCA, Shell, BRAC and BASF expressed support for EPA's proposal to find BR is attaining the 1-hour standard and for EPA's proposal to suspend certain SIP requirements under EPA's Clean Data Policy. EPA summarizes and responds below to some additional comments submitted by LCA, and to adverse comments received from LEAN.

LCA submitted the following additional comments:

*Comment:* LCA asserted that the BR area also attained the 1-hour standard during the 2004–2006 time period, and EPA did not take action on the State's request that EPA make a clean data determination. LCA stated in its comments that it reserves the right to request a determination that the area actually attained the standard at an earlier time, contending that this would have potential consequences with respect to anti-backsliding measures that may be required.

*Response:* The scope of this action is limited to a finding of attainment for the 1-hour ozone standard based on LDEQ's request for such a finding for the time period between 2006–2008, and continuing until the present. A determination of attainment for purposes of the clean data policy is based on the most recent three years of complete, quality-assured monitoring data, and its duration is conditioned on the area remaining in attainment. Any findings related to other historical periods are not relevant to today's rulemaking.

*Comment:* LCA stated in its comments that it also reserves the right to request a determination that the BR area actually attained the 1-hour ozone standard by the November 15, 2005 deadline.

*Response:* The scope of this rulemaking is limited to a determination of attainment for the 1-hour ozone standard based on LDEQ's request for such a determination for the time period between 2006–2008, and continuing until the present. In this rulemaking, EPA is not addressing the BR area's attainment status with respect to any other historical time period, or its status as of its 2005 attainment date.

*Comment:* LCA contended that EPA can rely on a level of 90 ppb averaged on an 8-hour basis for ozone as being an equivalent level of protection to the 1-hour standard in the absence of any effective 1-hour standard. LCA argues that, because the 1-hour standard was legally revoked during the time period at issue (as of November 2005) EPA rationally could look to the 8-hour data for the BR area and conclude that a design value of 90 ppb was equivalent to the revoked 1-hour standard.

*Response:* LCA's comment addresses issues that are beyond the scope of this rulemaking. EPA has not made a finding that 90 ppb averaged on an 8 hour basis is equivalent to 120 ppb averaged on a 1-hour basis. This action considers only whether the area has attained the 1-hour ozone standard of 120 ppb (or 124 ppb when rounding is considered), based on monitoring data for that standard.

*Comment:* LCA states that it reserves the right to request that the requirement for LDEQ to adopt additional antibacksliding requirements in the SIP, including but not limited to 185 fees, be suspended by the Clean Data Policy attainment determination. LCA asserts that it understands that EPA is in the process of developing a rulemaking and/or guidance concerning whether achieving 1-hour standard attainment (and/or achieving 8-hour standard attainment) suspends the obligation to impose section 185 fees where such have not yet been required by a state for a severe nonattainment area.

*Response:* The scope of today's action is limited to an attainment determination for the 1-hour ozone standard that suspends the requirements to submit an attainment demonstration, a severe reasonable further progress plan, and applicable contingency measures plans for that standard for so long as the area remains in attainment of the standard in the future. As we stated in the proposal, and in the section above on the effect of today's rulemaking, EPA will address the section 185 fees anti-backsliding requirements for the 1-hour ozone standard in a separate proceeding or rulemaking.

*Comment:* LCA states that it believes it is fully consistent with the CAA to suspend the requirement to submit the 185 fees program or an equivalent program when an area is determined to be attaining the 1-hour standard.

*Response:* As stated above and in the previous response to comment, the scope of this action is limited to suspending the requirements to submit an attainment demonstration, a severe reasonable further progress plan, and applicable contingency measures plans for the 1-hour ozone standard for so long as the area remains in attainment of the standard in the future. EPA will address BR's 1-hour anti-backsliding requirements for CAA section 185 fees in a separate rulemaking action.

LEAN made the following comments:

*Comment:* LEAN asserts generally that EPA cannot suspend certain 1-hour ozone requirements under EPA's Clean Data Policy.

*Response:* As set forth in detail below, EPA's longstanding interpretation of the CAA under the Clean Data Policy is valid and reasonable, and has been upheld by every court in which it has been challenged. We respond to LEAN's specific comments below.

*Comment:* LEAN asserts that the 1-hour standard is no longer relevant for determining whether an area's air quality is requisite to protect public health.

*Response:* While EPA agrees that it has issued an 8-hour ozone standard that is more protective than the 1-hour standard, certain 1-hour anti-backsliding requirements remain applicable to the BR area. Thus the issue of whether an area meets the 1-hour anti-backsliding requirements is still relevant. EPA's Clean Data Policy was originally directed at requirements under the 1-hour standard, and that interpretation has now been incorporated in the form of a regulation for implementation of the 8-hour ozone requirements. Under the Clean Data Policy, an attainment determination for the 1-hour standard has consequences for an area's obligation to submit certain regulatory requirements for that standard. For the reasons set forth in the proposal and in EPA's responses to comments here, a determination that the BR area has attained the 1-hour ozone standard suspends the requirement to submit 1-hour attainment demonstration, 1-hour reasonable further progress and 1-hour contingency measures for so long as the area continues to meet the 1-hour standard. This determination has no bearing on the requirements for the 8-hour ozone standard.

*Comment:* LEAN asserts that BR has not attained the revised 1997 8-hour ozone standard, which is 75 ppb (the 2008 8-hour standard). *See* 73 FR 16435–16514 (March 27, 2008) [2]

*Response:* As set forth in responses to comments above, our action here is limited to a determination that the BR area has attained the 1-hour ozone standard based on complete, quality-assured monitoring data for 2006–2008, and preliminary data for 2009. The preliminary 2009 data show the 1-hour

[2] On September 16, 2009 we announced that we are reconsidering our 2008 decision setting national standards for ground-level ozone. The reconsidered standard was announced on January 6 and proposed on January 19, 2010 (75 FR 2938). We expect by August 2010 to have completed our reconsideration of the standard and designations to proceed thereafter. When and if EPA designates BR as nonattainment of the reconsidered standard, LDEQ will be required to prepare a new ozone plan that addresses that standard.

ozone design value continues to be 114 ppb. There were no monitored exceedances for this time period.

While EPA agrees that compliance with the 1-hour standard is not equivalent to attainment of the more protective 1997 or 2008 8-hour standards, certain 1-hour requirements remain applicable to BR for anti-backsliding purposes. Under the Clean Data Policy, a determination of attainment for the 1-hour standard suspends the obligation to submit certain SIP measures, including the 1-hour attainment demonstration, 1-hour reasonable further progress and 1-hour contingency measures for so long as the area continues to meet the 1-hour standard. EPA's longstanding interpretation, which Courts have upheld, is that for an area meeting the 1-hour standard, submissions for the reasonable further progress requirements are not necessary or meaningful, because the goal of the rate of progress reductions—attainment—has been met. Similarly, EPA believes—and Courts have agreed—that a plan to attain the 1-hour standard is unnecessary for an area that is meeting the standard. Moreover, contingency measures, which are tied to rate of progress and attainment plan requirements, are no longer needed where an area is meeting the standard. EPA's rationale for its interpretation is more fully explained in our Clean Data Policy, in EPA's 8-hour ozone implementation rulemaking and the 1-hour ozone rulemakings cited therein. See 70 FR 71612 (November 29, 2005) and in the cases that have upheld EPA's Clean Data Policy. As discussed in more detail below, the Clean Data Policy has been upheld in a number of court cases, including the DC, 7th, 9th and 10th Circuits. *See NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009); *Sierra Club v. EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion). The Courts have made clear that a determination of attainment, for either the 1-hour or 8-hour standard, is a valid, reasonable, and legitimate alternative way of satisfying the requirements to submit attainment demonstrations, reasonable further progress requirements, and contingency measures, for that standard. Upon EPA's final determination that the BR area is attaining the 1-hour standard, the submission of those measures is no longer legally required for as long as the area remains in attainment. Thus the commenter is incorrect in asserting that EPA is removing mandatory controls from the SIP. The Commenter's claim that the severe 1-hour measures are necessary is belied by the fact that the sole purpose of these measures is to bring about attainment of the 1-hour standard. EPA is determining that this attainment has already occurred and it continues, and that submission of measures designed to create attainment is not necessary for so long as the area continues to attain. Contrary to Commenter's assertion, no further reductions to bring about attainment of the 1-hour standard are necessary or required. The application of the Clean Data Policy for the 1-hour standard does not in any way hinder or interfere with attainment of the 8-hour standard. Requirements for the 1997 8-hour ozone standard remain in place to address the 8-hour standard for which the area is currently designated nonattainment, and those requirements are not affected by this rulemaking. As discussed further below, the DC Circuit Court has upheld the regulation embodying the Clean Data Policy for the 8-hour ozone standard that suspends 8-hour requirements for attainment demonstrations, RFP, and contingency measures upon a determination of attainment for that standard. 40 CFR 51.918. The regulation upheld was based on EPA's interpretation of the Clean Data Policy under the 1-hour ozone standard. Moreover, since it is incontrovertible that a determination of attainment for the 8-hour ozone standard legally suspends certain 8-hour submission requirements, it would be inconsistent and nonsensical to adopt a contradictory interpretation for the identical requirements under the 1-hour standard.

*Comment:* LEAN argues that Louisiana's five-parish BR area has *never* met minimum federal health-protection standards for ozone air pollution.

*Response:* As set forth in the responses to comment above, EPA's rulemaking action today is limited to a determination that the BR area has attained the 1-hour ozone standard based on complete, quality-assured 2006–2008 air monitoring data, and preliminary data for 2009 that show the area continues in attainment of the 1-hour ozone standard. An area violates the 1-hour ozone standard if, over a consecutive 3-year period, more than 3 days of expected number of exceedances occur at the same monitor. *See* CAA, section 107(d)(4); 40 CFR Part 50, App. H. The data show that during this three-year period, no single monitor recorded more than three expected number of exceedances. EPA did not receive any comments that challenge EPA's determination that the area has monitored attainment of the 1-hour ozone standard for 2006–2008, the most recent three-year period for which complete, quality-assured data are available. Nor is there any challenge to EPA's conclusion that preliminary data for 2009 also indicate that the area continues to be in attainment for the 1-hour ozone standard. While this rulemaking does not address any ozone standard other than the 1-hour standard, EPA notes that recent monitoring data suggest that the BR area is also currently attaining the 1997 8-hour ozone standard.

*Comment:* LEAN argues that the Court's decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), prohibits BR from removing controls until it has attained the standard EPA has determined is requisite to public health, which they assert is the 75 ppb 2008 8-hour ozone standard. LEAN contends that the *South Coast* case made it clear that EPA cannot release an area from applicable controls until it has achieved "safe" air quality. They further assert that allowing BR to escape antibacksliding requirements because it attained the 1-hour standard would be ignoring Congress' intent when enacting the CAA that "air quality should be improved until safe and never allowed to retreat thereafter."

*Response:* The suspension of the obligation to submit the attainment demonstration, RFP plan, and contingency measures for the 1-hour ozone standard does not remove any controls that are in place, or any controls that are required when the area is attaining the 1-hour standard. It is directed only at plan measures aimed specifically at attainment of the 1-hour standard, which are not necessary once the area has attained, and continues to attain that standard. The obligations for submissions being suspended here do not bear on any obligations linked to the revised 2008 8-hour ozone standards. We will address any new 8-hour requirements in a separate proceeding or rulemaking. Moreover, as set forth above, the DC Circuit upheld EPA's regulation embodying the Clean Data Policy in 40 CFR 51.918. That regulation provides that a determination of the 1997 8-hour standard will result in the suspension of requirements to submit requirements related to the 1997 8-hour standard. Thus, contrary to commenter's contention, the DC Circuit supports, and does not prohibit, EPA's application of the Clean Data Policy for purposes of the 1-hour standard. EPA's defense of the Clean Data Policy for the 1997 8-hour standard was identical to and

based upon its interpretation and practice with respect to the 1-hour ozone standard. See Phase 2 Rule, 70 FR 71644–71646 (November 29, 2005) and *NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009). Thus the DC Circuit has rejected the arguments LEAN raises against the Clean Data Policy, and the Court has upheld EPA's interpretation as consistent with the Clean Air Act.

As noted in footnote two, EPA is currently reconsidering the 2008 8-hour ozone standard of 75 ppb. We expect by August 2010 to have completed our reconsideration of the standard and designations to proceed thereafter. When and if EPA designates BR as nonattainment of the reconsidered standard, LDEQ will be required to prepare a new ozone plan that addresses that standard.

*Comment:* LEAN argues that EPA cannot lawfully suspend controls from a SIP without going through the comprehensive redesignation procedures of 42 U.S.C. 7407(d)(3).

*Response:* This action does not constitute a redesignation to attainment pursuant to section 107(d)(3). Consequently, the criteria of section 107(d)(3) do not apply to this action. *See* 60 FR 36723. Nor does the existence of the separate statutory redesignation procedure prevent EPA from applying its interpretation of CAA requirements under the Clean Data Policy.

Several Circuit Courts have upheld the use of the Clean Data Policy to suspend the requirement to submit certain SIP planning measures for the 1-hour ozone standard. The Tenth, Seventh and Ninth Circuits have upheld EPA rulemakings applying the Clean Data Policy. *See Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) memorandum opinion. *See* also the discussion and rulemakings cited in the Phase 2 8-Hour Ozone Implementation Rule, 70 FR 71644–71646 (November 29, 2005).

The D.C. Circuit has also upheld the Clean Data Policy, as it is embodied in 40 CFR 51.918, which was challenged in the context of the 8-hour ozone standard in the Phase 2 Rule ozone litigation in *See NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009). The DC Circuit specifically rejected the arguments that the Clean Data Policy is inconsistent with the redesignation provisions of the CAA:

> We think the statute unclear as to whether those sections apply to an area that is already attaining the NAAQS. For the reasons below, we join the Tenth Circuit in holding the EPA's interpretation is reasonable. *See Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir.1996).
>
> * * * The EPA's reasoning disposes as well of the NRDC's contentions that the Clean Data Policy unlawfully circumvents the redesignation requirements, CAA § 107(d)(3)(E), 42 U.S.C. 7407(d)(3)(E), violates the mandate that all Part D requirements remain in force until an area has an approved maintenance plan in place, CAA § 175A(c), 42 U.S.C. 7505a(c), and disregards the Supreme Court's admonition that the EPA cannot "render Subpart 2's carefully designed restrictions on EPA discretion utterly nugatory," *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457, 484, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001). The Clean Data Policy does not effect a redesignation; an area must still comply with the statutory requirements before it can be redesignated to attainment. Furthermore, Part D—including Subpart 2—remains in force insofar as it applies but, as we have just seen, the EPA has reasonably concluded the provisions of the Act requiring percentage reductions do not apply to an area that has attained the NAAQS.

*See* also *Latino Issues Forum* v. *EPA,* No. 0675831 (9th Cir.) Memorandum Opinion, March 2, 2009, in which the 9th Circuit upheld EPA's Clean Data Policy in the context of the PM–10 standard. In rejecting petitioner's challenge to the Clean Data Policy, the Court stated:

> As the EPA rationally explained, if an area is in compliance with PM–10 standards, then further progress for the purpose of ensuring attainment is not necessary.

Thus, the Courts have considered and rejected the commenter's arguments that the Clean Data Policy is at odds with the redesignation process, and have ruled in favor of EPA's interpretation of the Clean Data Policy, finding it consistent with the provisions of the CAA.

*Comment:* LEAN contends that the Clean Data Policy is illegal and cannot be used to ignore the statutorily-required redesignation procedures of 42 U.S.C. 7407(d)(3).

*Response:* See above response. As the Courts have recognized, EPA's interpretation under the Clean Data Policy does not circumvent or ignore the Act's redesignation provisions. Nor does the CAA indicate that Congress intended the redesignation provisions to preclude a determination of attainment from suspending requirements to submit that by their terms are inoperative if an area is attaining the NAAQS. Even after application of the Clean Data Policy, an area remains in nonattainment status until EPA redesignates the area after making the other findings required under Section 107(d). *See* 107(d)(3)(E)(i)–(v) (redesignation requirements); see also, e.g., 60 FR 37366 (July 20, 1995) and 61 FR 31831 (June 21, 1996) (suspension of requirements was followed by separate redesignation rule). Applying the Clean Data Policy does not relax any control measures already in place, nor does it affect any other applicable requirements under Part D or other parts of the statute. *See, e.g.,* 60 FR 36723, 36725 (July 18, 1995). In addition, until the area is redesignated, it faces the risk that the suspended obligations will be reimposed if the area lapses back into nonattainment, and the further risk that the area will be reclassified if the lapse causes it to miss its attainment deadline. Therefore, States in which areas attain the NAAQS have every incentive to ensure that those areas remain in attainment and to develop the long-term maintenance plan under Section 175A that is required, in part, to obtain redesignation. *See* CAA section 107(d)(3)(E)(v), *Sierra Club* v. *EPA,* 99 F. 3d 1551, 1558 (10th Cir. 1996).

*Comment:* LEAN asserts that EPA has never identified a lawful contingency measure for the BR area or has yet to approve a lawful contingency measures plan. The effect of EPA's action is to reward delay tactics by canceling those pollution reductions it has unlawfully delayed.

*Response:* While we agree with the Commenter that BR does not have serious or severe area contingency measures for the 1-hour standard in place, for the reasons set forth in the responses to comments above and in the proposal, the obligation to submit such measures is suspended upon a finding of attainment for the 1-hour standard per the Clean Data Policy. Since EPA is determining that the area is attaining the 1-hour standard, and for as long as the area continues to attain, the requirement to submit contingency measures is suspended and no additional reductions are necessary to attain that standard. EPA is not rewarding delay tactics, but rather is simply recognizing that it is unnecessary and not required at this time to compel the State to submit measures whose sole purpose is to bring about attainment that is already occurring.

*Comment:* LEAN comments that, while EPA states in the proposed rule that the suspended requirements would be re-implemented if BR falls out of attainment for the 1-hour standard, the proposed rule makes no mention of how quickly the suspended requirements to submit would have to be put back in place if BR fell out of attainment. LEAN speculates that the requirements could be re-imposed and then re-suspended in an illegal manner.

*Response:* EPA will make a future determination in notice-and-comment rulemaking if the BR falls out of attainment for the 1-hour standard. The

Clean Data Policy lays out the process to implement a suspended measure:

> [i]f EPA subsequently determines that an area has violated the standard, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would thereafter have to address the pertinent SIP requirements within a *reasonable* amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submission at issue.[3]

Thus EPA has undertaken to act reasonably and responsibly in the future to re-impose the obligation for the State to submit the measures should EPA determine that the area has fallen out of attainment. The Commenter is thus wrong to assume that EPA's exercise of its discretion with regard to timing of reinstatement of obligations would bring about absurd or illegal results. Any such concerns are entirely speculative and without foundation in fact.

## IV. Final Action

For the reasons set forth in the proposed rulemaking and in this final rulemaking, and based on complete, quality-assured data for 2006–2008, and data for 2009 that are currently available, we are determining that the BR 1-hour ozone nonattainment area has attained and continues to attain the 1-hour ozone standard. Thus, the requirements for submitting the 1-hour ozone severe nonattainment area attainment demonstration SIP with its RACM demonstration and other associated elements, the severe RFP requirements, and section 172(c)(9) and section 182(c)(9) serious and severe contingency measures are suspended for so long as the area is attaining the 1-hour ozone standard.

## V. Statutory and Executive Order Reviews

This action merely makes a determination of attainment based upon air quality that results in suspensions of certain Clean Air Act requirements, and does not impose additional requirements. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there is no federally recognized Indian country located in the states, 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 rules 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 Clean Air Act, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 2010. Filing a petition for reconsideration by the Administrator of these final rules 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 dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 29, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

■ 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 T—Louisiana

■ 2. Section 52.977 is added to read as follows:

### § 52.977 Control strategy and regulations: Ozone.

Determination of Attainment. Effective March 12, 2010 EPA has determined the Baton Rouge 1-hour ozone nonattainment area has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). Under the provisions of EPA's Clean Data Policy, this determination suspends the requirements for this area to submit a severe attainment demonstration, a severe reasonable further progress plan, applicable contingency measures plans, and other planning Louisiana State Implementation Plan (SIP) requirements related to attainment of the 1-hour ozone NAAQS for so long as the area continues to attain the 1-hour ozone NAAQS.

[FR Doc. 2010–2961 Filed 2–9–10; 8:45 am]

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[3] As referenced in footnote 1, *see* May 10, 1995 EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard." *See* also 70 FR 71644–71646 (November 29, 2005).

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0923; FRL–8809–4]**

### Exemption from the Requirement of a Tolerance; Technical Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendmemt.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of June 3, 2009, concerning minor technical revisions of certain commodity terms listed under 40 CFR part 180, subpart D. The fungal active ingredient *Aspergillus flavus* NRRL 21882 was inadvertently revised. This document is being issued to amend the section to include text that was omitted.

**DATES:** This final rule is effective February 10, 2010.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008-0923. All documents in the docket are listed in the docket index available in *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** *For 40 CFR 180.1254 only contact:* Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460–0001; telephone number: (703) 308–8097; fax number: (703) 308–7026; e-mail address: *bacchus.shanaz@epa.gov*.

*For other matters regarding EPA–HQ–OPP–2008–0923:* Stephen Morrill, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460–0001; telephone number: (703) 308–8319; fax number: (703) 308–7026; e-mail address: *morrill.stephen@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### II. What Does this Technical Amendment Do?

This technical amendment revises § 180.1254 to reinstate text that was inadvertently omitted in a final rule that was published in the **Federal Register** of June 3, 2009 (74 FR 26527) (FRL–8417–9). The June 3, 2009 final rule revised § 180.1254, however; the revision omitted text which which had been added as paragraph (b) in a final rule published in the **Federal Register** on October 1, 2008 (73 FR 56995).

#### III. Why is this Technical Amendment Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), (5 U.S.C. 553(b)(3)(B)), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because the omission was the result of clerical error and was neither proposed nor commented upon. Notice and comment is therefore unnecessary.

#### IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

No. This action only corrects the omission for a previously published final rule and does not impose any new requirements. EPA's compliance with the statutes and Executive orders for the underlying rule is discussed in Unit III. of the final rule published on June 3, 2009 (74 FR 26527).

#### V. Congressional Review Act

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

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 2010.

**Keith A. Matthews,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 321(q), 346a and 371.

■ 2. Section 180.1254 is revised to read as follows:

**§ 180.1254 Aspergillus flavus NRRL 21882; exemption from the requirement of a tolerance.**

(a) An exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* NRRL 21882 on peanut; peanut, hay; peanut, meal; and peanut, refined oil.

(b) An exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* NRRL 21882 on corn, field, forage; corn, field, grain; corn, field, stover; corn, field, aspirated grain fractions; corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; corn, sweet, stover; corn, pop, grain; and corn, pop, stover.

[FR Doc. 2010–2655 Filed 2–9–10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2009–0289; FRL–8809–9]**

### Acetamiprid; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of acetamiprid in

or on fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F; and tea, dried. It additionally establishes tolerances with regional registrations on clover, forage and clover, hay. Finally, this regulation deletes an existing individual tolerance in or on grape, as it will be superseded by inclusion in subgroup 13-07F. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective February 10, 2010. Objections and requests for hearings must be received on or before April 12, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0289. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Electronic Access to Other Related Information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access electronically the OPPTS harmonized test guidelines referred in this document, please go to *http://www.epa.gov/oppts* and select "Test Methods and Guidelines."

### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0289 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before April 12, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0289, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Petition for Tolerance

In the **Federal Register** of August 19, 2009 (74 FR 41898) (FRL–8426–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7544) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.578 be amended by establishing a tolerance for residues of the insecticide acetamiprid, *N*1-[(6-chloro-3-pyridyl)methyl]-*N*2-cyano-*N*1-methylacetamidine, in or on fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 0.35 parts per million (ppm); and tolerances with regional restrictions in or on clover, forage at 0.10 ppm; clover, hay at 0.01 ppm; and tea at 50 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Nippon Soda Co., Ltd., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that the petitioned-for tolerance with regional registrations on tea should be established as a tolerance with no U.S. registrations. The reason for this change is explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is

reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of acetamiprid on fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 0.35 ppm; tea, dried at 50.0 ppm; clover, forage at 0.10 ppm; and clover, hay at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acetamiprid is moderately toxic via the oral route of exposure and is minimally toxic via the dermal and inhalation routes of exposure. It is not an eye or skin irritant, nor is it a dermal sensitizer. Acetamiprid does not appear to have specific target organ toxicity. Generalized toxicity was observed as decreases in body weight, body weight gain, food consumption and food efficiency in all species tested. Generalized liver effects were also observed in mice and rats (hepatocellular vacuolation in rats and hepatocellular hypertrophy in mice and rats).

In the rat developmental study, fetal shortening of the 13th rib was observed at the same dose level that produced maternal effects (reduced body weight and body weight gain and increased liver weights). No developmental effects were observed in the rabbit at doses that reduced maternal body weight and food consumption. Effects in pups in the 2-generation rat reproduction study included delays in preputial separation, vaginal opening and pinna unfolding as well as reduced litter size, decreased pup viability and weaning indices; offspring effects observed in the developmental neurotoxicity (DNT) study included decreased body weight and body weight gains, decreased pup viability and decreased maximum auditory startle response in males. These effects were seen in the presence of less severe effects (decreased body weight and body weight gain) in the maternal animals.

In the acute neurotoxicity study, male and female rats displayed decreased motor activity, tremors, walking and posture abnormalities, dilated pupils, coldness to the touch and decreased grip strength and foot splay at the highest dose tested (HDT). There was a decrease in the auditory startle response in male rats at the HDT in the DNT; additionally, tremors were noted in female mice at the HDT in the subchronic feeding study.

Based on acceptable carcinogenicity studies in rats and mice, EPA has determined that acetamiprid is "not likely to be carcinogenic to humans." This determination is based on the absence of a dose-response or statistical significance for the increased incidence in mammary adenocarcinomas observed in the rat carcinogenicity study, as well as the lack of evidence of carcinogenic effects in the mouse cancer study. Acetamiprid tested positive as a clastogen in an *in vitro* mammalian chromosome aberration assay in Chinese hamster ovary cells. There was no sign of mutagenicity in other mutagenicity studies for acetamiprid.

Specific information on the studies received and the nature of the adverse effects caused by acetamiprid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "*Acetamiprid*: *Human Health Risk Assessment for Proposed Food Uses on Clover Grown for Seed, Small Vine Climbing Fruits, except Kiwifruit, Subgroup 13-07F, Greenhouse Grown Tomatoes and Tea*," at pages 57-61 in docket ID number EPA–HQ–OPP–2009–0289.

*B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for acetamiprid used for human risk assessment can be found at *http://www.regulations.gov* in the document "*Acetamiprid: Human Health Risk Assessment for Proposed Food Uses on Clover Grown for Seed, Small Vine Climbing Fruits, except Kiwifruit, Subgroup 13-07F, Greenhouse Grown Tomatoes and Tea*," at pages 25-26 in docket ID number EPA–HQ–OPP–2009–0289.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to acetamiprid, EPA considered exposure under the petitioned-for tolerances as well as all existing acetamiprid tolerances in 40 CFR 180.578. EPA assessed dietary exposures from acetamiprid in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the

possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA utilized maximum percent crop treated (PCT) data for several commodities and 100 PCT for all proposed uses; anticipated residues derived from field trial data for apples, broccoli, cabbage, celery, grapefruit, grapes, lettuce, oranges, pears, peppers, spinach, tomatoes, stone fruit and cucurbit vegetables; tolerance-level residues for livestock commodities; and empirical processing factors for apple juice, orange juice, grapefruit juice, raisins, dried prunes, tomato paste and tomato puree. Dietary Exposure Evaluation Model (DEEM) default processing factors were used for all other processed commodities.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA utilized average PCT data for several commodities and 100 PCT for all proposed uses, tolerance-level residues for all commodities and empirical processing data for grape juice and raisins. DEEM default processing factors were used for all other processed commodities.

iii. *Cancer*. Based on the evidence discussed in Unit III.A., EPA has determined that acetamiprid is "not likely to be carcinogenic to humans." Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

• *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.

• *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.

• *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For the acute assessment, EPA used maximum PCT information as follows:

Apples at 30%; broccoli at 15%; cabbage at 10%; cauliflower at 15%; celery at 45%; cotton at 5%; grapefruit at 5%; lettuce at 20%; oranges at 5%; peaches at 2.5%; pears at 60%; peppers at 5%; potatoes at 2.5%; pumpkins at 2.5%; spinach at 15%; and squash at 2.5%.

For the chronic assessment, EPA used average PCT information as follows:

Apples at 20%; broccoli at 5%; cabbage at 5%; cauliflower at 10%; celery at 25%; cotton at 5%; grapefruit at 2.5%; lemons at 5%; lettuce at 10%; oranges at 2.5%; peaches at 1%; pears at 35%; peppers at 2.5%; potatoes at 2.5; pumpkins at 1%; spinach at 5%; and squash at 2.5%.

In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which acetamiprid may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for acetamiprid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of acetamiprid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of acetamiprid for surface water are estimated to be 20.1 parts per billion (ppb) for acute exposures and 4.9 ppb for chronic exposure. For ground water, the EDWC is 0.0016 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 20.1 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of 4.9 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control,

indoor pest control, termiticides, and flea and tick control on pets).

Acetamiprid is currently registered for use in indoor and outdoor residential settings, including crack and crevice applications on carpet and hard surfaces and applications to residential turf. EPA assessed residential exposures for adults applying bait and gel products; for postapplication exposure for adults (from short-term dermal exposure) and toddlers (from short-term dermal and incidental exposure) following indoor crack and crevice treatments; and postapplication exposure for adults (from short- and intermediate-term dermal exposure) and toddlers (from short-term and intermediate-term dermal and incidental oral exposures, including hand-to-mouth, object-to-mouth and incidental ingestion of soil) following treatments on turf.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Acetamiprid is a member of the neonicotinoid class of pesticides which also includes thiamethoxam, clothianidin, imidacloprid and several other active ingredients. Structural similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events. Although the neonicotinoids bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that clothianidin operates by direct competitive inhibition, while thiamethoxam is a non-competitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nAChRs, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors, which, in turn, confers the notably greater selective toxicity of this class towards insects, including aphids and leafhoppers, compared to mammals. Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (e.g., testicular tubular atrophy with thiamethoxam; mineralized particles in thyroid colloid with imidacloprid). Thus, there is currently no evidence to indicate that neonicotinoids share common mechanisms of toxicity, and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the neonicotinoids. In addition, acetamiprid does not appear to produce a toxic metabolite produced by other substances. Therefore, for the purposes of this tolerance action, EPA has not assumed that acetamiprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism released by EPA's Office of Pesticide Programs on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safty factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology database for acetamiprid includes rat and rabbit developmental toxicity studies, a 2-generation reproduction toxicity study in rats and a DNT study in rats. There was no evidence of quantitative or qualitative susceptibility of rat or rabbit fetuses following *in utero* exposure to acetamiprid in the developmental toxicity studies. However, both the DNT and 2-generation reproduction studies showed an increase in qualitative susceptibility of pups. Effects in pups in the reproduction study included delays in preputial separation, vaginal opening and pinna unfolding, as well as reduced litter size, decreased pup viability and weaning indices; offspring effects observed in the DNT study included decreased body weight and body weight gains, decreased pup viability and decreased maximum auditory startle response in males. These effects were seen in the presence of decreased body weight and body weight gain in the maternal animals, indicating increased qualitative susceptibility of fetuses and offspring to acetamiprid. Quantitative evidence of increased susceptibility was not observed in any study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for acetamiprid is complete except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. Acetamiprid does not show any evidence of treatment-related effects on the immune system and the overall weight of evidence suggests that this chemical does not directly target the immune system. Therefore, EPA does not believe that conducting the immunotoxicity study will result in a dose less than the point of departure currently used for overall risk assessment, and an additional database uncertainty factor for potential immunotoxicity does not need to be applied.

ii. There is evidence of increased qualitative susceptibility of the young following *in utero* exposure to acetamiprid in the rat reproduction study. Additionally, a rat DNT study is available that shows evidence of increased qualitative susceptibility of offspring (a decrease in the auditory startle response in male rats) at the HDT. Therefore, EPA performed a degree of concern analysis to determine the level of concern for the effects observed when considered in the context of all available toxicity data, and to identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the acetamiprid risk assessment.

In considering the overall toxicity profile and the endpoints and doses selected for the acetamiprid risk assessment, EPA characterized the

degree of concern for the effects observed in the acetamiprid DNT and the 2-generation reproduction study as low, noting that there is a clear NOAEL for the offspring effects in both studies, and regulatory doses were selected to be protective of potential offspring effects in both the DNT and the 2-generation study. No other residual uncertainties were identified. Based on the available data, EPA determined that changes in motor activity, auditory startle reflex, learning and memory assessments and changes in the brain morphometrics can occur as the result of a single exposure at a critical junction during pregnancy or from multiple exposures throughout pregnancy and lactation. Therefore, the NOAEL for offspring effects observed in the DNT was selected as the dose for acute dietary exposures (co-critical with the acute neurotoxicity study), as well as short-term and long-term non-dietary risk assessment. Use of the DNT NOAEL is protective of effects seen in the 2-generation study (the NOAEL from the DNT is 10.0 milligrams/kilogram/day (mg/kg/day) and the NOAEL from the 2-generation study is 17.9 mg/kg/day). The chronic dietary study in rats yielded a lower long-term NOAEL (7.1 mg/kg/day) and was, therefore, used for assessing chronic dietary risk. EPA believes that the endpoints and doses selected for acetamiprid are protective of adverse effects in both offspring and adults; therefore, there are no residual concerns regarding effects in the young.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on tolerance-level residues or anticipated residues derived from reliable field trial data. The PCT estimates used in the dietary assessments were derived from valid and reliable data and are unlikely to be exceeded. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acetamiprid in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by acetamiprid.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to acetamiprid will occupy 43% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acetamiprid from food and water will utilize 15% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of acetamiprid is not expected.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acetamiprid is currently registered for uses that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term and intermediate-term residential exposures to acetamiprid.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that the combined short-term and intermediate-term food, water, and residential exposures aggregated result in an aggregate MOE of 270 for toddlers, the population group receiving the greatest combined short-term and intermediate-term risk (from the combined dermal and incidental oral postapplication exposures following indoor crack and crevice treatments). As the aggregate MOEs for short-term and intermediate-term exposure are greater than 100 (the LOC) for all population subgroups assessed, short-term and intermediate-term aggregate exposures to acetamiprid are not of concern to EPA.

4. *Aggregate cancer risk for U.S. population*. Based on the adequate cancer studies in rats and mice, EPA has concluded that acetamiprid is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acetamiprid residues.

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

The following adequate enforcement methodologies are available to enforce the tolerance expression: A gas chromatography with electron capture detection (GC/ECD) method and a high performance liquid chromatography with ultraviolet detection (HPLC/UV) method. These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

*B. International Residue Limits*

There are no Codex or Mexican maximum residue limits (MRLs) established for residues of acetamiprid on commodities associated with this petition. EPA is establishing a tolerance on tea, dried at 50.0 ppm, which will harmonize with a Japanese MRL established for tea at 50 ppm. Canada has established a MRL for acetamiprid residues on grape at 0.20 ppm; however, the tolerance for subgroup 13-07F (including grape) cannot be harmonized with the Canadian MRL on grape at this time because field trial data shows residue levels for grape that are higher than 0.20 ppm.

*C. Revisions to Petitioned-For Tolerances*

Based upon review of the data supporting the petition, EPA has determined that the petitioned-for tolerance with regional registrations on tea at 50 ppm should be established as a tolerance with no U.S. registrations on tea, dried at 50.0 ppm. At least one U.S. residue field trial study is required to establish a domestic registration on tea; however, no U.S. residue field trial data were submitted in support of the use of acetamiprid on tea. Therefore, the Agency has established a tolerance with no U.S. registrations on tea, dried at 50.0 ppm. EPA has also revised the tolerance expression in paragraphs (a)(1), (a)(2) and (c) of §180.578 to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of

acetamiprid not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

## V. Conclusion

Therefore, tolerances are established for residues of acetamiprid, *N*1-[(6-chloro-3-pyridyl)methyl]-*N*2-cyano-*N*1-methylacetamidine, in or on fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 0.35 ppm; tea, dried at 50.0 ppm; clover, forage at 0.10 ppm; and clover, hay at 0.01 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 1, 2010.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.578 is amended by revising the introductory text in paragraphs (a)(1) and (a)(2); removing the entry for "Grape" from the table in paragraph (a)(1); alphabetically adding "Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F" and "Tea, dried" to the table in paragraph (a)(1); and revising paragraph (c). The added and revised text reads as follows:

### § 180.578 Acetamiprid; tolerances for residues.

(a) * * *

(1) Tolerances are established for residues of the insecticide acetamiprid *N*1-[(6-chloro-3-pyridyl)methyl]-*N*2-cyano-*N*1-methylacetamidine, including its metabolites and degradates, in or on the commodities in the table below as a result of the application of acetamiprid. Compliance with the tolerance levels specified below is to be determined by measuring only acetamiprid in or on the following commodities.

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F | 0.35 |
| * * * * * | |
| Tea, dried[1] | 50.0 |
| * * * * * | |

[1]There are no U.S. registrations as of February 10, 2010, for the use of acetamiprid on dried tea.

(2) Tolerances are established for residues of the insecticide acetamiprid *N*1-[(6-chloro-3-pyridyl)methyl]-*N*2-cyano-*N*1-methylacetamidine, including its metabolites and degradates, in or on the commodities in the table below as a result of the application of acetamiprid. Compliance with the tolerance levels specified below is to be determined by measuring acetamiprid and *N*1-[(6-chloro-3-pyridyl)methyl]-*N*2-cyano-acetamidine in or on the following commodities.

* * * * *

(c) *Tolerances with regional registrations*. Tolerances with regional registrations are established for residues of the insecticide acetamiprid *N*1-[(6-chloro-3-pyridyl)methyl]-*N*2- cyano-*N*1-methylacetamidine, including its metabolites and degradates, in or on the commodities in the table below as a result of the application of acetamiprid. Compliance with the tolerance levels specified below is to be determined by measuring only acetamiprid in or on the following commodities.

| Commodity | Parts per million |
|---|---|
| Clover, forage | 0.10 |
| Clover, hay | 0.01 |

* * * * *

[FR Doc. 2010–2803 Filed 2–9–10; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2009–0480; FRL–8807–8]**

## Poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane]; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane]; when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. UDL Laboratories, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] on food or feed commodities.

**DATES:** This regulation is effective February 10, 2010. Objections and requests for hearings must be received on or before April 12, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0480. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8560; e-mail address: *fertich.elizabeth@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Electronic Access to Other Related Information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0480 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 12, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0480, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of October 7, 2009 (74 FR 51597) (FRL–8792–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7574) filed by UDL Laboratories, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478–2844. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane]; CAS Reg. No. 39444–87–6. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any substantive comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW1,000, and the polymer does not contain any reactive functional groups.

Thus, poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane].

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] is 1800 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." For the

purposes of this tolerance action, EPA has not assumed that poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane], EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane].

## VIII. Other Considerations

### *A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

### *B. International Tolerances*

The Agency is not aware of any country requiring a tolerance for poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane] from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

## XI. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 28, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by adding alphabetically the following polymer to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

| Polymer | CAS No. |
|---|---|
| * * * * | * |
| Poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1, 1′-methylene-bis-[4-isocyanatocyclohexane], minimum number average molecular weight (in amu), 1800 ..... | 39444–87–6 |
| * * * * | * |

[FR Doc. 2010–2788 Filed 2–9–10; 8:45 am]

**BILLING CODE 6560–50–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**RIN 0648–XT99**

**[Docket No. 100120036–0038–01]**

## Fisheries of the Northeastern United; Black Sea Bass Fishery; 2010 Black Sea Bass Specifications; Emergency Rule

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

**ACTION:** Temporary rule; emergency action; request for comments.

**SUMMARY:** Through this emergency rule NMFS is implementing increases to the 2010 black sea bass specifications (i.e., commercial fishing quota, recreational harvest limit (RHL), and research set-aside (RSA)). This action is necessary to mitigate potential foregone economic yield associated with the current lower specifications and to ensure the specifications are consistent with the best available scientific information. This action is also necessary to increase specifications consistent with the recently revised catch level recommendation from the Mid-Atlantic Fishery Management Council (Council) and its scientific advisors, the Scientific and Statistical Committee (SSC).

**DATES:** Effective from February 10, 2010, through August 9, 2010. Comments must be received (see **ADDRESSES**) by 5 p.m., local time, on March 12, 2010.

**ADDRESSES:** You may submit comments, identified by 0648–XT99, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*

• (978) 281–9135. Send the fax to the attention of the Sustainable Fisheries Division. Include "Comments on 2010 Black Sea Bass Specification Increase" prominently on the fax.

• Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Black Sea Bass Specification Increase."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

**SUPPLEMENTARY INFORMATION:** A final rule to establish the 2010 black sea bass specifications was published in the **Federal Register** on December 22, 2009 (74 FR 67978), and became effective on January 1, 2010. The final rule implemented a 2.71–million-lb (1,229–mt) Total Allowable Catch (TAC) and, after deducting estimated discards, a Total Allowable Landings (TAL) of 2.3 million lb (1,043 mt). The TAC was based on the SSC(s initial 2010 Acceptable Biological Catch (ABC) recommendation of 2.71 million lb (1,229 mt) and was the status quo catch level from 2009. The TAL was further subdivided into RSA, commercial quota, and a RHL as outlined in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). However, at its December 9–11, 2009, meeting in Wilmington, DE, the Council decided to convene a joint meeting of the SSC and Black Sea Bass Monitoring Committee (MC) to re-examine and reconsider the SSC(s 2010 black sea bass ABC recommendation. The Council's SSC and MC met on January 8, 2010, and ultimately decided to revise the ABC recommendation from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt), consistent with catch levels established for 2008.

On January 15, 2010, the Northeast Regional Administrator, NMFS, received a letter from the Council Chairman, on behalf of the full Council, formally relaying the SSC(s revised ABC recommendation and requesting emergency action to increase catch levels as expediently as possible. The Council outlined the following as justification for requesting the emergency modification of the 2010 black sea bass catch levels as follows:

• The Council provided the January 8, 2009, SSC meeting summary. The summary document provides information on the SSC discussion and its justification for revising the 2010 ABC recommendation.

• The revision of the ABC recommendation by the Council(s SSC was unforeseen.

• The increased catch levels provided by the revised ABC level can be reasonably expected to alleviate significant social and economic impacts relative to the initial ABC recommendation from the SSC.

The Regional Administrator has reviewed the Council(s request for temporary emergency rulemaking with respect to section 305(c) of the Magnuson Stevens Fishery Conservation and Management Act (MSA) and NMFS policy guidance for the use of emergency rules (August 21, 1997; 62 FR 44421) and finds the Council(s request meets both the criteria and justifications for invoking the emergency rulemaking provisions of the MSA. Specifically, the SSC revision of its previously recommended ABC was a recent and unforeseen event. By this emergency rulemaking, NMFS is increasing the 2010 black sea bass TAC and TAL, thereby relieving restrictions imposed by the previous, lower catch levels. Doing so will assist in preventing significant direct economic loss for fishery participants and associated industries that would be subject to lower commercial and recreational harvest levels. An additional amount of black sea bass landings will be set aside for research activities, thereby

permitting additional research to be funded by black sea bass RSA in 2010.

Through this temporary emergency rule, NMFS increases the 2010 black sea bass TAC from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt), consistent with the revised ABC recommendation from the SSC. After deducting discards from the TAC, the TAL is increased from 2.3 million lb (1,043 mt) to 3.7 million lb (1,678 mt). The Council expressed a desire that 3 percent of the increased TAL be set aside for research, consistent with its initial specification process that occurred in August 2009. This results in 111,000 lb (50 mt) as the revised RSA. The remaining 3,589,000 lb (1,628 mt) is divided 49 percent for the revised commercial fishery quota and 51 percent as the revised RHL. The complete change to all specifications resulting from this temporary emergency rule are outlined in Table 1.

TABLE 1. TEMPORARY EMERGENCY RULE REVISED 2010 BLACK SEA BASS SPECIFICATIONS

| | Allowable Biological Catch (ABC)/ Total Allowable Catch (TAC) | | Discards | | Total Allowable Landings (TAL) | | Research Set-Aside (RSA) | | Commercial Quota | | Recreational Harvest Limit (RHL) | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | lb | mt | lb | mt | lb | mt | lb | mt | lb | mt | lb | mt |
| Published at 74 FR 67978, December 22, 2009 | 2,710,000 | 1,229 | 410,000 | 186 | 2,300,000 | 2,252 | 69,000 | 31 | 1,093,190 | 456 | 1,137,810 | 516 |
| Emergency Rule Revisions | 4,500,000 | 2,041 | 800,000 | 363 | 3,700,000 | 1,678 | 111,000 | 50 | 1,758,610 | 798 | 1,830,390 | 830 |

**Classification**

The Administrator, Northeast Region, NMFS, determined that this temporary rule is consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation Management Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest.

This emergency action is being implemented to increase the 2010 black sea bass allowable landings levels for the commercial and recreational fisheries, thereby alleviating restrictions on both. The information to support the increase through this action was not available from the Council until January 15, 2010, and occurred as the result of unforeseen circumstances. It could not be foreseen that the Council would request the SSC to revisit its 2010 ABC recommendation from the catch levels associated with the previously implemented, more restrictive measures. It was also unforeseen that the SSC would increased its previously recommended ABC level and that the Council would request implementation of the increase by emergency action.

Unnecessary economic harm and negative social impacts will occur to fishery participants and related businesses if this action to increase catch levels is not enacted as quickly as possible. Notice and comment rulemaking would significantly delay implementation of the increased catch levels and, given the seasonal distribution of black sea bass, would likely result in differential, higher impacts to some individual states and fishery participants that operate almost exclusively in the first quarter. Such impacts would undermine the intent of this rule. These negative socio-economic impacts may be alleviated or eliminated by the more expedient implementation of increased catch limits by NMFS through this emergency rule.

Commercial fishing activities are already underway for the 2010 fishing season that opened on January 1, 2010. Individual states are currently utilizing very restrictive trip and possession limits to ensure that the NMFS-administered coastwide quota is available for the entirety of the 2010 fishing year. These possession limits cause fishery participants that encounter black sea bass above and beyond their permitted limits to discard fish at sea, often with high mortality rates among discarded animals. By promulgating this emergency rule without prior notice and the opportunity for public comment, NMFS will more quickly increase the 2010 commercial quota which will, in turn, allow for less restrictive state-administered trip and possession limits. This will allow fishery participants to convert potential at-sea discards into landings and to maximize the economic returns from their fishing operations.

Recreational fisheries have not yet begun for 2010; however, the Council is in the process of finalizing recommended 2010 management measures for submission to NMFS for review and implementation. By foregoing prior notice and the opportunity for public comment, NMFS will ensure that the Council may make use of the less restrictive, increased RHL when crafting and analyzing potential 2010 black sea bass recreational management measures. Were normal notice-and-comment rulemaking utilized to implement the increased 2010 black sea bass catch levels, it is highly likely that additional rulemaking would be necessary to liberalize recreational management measures later in the year following the implementation of the increased RHL. Following the implementation of this emergency rule to increase the RHL, only one notice-and-comment rulemaking will be necessary to establish the 2010 recreational management measures in the spring of 2010.

The efficiencies gained by promulgating recreational management measures through one rulemaking are significant and contribute to effective joint management between state and Federal management partners and ensures the orderly prosecution of the fishery. Many of the individual states involved with management of black sea bass recreational fisheries within their state-water jurisdictions have complex rulemaking processes, often involving their respective legislatures or public hearing processes. Were black sea bass recreational management measures revised through a second rulemaking mid-year or later, comparable state management measures would lag behind measures for Federal waters. This is an undesirable situation that NMFS, the Council, and the individual states have specifically sought to avoid in recent years by jointly adopting identical management measures for state and Federal waters. In addition, many recreational party and charter vessel

operators book clients for trips well in advance. These operators will benefit by being able to better plan their operations for the entirety of the fishing year under the to-be established recreational management measures as opposed to having to develop business plans for measures under both the existing and increased catch levels that would become effective later in the fishing year were a second rulemaking necessary.

In addition, by implementing the increase in 2010 TAL quickly, NMFS will be able to increase the amount of black sea bass set aside for research from 69,000 lb (31 mt) to 111,000 lb (50 mt). This additional 42,000 lb (19 mt) will permit additional research on black sea bass to be conducted. A previously approved RSA project to conduct a pot survey of scup in hard bottom areas of southern New England has been awarded a NOAA Grant to conduct their proposed scup research using RSA; however, this project also proposed to conduct simultaneous research on black sea bass but was not awarded authorization to do so because insufficient pounds of black sea bass RSA were available at the time of the grant award. This action will make available sufficient black sea bass RSA for the black sea bass component of this project to move forward. Timely distribution of the additional RSA pounds is necessary to ensure both the research field work and RSA-compensation fishing can occur during the spring fishery. Delay of the additional black sea bass RSA award by notice-and-comment rulemaking would likely jeopardize the completion of the research. The researcher would likely miss a substantial portion of the field research, not have sufficient time to generate research funding by the sale or capture of the RSA pounds, or both.

NMFS has determined that increasing the 2010 black sea bass TAC and TAL by emergency action is consistent with section 305(c) of the MSA and NMFS guidance for application of emergency rules. The revised TAC and TAL are consistent with the best available scientific information (i.e., the revised SSC ABC recommendation), the Summer Flounder, Scup, and Black Sea Bass FMP, and present a low likelihood that the black sea bass stock will experience overfishing. Implementation via emergency rule is expected to substantially mitigate negative socio-economic impacts to fishery participants and associated businesses. Negative socio-economic impacts would continue or, in some components of the 2010 fisheries be more severe, if implementation of the increased TAL were delayed by normal notice-and-comment rulemaking.

For the same reasons, the Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C 553(d)(3) to waive the 30-day delayed effective date required by 5 U.S.C. 553(d). Members of the public, fishing and related industries, and the Council expect NMFS to utilize the most expedient rulemaking processes possible to ensure that the revised 2010 black sea bass TAL is implemented as quickly as possible to relieve fishery restrictions.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 USC 553 or any other law.

Dated: February 4, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2010–2941 Filed 2–9–10; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 0810141351–9087–02]**

**RIN 0648–XU30**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock for American Fisheries Act Catcher Vessels in the Inshore Open Access Fishery in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by American Fisheries Act (AFA) trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2010 pollock total allowable catch (TAC) allocated to the inshore open access fishery in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 5, 2010, through 1200 hrs, A.l.t., June 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2010 Bering Sea pollock TAC allocated to the AFA inshore open access fishery in the BSAI is 2,762 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) and inseason adjustment (74 FR 68715, December 29, 2009). The actual 2010 Bering Sea subarea inshore cooperative allocations, including the inshore open access allocation, are posted at *http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa__sf.htm.*

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of pollock TAC allocated to the AFA inshore open access fishery, which is catching pollock for processing by the inshore component in the Bering Sea subarea, will soon be reached. Therefore, the Regional Administrator is establishing the A season allowance of pollock TAC as the directed fishing allowance. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock by AFA trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment

pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directing fishing for pollock by AFA trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 4, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 5, 2010.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–2936 Filed 2–5–10; 4:15 pm]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 0910091344–9056–02]**

**RIN 0648–XU27**

### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2010 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 5, 2010, through 1200 hrs, A.l.t., March 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2010 TAC of pollock in Statistical Area 630 of the GOA is 4,403 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009) and inseason adjustment (74 FR 68713, December 29, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2010 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,303 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 3, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 4, 2010.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–2937 Filed 2–5–10; 11:15 am]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 75, No. 27
Wednesday, February 10, 2010

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

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100 and 109

**[Notice 2010–01]**

### Coordinated Communications

**AGENCY:** Federal Election Commission.

**ACTION:** Supplemental Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Election Commission is issuing a Supplemental Notice of Proposed Rulemaking for the Notice of Proposed Rulemaking on Coordinated Communications published on October 21, 2009, in order to elicit comments addressing the impact of the Supreme Court's decision in *Citizens United* v. *FEC.* The Commission is also announcing a public hearing on the proposed rules regarding coordinated communications. No final decision has been made by the Commission on the issues presented in this rulemaking.

**DATES:** Comments must be received on or before February 24, 2010. The hearing will be held on Tuesday and Wednesday, March 2 and 3, 2010 and will begin at 10 a.m. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments. Any person who requested to testify in written comments received by the Commission prior to the deadline for the initial comment period need not request to testify again.

**ADDRESSES:** All comments must be in writing, addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and submitted in either electronic, facsimile or paper form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic comments should be sent to *CoordinationShays3@fec.gov.* If the electronic comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with paper follow-up. Paper comments and paper follow-up of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its website after the comment period ends. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy L. Rothstein, Assistant General Counsel, Ms. Jessica Selinkoff, or Ms. Joanna Waldstreicher, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** On October 21, 2009, the Commission published a Notice of Proposed Rulemaking ("NPRM") proposing possible changes to the "coordinated communication" regulations at 11 CFR 109.21 in response to the decision of the Court of Appeals for the District of Columbia Circuit in *Shays* v. *FEC,* 528 F.3d 914 (D.C. Cir. 2008) ("*Shays III Appeal*"). *See* Notice of Proposed Rulemaking on Coordinated Communications, 74 FR 53893 (Oct. 21, 2009). The deadline for comments on the NPRM was January 19, 2010. In the NPRM, the Commission stated that it would announce the date of a hearing at a later date.

## I. Extension of Comment Period

Two days after the close of the NPRM's comment period, on January 21, 2010, the Supreme Court issued its decision in *Citizens United* v. *FEC,* No. 08–205 (U.S. Jan. 21, 2010), *available at http://www.fec.gov/law/litigation/cu_sc08_opinion.pdf. Citizens United* may raise issues relevant to the coordinated communications rulemaking. Therefore, the Commission is re-opening the comment period for this rulemaking. The Commission seeks additional comment as to the effect of the *Citizens United* decision on the proposed rules, issues, and questions raised in the NPRM and in this Supplemental Notice of Proposed Rulemaking ("SNPRM").[1] Comments are due on or before February 24, 2010.

### *a. General Considerations*

In response to *Shays III Appeal,* the Commission's NPRM proposed four alternatives for revising the content prong of the coordinated communications test, three alternatives for revising the conduct prong of the coordinated communications test, two alternative definitions of "promote, support, attack, or oppose" ("PASO"), and two safe harbors.

The Commission seeks comments on the effect of the *Citizens United* decision on the Commission's proposals in the NPRM. The Commission asks broadly whether commenters believe *Citizens United* affects any aspect of the proposed rules and also asks specific questions regarding certain aspects of the proposed rules.

In concluding that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption," the Court explained that "'[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.'" *Citizens United,* slip op. at 41–42 (quoting *Buckley* v. *Valeo,* 424 U.S. 1, 47 (1976)). Does this statement suggest the need for a more robust coordination rule because the presence of prearrangement and coordination may result in, or provide the opportunity for, *quid pro quo* corruption?

The Court further held that the governmental interest in "[l]aws that burden political speech" is "limited to *quid pro quo* corruption," and that "[i]ngratiation and access, in any event, are not corruption." *Citizens United,* slip op. at 43, 45. In light of these statements in *Citizens United,* is one of the governmental interests asserted in *Shays III-Appeal* for a stricter coordinated communications rule—*i.e.,* to prevent third-party sponsors of communications from ingratiating themselves with Federal candidates (528 F.3d at 925)—still valid after *Citizens United*? Or, was the Court's holding limited to the independent expenditures that were at

[1] The Commission is reevaluating a number of other regulations in light of the *Citizens United* decision and intends to begin a separate rulemaking to address these other regulations. Commenters will have an opportunity to address these other issues at that time.

issue in *Citizens United*? Given that coordination was not at issue in *Citizens United,* did the Court's mention of coordination suggest, in any way, that a different governmental interest would justify regulating non-party speech that may be coordinated?

Now that *Citizens United* permits additional entities, such as public corporations and labor organizations, to make independent expenditures, does the proposed rule on coordinated communications adequately address those organizations?

*b. Content Standards*

The Commission seeks comment on the effect, if any, of the *Citizens United* decision on the proposed content standards. What effect does the decision have on the proposed Modified *WRTL* content standard, including the proposal's "functional equivalent of express advocacy" test? *See, e.g., NPRM,* 74 FR at 53902. Should any parts of 11 CFR 114.15 be included in such a test, or is Section 114.15 simply inapplicable after *Citizens United*? Does the "functional equivalent of express advocacy" standard still provide a potentially useful coordinated communications content standard to address the *Shays III-Appeal* court's concerns? Should the Commission devise alternative criteria for the Modified *WRTL* content standard, or does the Court's discussion of the Commission's "two part, 11-factor balancing test to implement *WRTL's* ruling" indicate a general disapproval of such an approach? *Citizens United,* slip op. at 18 (referring to *FEC* v. *Wis. Right to Life, Inc.,* 551 U.S. 449 (2007) ("*WRTL*")). Are any additional criteria necessary at all, or should the Commission simply rely on the Modified *WRTL* standard as articulated in the proposed rule text? Did the Court's application of the test to *Hillary: The Movie* demonstrate that the Court's "functional equivalent of express advocacy" standard is sufficiently workable without further explanation?

Additionally, the Commission seeks further comment on the examples given in the NPRM—both those in the proposed PASO definitions and those to which the proposed PASO and Modified *WRTL* content standards may or may not apply—in light of *Citizens United. See Citizens United,* slip op. at 3, 20–21, and 52–54; *see also NPRM,* 74 FR at 53903–04 and 53911–12. The Commission also seeks comment on the application of the proposed content standard alternatives to the communications at issue in *Citizens United. See Citizens United,* slip op. at 3, 52–54. What impact, if any, does the Court's conclusion that *Hillary: The Movie* is "the functional equivalent of express advocacy" have on the Commission's coordinated communications rules and in particular to the application of the "express advocacy" content standard outside the 90/120-day windows? Does the analysis change when the "functional equivalent of express advocacy" is not being applied to a communication in order to strike down a speech prohibition, as in *Citizens United,* but rather to restrict certain speech, as in the proposed coordination rules? *See, e.g., Citizens United,* slip op. at 10 ("First Amendment standards, however, 'must give the benefit of any doubt to protecting rather than stifling speech' ") (quoting *WRTL,* 551 U.S. at 469). Is there anything in the opinion to suggest that the Court intended its conclusion, that *Hillary: The Movie* is "the functional equivalent of express advocacy" to apply only in limited contexts?

Are the proposed PASO definitions sufficiently clear and unambiguous so as not to require "intricate case-by-case determinations" or to require prospective speakers to seek guidance from the Commission as to whether their proposed speech would be coordinated? *Id.* at 12. Do *Citizens United* and *WRTL* provide a constitutional limit on the reach of the proposed PASO standard? Are any content standards broader than express advocacy or its functional equivalent permissible after *Citizens United,* or are these the only standards that the Court has concluded are sufficiently clear? In light of the Supreme Court's statements that the PASO components "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," *McConnell* v. *FEC,* 540 U.S. 93, 170 n.64 (2003), and that any rule must "eschew the open-ended rough-and-tumble of factors," *Citizens United,* slip op. at 19 (quoting *WRTL,* 551 U.S. at 469), should the Commission adopt a PASO content standard without a definition? In the absence of a definition, would the rule provide specific enough guidance to prospective speakers? Would such a rule be enforceable by the Commission?

More generally, how should the Commission conduct investigations in enforcement actions arising from allegations of coordination? Does the Court's holding in *Citizens United* that corporations have a First Amendment right to make independent expenditures raise concerns about investigating potentially coordinated communications that do not exist in other contexts? Would investigations to determine whether a communication is independent or coordinated (and thus a contribution), chill protected speech? To avoid such a risk, should the Commission require a heightened standard (*e.g.,* requiring more particularity or specificity) in any complaint alleging coordination before opening an enforcement proceeding? Should such a heightened complaint standard be adopted with, or regardless of, any revised content standard? Would such a heightened complaint standard impair the Commission's ability to investigate allegations of contributions via coordination? Does anything in the Act (particularly 2 U.S.C. 437g(a)) authorize or preclude the Commission from adopting a heightened complaint standard for coordination allegations? If the Commission may not require a heightened complaint standard for coordination allegations, would that then preclude the application of a broader content standard? Why?

*c. Safe Harbors*

Additionally, the NPRM proposes safe harbors that would exempt certain communications sponsored by 501(c)(3) organizations or candidates' businesses from being treated as coordinated. *NPRM,* 74 FR at 53907–53910. Are these proposed safe harbors consistent with the *Citizens United* decision? *See, e.g.,* slip op. at 24 ("Prohibited too, are restrictions distinguishing among different speakers, allowing speech by some but not others."). Should the proposed safe harbors apply broadly regardless of the types of entities involved? For example, should there be a safe harbor from the coordination rules for any public communication in which a candidate for Federal office expresses or seeks support for any type of organization, or for a position on a public policy or legislative proposal espoused (or opposed) by that organization? Similarly, should the safe harbor for commercial transactions include any public communication in which a candidate for Federal office proposes any type of commercial transaction, regardless of whether it is for a business that the candidate owns or operates, or whether the business existed prior to the candidacy? Would such safe harbors be overbroad or undermine the efficacy of the rule?

*d. Consequences of Court's Media Exemption Analysis*

In *Citizens United,* the Court stated, "There is no precedent supporting laws that attempt to distinguish between corporations which are deemed to be exempt as media corporations and those which are not," and "[t]his differential

treatment [between corporations with and without media outlets] cannot be squared with the First Amendment." Slip op. at 37. Does the Court's analysis of the media exemption affect the proposed rule changes, or the coordination rules generally? If so, how?

## II. Notice of Hearing

The Commission announces that a hearing will be held on Tuesday, March 2, 2010 and Wednesday, March 3, 2010 (*see* **DATES** and **ADDRESSES,** above). The witnesses will be those individuals who indicated in their timely comments, whether to the NPRM published on October 21, 2009 or to this notice, that they wish to testify at the hearing. Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary's office at (202) 694–1040, at least 72 hours prior to the hearing date.

Dated: February 5, 2010.
On behalf of the Commission,

**Matthew S. Petersen,**

*Chairman, Federal Election Commission.*

[FR Doc. 2010–2973 Filed 2–9–10; 8:45 am]

**BILLING CODE 6715–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

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

## Proposed Amendment of Class E Airspace; Emmetsburg, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Emmetsburg, IA. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Emmetsburg Municipal Airport, Emmetsburg, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** 0901 UTC. Comments must be received on or before March 29, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1153/Airspace Docket No. 09–ACE–13, 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–2009–1153/Airspace Docket No. 09–ACE–13." The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* "**ADDRESSES**" section for address and phone number) between 9 a.m and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

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

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the

safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Emmetsburg Municipal Airport, Emmetsburg, IA.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE IA E5 Emmetsburg, IA [Amended]**

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

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

* * * * *

Issued in Fort Worth, TX on February 1, 2010.

**Anthony D. Roetzel,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2010–2925 Filed 2–9–10; 8:45 am]

BILLING CODE 4901–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2009–1154; Airspace Docket No. 09–AGL–35]**

## Proposed Amendment of Class E Airspace; Marion, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace in the Marion, IL area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Southern Illinois Airport, Carbondale/Murphysboro, IL. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** 0901 UTC. Comments must be received on or before March 29, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1154/Airspace Docket No. 09–AGL–35, 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–2009–1154/Airspace Docket No. 09–AGL–35." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRM's**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* "**ADDRESSES**" section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface in the Marion, IL airspace area, establishing controlled airspace for SIAPs at Southern Illinois Airport, Carbondale/Murphysboro, IL. The addition of the RNAV (GPS) RWY 36R SIAP at Southern Illinois Airport has created the need to extend Class E airspace to the south of the current airspace. Adjustment to the geographic coordinates for Williamson County Regional Airport, Marion, IL, also would be made in accordance with the FAAs National Aeronautical Charting Office. Controlled airspace is needed for the

safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace in the Marion, IL area.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL IL E5 Marion, IL [Amended]**

Carbondale/Murphysboro, Southern Illinois Airport, IL
(Lat. 37°46′41″ N., long. 89°15′07″ W.)
Marion, Williamson County Regional Airport, IL
(Lat. 37°45′18″ N., long. 89°00′40″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 37°53′40″ N., long. 88°48′35″ W.; to lat. 37°56′25″ N., long. 89°02′40″ W.; to lat. 37°58′45″ N., long. 89°20′25″ W.; to lat. 37°47′25″ N., long. 89°26′00″ W.; to lat. 37°42′10″ N., long. 89°24′00″ W.; to lat. 37°40′46″ N., long. 89°20′17″ W.; to lat. 37°34′56″ N., long. 89°20′25″ W.; to lat. 37°34′48″ N., long. 89°10′21″ W.; to lat. 37°37′05″ N., long. 89°10′18″ W.; to lat. 37°32′50″ N., long. 88°59′00″ W.; to lat. 37°42′35″ N., long. 88°52′15″ W.; to the point of beginning.

Issued in Fort Worth, TX on February 1, 2010.

**Anthony D. Roetzel,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2010–2927 Filed 2–9–10; 8:45 am]

BILLING CODE 4901–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2009–1183; Airspace Docket No. 09–ASW–38]**

## Proposed Amendment of Class E Airspace; Osceola, AR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Osceola, AR. Decommissioning of the Osceola non-directional beacon (NDB) at Osceola Municipal Airport, Osceola, AR, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Osceola Municipal Airport.

**DATES:** 0901 UTC. Comments must be received on or before March 29, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1183/Airspace Docket No. 09–ASW–38, 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–2009–1183/Airspace Docket No. 09–ASW–38." The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/*

*air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* "**ADDRESSES**" section for address and phone number) between 9 a.m and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Osceola Municipal Airport, Osceola, AR. Airspace reconfiguration is necessary due to the decommissioning of the Osceola NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Osceola Municipal Airport, Osceola, AR.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

## The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASW AR E5 Osceola, AR [Amended]**

Osceola Municipal Airport, AR
(Lat. 35°41′28″ N., long. 90°00′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Osceola Municipal Airport.

Issued in Fort Worth, TX on February 1, 2010.

**Anthony D. Roetzel,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2010–2929 Filed 2–9–10; 8:45 am]

BILLING CODE 4901–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

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

## Proposed Amendment of Class E Airspace; Mapleton, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Mapleton, IA. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at James G. Whiting Memorial Field Airport, Mapleton, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** 0901 UTC. Comments must be received on or before March 29, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1155/Airspace Docket No. 09–ACE–14, 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–2009–1155/Airspace Docket No. 09–ACE–14." The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* "**ADDRESSES**" section for address and phone number) between 9 a.m and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at James G. Whiting Memorial Field Airport, Mapleton, IA. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE IA E5 Mapleton, IA [Amended]**

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

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

Issued in Fort Worth, TX on February 1, 2010.

**Anthony D. Roetzel,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2010–2930 Filed 2–9–10; 8:45 am]

BILLING CODE 4901–13–P

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

**[Release No. 34–61414A; File No. S7–04–10]**

**RIN 3235–AK54**

## Purchases of Certain Equity Securities by the Issuer and Others; Correction

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On January 29, 2010, at 75 FR 4713, the Securities and Exchange Commission published in the **Federal Register** a proposed rule, titled, "Purchases of Certain Equity Securities by the Issuer and Others." The proposed rule was published with an incorrect Regulation Identifier Number (RIN). This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Joan Collopy, (202) 551–5720.

### Correction

In proposed rule FR Doc. 2010–1856, beginning on page 4713 in the issue of January 29, 2010, the RIN is corrected as set forth above.

Dated: Dated: February 4, 2010.

**Elizabeth E. Murphy,**

*Secretary.*

[FR Doc. 2010–2856 Filed 2–9–10; 8:45 am]

BILLING CODE P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 258**

**[EPA–R08–RCRA–2009–0621; FRL–9110–4]**

## Determination to Approve Alternative Final Cover Request for the Lake County, MT Landfill; Opportunity for Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency, Region VIII, is making a determination to approve an alternative final cover for the Lake County landfill, a municipal solid waste landfill (MSWLF) owned and operated by Lake County, Montana on the Confederated Salish and Kootenai Tribes' Flathead Reservation in Montana. EPA is seeking public comment on EPA's determination to approve Lake County's alternative final cover proposal.

**DATES:** Comments must be received on or before March 12, 2010. If sufficient public interest is expressed, EPA will schedule and hold a public meeting. If a public meeting is scheduled, the date, time and location will be announced in the *Missoulian* and the *Char-Koosta News.* (If you are interested in attending a public meeting, contact Stephanie Wallace at (406) 457–5018).

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2009–0621 by one of the following methods:

- *Online: http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: wallace.stephanie@epa.gov.*
- *Fax:* (406) 457–5055.
- *Mail:* Stephanie Wallace, Environmental Protection Agency, Region VIII, Montana Office, 10 West 15th Street, Suite 3200, Helena, MT 59626.
- *Hand delivery:* Environmental Protection Agency, Region VIII, Montana Office, 10 West 15th Street, Suite 3200, Helena, MT 59626. Such deliveries are only accepted during normal hours of operation, which are Monday through Friday from 8 a.m. until 4:30 p.m.

*Instructions:* Direct your comments to Docket ID No. EP–R08–RCRA–2009–0621. 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 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 by 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 rather than going through *http://www.regulations.gov,* your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. 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 detects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency Region VIII, Montana Office, 10 W. 15th Street, Suite 3200, Helena, Montana. A complete public portion of the administrative record for this rulemaking is also available for review at this location and at the Polson City Library. The Environmental Protection Agency Region VIII, Montana Office is open from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays, and is located in a secure building. To review docket materials, it is recommended that the public make an appointment by calling the EPA Montana Office at (406) 457–5000 during normal business hours. The Polson City Library, located at 2 First Avenue, Polson, MT (telephone (406) 883–8225) is open from 11 a.m. to 6 p.m., Monday through Friday and 11 a.m. to 4 p.m. Saturday.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Wallace, EPA Region VIII Montana Office, 10 W. 15th Street, Suite 3200, Helena, MT 59626; telephone number: (406) 457–5018; fax number (406) 457–5055; e-mail address: *wallace.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Submitting Comments to EPA

1. *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.

2. *Submitting Confidential Business Information (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.

3. *Docket Copying Costs:* Copying arrangements will be made through the EPA Montana Office and billed directly

to the recipient. Copying costs may be waived, depending on the total number of pages copied.

If sufficient public interest is expressed, EPA will hold a public meeting. The location, date and time of a meeting will be announced in the *Missoulian* and the *Char-Koosta News.*

## I. General Information

### *A. Background*

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

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

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

The regulation at 40 CFR 258.60(a) establishes closure criteria for MSWLF units that are designed to minimize infiltration and erosion. The regulation requires final cover systems to be designed and constructed to:

(1) Have a permeability less than or equal to the permeability of any bottom liner system or natural sub-soils present, or a permeability no greater than $1\times10^{-5}$ cm/sec, whichever is less, and

(2) Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum of 18 inches of earthen material, and

(3) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

The regulation at 40 CFR 258.60(b) allows for variances from these specified MSWLF closure criteria. Specifically, the rule allows for the Director of an approved State to approve an alternative final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of 40 CFR 258.60, and

(2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of 40 CFR 258.60.

### *B. Lake County's Site-Specific Flexibility Request*

The Lake County landfill is a municipal solid waste landfill owned and operated by Lake County on the Confederated Salish and Kootenai Tribes' Flathead Reservation in Montana. The landfill site is approximately 50 acres in size and serves approximately 28,000 people in Lake County. Most of the county, including the landfill, lies within the boundaries of the Flathead Reservation. The landfill itself consists of a 30-acre unlined waste footprint that was used as the county's municipal landfill beginning in the 1960s. In the early 2000s the County built a transfer station and converted the landfill to accept inert and construction and demolition waste only. Of the existing 30-acre waste footprint, 14.6 acres were previously closed and covered.

On July 11, 2007, Lake County submitted a site-specific flexibility application request to EPA and the Confederated Salish and Kootenai Tribes for the Lake County landfill. The request seeks EPA approval for the use of an alternative final cover that varies from the final closure requirements of 40 CFR 258.60. This request would apply to the 15.4 acres of the landfill that have not been previously closed.

Between July 11, 2007, and January 22, 2009, Lake County made revisions to its application request in response to concerns raised by EPA and the Confederated Salish and Kootenai Tribes. EPA is basing its determination and this proposed rule on the application, dated July 11, 2007 and March 17, 2008, and the January 22, 2009 amendments to that application. The specific request for EPA approval of Lake County's application is discussed below. As set forth in more detail below, EPA is proposing to approve the request and allow Lake County to install an alternative final cover that meets the criteria at 40 CFR 258.60(b).

Lake County is seeking EPA approval to use an alternative final cover system for 15.4 acres of its existing waste footprint. Lake County proposes to install a 5.5-feet-thick multi-layer cover system comprised of the following from bottom to top: An 18-inch intermediate and gas vent layer, a 24-inch native sand layer, an 18-inch imported silt evapotranspiration layer, and a 6-inch topsoil layer. Lake County has demonstrated that the infiltration layer achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of 40 CFR 258.60, and the erosion layer provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of 40 CFR 258.60. On January 22, 2009, Lake County submitted a "Construction Quality Assurance & Control Plan" for the closure project that specifies that testing will be performed on each component as it is installed. Testing frequencies and standards during construction are described in detail in the "Construction Quality Assurance & Control Plan."

## II. EPA's Action

### *A. Determination To Approve Lake County's Site-Specific Flexibility Request*

After completing a review of Lake County's final site-specific flexibility application request, dated July 11, 2007, and the amendments to that application dated March 17, 2008, and January 22, 2009, EPA is proposing to approve Lake County's site-specific flexibility request to install an alternative final cover.

EPA is basing its determination on a number of factors, including unsaturated soil modeling, site-specific climatic and soils data, and the results of a pilot test of the viability of an

evapotranspiration cover conducted at the site by the County's consultants, the Desert Research Institute, and EPA. The pilot test consisted of the construction of two landfill cover test plots at the Lake County landfill facility. One plot used a landfill cover design with a flexible membrane liner, and the other plot used an evapotranspiration cover design. The results of the pilot test indicated that the evapotranspiration cover will perform better than the standard prescriptive cover in 40 CFR 258.60(a) in preventing the movement of leachate through the system.

EPA considered certain issues pertaining to the proposed alternative final cover, including the need for stringent quality assurance/quality control during construction, such as oversight throughout construction to ensure soils for each layer of the cover have the necessary physical properties and are installed so as to perform as designed.

In accordance with its application and the "Construction Quality Assurance & Control Plan," Lake County has pledged to provide the oversight required. EPA is also requiring as part of its approval of the final cover design, that Lake County:

- Submit an Operations and Maintenance Plan at 50% final design that includes an inspection schedule (at least quarterly) and remediation plan to address any potential rodent damage,
- Achieve re-vegetation rates of greater than 50% by the end of the first season and a complete stand of native grasses by the end of the third season, and
- Place documentation demonstrating compliance with the "Construction Quality Assurance and Control Plan," 40 CFR 258.60(a)(1), (2), and (3), and the above requirements in the landfill operating record.

## III. Statutory and Executive Order Reviews

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

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

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

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

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

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

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

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments," (65 FR 67249, November 9, 2000), calls for EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." EPA has concluded that this action may have Tribal implications because it is directly applicable to a facility operating on the Confederated Salish and Kootenai Tribes' Flathead Reservation. However, this determination will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. This determination to approve Lake County's application will affect only the operation of the County's landfill.

EPA consulted with the Confederated Salish and Kootenai Tribes early in the process of making this determination to approve the County's alternative final cover request so that the Tribes had the opportunity to provide meaningful and timely input. Between July 11, 2007 and January 22, 2009, technical issues were raised and addressed by both the Tribes and EPA concerning Lake County's proposal. EPA's consultation with the Tribes culminated in a letter of July 15, 2009 from the Tribes, in which they stated that they have no further issues with the Lake County proposal. EPA specifically solicits any additional comment on this determination from Tribal officials of the Confederated Salish and Kootenai Tribes.

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

The technical standards included in the application were proposed by Lake County. Given EPA's obligations under Executive Order 13175 (*see* above), the Agency has, to the extent appropriate, applied the standards established by the County and accepted by the Tribes. In addition, the Agency evaluated the proposal's design against the engineering design and construction criteria contained in the EPA draft guidance document, "Water Balance Covers for Waste Containment: Principles and Practice (2009)."

**Authority:** Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6907, 6912, 6944, and 6949a. Temporary Delegation of Authority to Promulgate Site-Specific Rules To Respond to Requests for Flexibility From Owners/Operators of Municipal Solid Waste Landfill Facilities in Indian Country, October 14, 2009, Incorporation by Reference.

## List of Subjects in 40 CFR Part 258

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

Dated: January 15, 2010.

**Carol Rushin,**

*Acting Regional Administrator, Region VIII.*

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

## PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

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

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

### Subpart F—[Amended]

2. Add § 258.62 to subpart F to read as follows:

**§ 258.62 Approval of site-specific flexibility requests in Indian Country.**

(a) Lake County Municipal Landfill final cover requirements. Paragraph (a) of this section applies to the Lake County Landfill, a municipal solid waste landfill owned and operated by Lake County on the Confederated Salish and Kootenai Tribes' Flathead Reservation in Montana. The alternative final cover request submitted by Lake County and dated July 11, 2007, and amended March 17, 2008, and January 22, 2009 is hereby incorporated into this provision by this reference. The facility owner and/or operator may close the facility in accordance with this application, including the following activities more generally described as follows:

(1) The owner and operator may install an evapotranspiration system as an alternative final cover for the 15.4 acre active area.

(2) The final cover system shall consist of a 5.5 feet-thick multi-layer cover system comprised, from bottom to top, of an 18-inch intermediate and gas vent layer, a 24-inch native sand layer, an 18-inch imported silt layer and a 6-inch topsoil layer, as well as seeding and erosion control.

(3) The final cover system shall be constructed to achieve an equivalent reduction in infiltration as the infiltration layer specified in § 258.60(a)(1) and (a)(2), and provide an equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of this section.

(4) In addition to meeting the specifications of the Lake County landfill "Alternative Cover" application of May 2007, and the "Construction Quality Assurance & Control Plan for the Lake County Class II Landfill Unit Landfill Closure Project" of January 2009, the owner and operator shall:

(i) At 50% final design, submit to EPA for approval an Operations and Maintenance Plan that includes an inspection schedule (at least quarterly) and remediation plan to address any potential rodent damage to the final cover; and

(ii) Achieve re-vegetation rates greater than 50% by the end of the first season and a complete stand of native grasses by the end of the third season.

(5) The owner and operator shall place documentation demonstrating compliance with the provisions of this Section in the operating record.

(6) All other applicable provisions of 40 CFR part 258 remain in effect.

(b) [Reserved]

[FR Doc. 2010–2794 Filed 2–9–10; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

**[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1087]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before May 11, 2010.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1087, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

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

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action

under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

**List of Subjects in 44 CFR Part 67**

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

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

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

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Matanuska-Susitna Borough, Alaska, and Incorporated Areas** | | | | |
| Susitna River | Approximately 11 miles northwest of the intersection of Talkeetna Road and Comsat Road. | None | +336 | Borough of Matanuska-Susitna. |
| | Approximately 1,100 feet downstream of the confluence with the Chulitna River. | None | +355 | |
| Talkeetna River | Approximately 900 feet downstream of the railroad bridge north of Talkeetna. | None | +348 | Borough of Matanuska-Susitna. |
| | Approximately 400 feet downstream of the confluence with Whiskey Slough. | None | +394 | |
| Twister Creek | Just downstream of South Talkeetna Road Spur | None | +345 | Borough of Matanuska-Susitna. |
| | At the divergence from the Talkeetna River | None | +381 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**Borough of Matanuska-Susitna**
Maps are available for inspection at 350 East Dahlia Avenue, Palmer, AK 99645.

| | | | | |
|---|---|---|---|---|
| **Chicot County, Arkansas, and Incorporated Areas** | | | | |
| Flooding effects of Caney Bayou. | Approximately 0.55 mile north of the intersection of Grant Street and Beouff Street. | None | +110 | City of Eudora. |
| | Approximately 1,035 feet south of the intersection of Camille Street and Lee Street. | None | +110 | |
| Macon Bayou | Just upstream of Private Road | None | +108 | City of Eudora. |
| | Just upstream of Verser Road | None | +108 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**City of Eudora**
Maps are available for inspection at City Hall, 239 South Main Street, Eudora, AR 71640.

| | | | | |
|---|---|---|---|---|
| **Conway County, Arkansas, and Incorporated Areas** | | | | |
| Arkansas River | Approximately 1.0 mile downstream of State Highway 9. | None | +295 | Unincorporated Areas of Conway County. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | Approximately 1.0 mile upstream of Lock & Dam #9 .. | None | +303 | |
| Caney Creek ..... | Approximately 1,300 feet downstream of the confluence with Park Creek. | None | +306 | Unincorporated Areas of Conway County. |
| | Approximately 0.6 mile upstream of State Highway 9 | None | +325 | |
| Cherokee Creek ..... | Just downstream of the Union Pacific Railroad ..... | None | +311 | Unincorporated Areas of Conway County. |
| | Just downstream of Green Lane ..... | None | +319 | |
| Point Remove Creek ..... | At the confluence with the Arkansas River ..... | None | +299 | Unincorporated Areas of Conway County. |
| | Approximately 2.0 miles upstream of Old Cherokee Road. | None | +301 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**Unincorporated Areas of Conway County**

Maps are available for inspection at 117 South Moose Street, Morrilton, AR 72110.

**Desha County, Arkansas, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Canal No. 18 ..... | Approximately 1.0 mile downstream of the Missouri Pacific Railroad. | None | +137 | Unincorporated Areas of Desha County. |
| | Approximately 1,300 feet upstream of State Highway 1. | None | +142 | |
| Canal No. 19 ..... | Approximately 0.5 mile downstream of U.S. Highway 165. | None | +157 | Unincorporated Areas of Desha County. |
| | Approximately 1,300 feet upstream of U.S. Highway 165. | None | +157 | |
| Ditch No. 6 ..... | Just upstream of Burnett Street ..... | None | +164 | Unincorporated Areas of Desha County. |
| | Just upstream of State Highway 159 ..... | None | +164 | |
| Little Bayou Macon ..... | Approximately 556 feet upstream from the confluence with Canal No. 18. | None | +137 | Unincorporated Areas of Desha County. |
| | Approximately 2.0 miles upstream of State Highway 1 | None | +141 | |
| | Just upstream of County Road 324 ..... | None | +141 | |
| | Approximately 0.5 mile upstream of State Highway 4 | None | +142 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**Unincorporated Areas of Desha County**

Maps are available for inspection at 608 Robert Moore Avenue, Arkansas City, AR 71630.

**Stephenson County, Illinois, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Indian Creek ..... | Approximately 0.61 mile above State Route 73 ..... | +785 | +782 | Unincorporated Areas of Stephenson County. |
| | Approximately 0.78 mile above State Route 73 ..... | +785 | +782 | |
| Pecatonica River ..... | Approximately 1.2 mile below North Rock City Road .. | None | +749 | Village of Ridott. |
| | Approximately 1.93 mile above North Rock City Road | None | +754 | |
| Pecatonica River ..... | Approximately 0.43 mile below Route 75 (Stephenson Street). | +763 | +762 | City of Freeport. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | Approximately 4.0 miles above Route 26 | None | +767 | |
| Pecatonica River | Approximately 1.61 mile above West McConnell Road | +780 | +779 | Unincorporated Areas of Stephenson County. |
| | Illinois/Wisconsin State boundary | +785 | +782 | |
| Yellow Creek | Approximately 400 feet downstream of Pearl City Road. | None | +814 | Unincorporated Areas of Stephenson County. |
| | Approximately 0.49 mile upstream of Pearl City Road | None | +815 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**City of Freeport**

Maps are available for inspection at City Hall, 230 West Stephenson Street, Freeport, IL 61032.

**Unincorporated Areas of Stephenson County**

Maps are available for inspection at the County Courthouse, 15 North Galena Avenue, Freeport, IL 61032.

**Village of Ridott**

Maps are available for inspection at the Village Hall, 200 East 3rd Street, Ridott, IL 61067.

**Whiteside County, Illinois, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| French Creek | Approximately 3,100 feet downstream of Portland Avenue. | None | +623 | Unincorporated Areas of Whiteside County. |
| | Approximately 1,700 feet downstream of Lyndon Road. | None | +659 | |
| Interior Drainage | Approximately at Wares Lake landward/east of the Fulton Illinois LFPP Levee and north of Melody Hills Street. | None | +584 | Unincorporated Areas of Whiteside County. |
| | Approximately at Cattail Slough, west of State Route 84/Waller Road. | None | +584 | |
| Mississippi River | Approximately 0.6 mile downstream of Meredosia Road extended. | +586 | +588 | Unincorporated Areas of Whiteside County. |
| | Approximately 180 feet downstream of Garret Street extended. | +588 | +589 | |
| | Approximately 780 feet upstream of Lock and Dam No. 13. | +594 | +593 | |
| | Approximately 2.1 miles upstream of Lock and Dam No. 13. | +594 | +593 | |
| Mississippi River | Approximately 920 feet upstream of Meredosia Road extended. | +587 | +588 | Village of Albany. |
| | Approximately 380 feet downstream of the confluence with Spring Creek. | +588 | +589 | |
| Rock Creek | Approximately 1,560 feet upstream of the confluence with French Creek. | None | +622 | Unincorporated Areas of Whiteside County. |
| | Approximately 750 feet upstream of Damen Road extended. | None | +636 | |
| Rock River | Approximately 1.6 mile downstream of State Route 78/Bishop Road. | None | +601 | City of Prophetstown. |
| | Approximately 1.1 mile downstream of the confluence with Walker Slough. | None | +605 | |
| Rock River | Approximately 1,820 feet downstream of 12th Avenue/Avenue G. | None | +630 | City of Rock Falls, City of Sterling. |
| | Approximately 0.46 mile upstream of Government Dam. | None | +640 | |

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

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

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**ADDRESSES**

**City of Prophetstown**

Maps are available for inspection at City Hall, 339 Washington Street, Prophetstown, IL 61277.

**City of Rock Falls**

Maps are available for inspection at City Hall, 603 West 10th Street, Rock Falls, IL 61071.

**City of Sterling**

Maps are available for inspection at City Hall, 212 3rd Avenue, Sterling, IL 61081.

**Unincorporated Areas of Whiteside County**

Maps are available for inspection at the County Courthouse, 200 East Knox Street, Morrison, IL 61270.

**Village of Albany**

Maps are available for inspection at the Village Hall, 101 North Lime Street, Albany, IL 61230.

**Marion County, Kansas, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Clear Creek | At the confluence with Mud Creek | None | +1,319 | Unincorporated Areas of Marion County. |
| | Approximately 250 feet upstream of Cedar Street | None | +1,319 | |
| Cottonwood River | Approximately 1,100 feet downstream of 5th Street | None | +1,272 | Unincorporated Areas of Marion County. |
| | Approximately 775 feet upstream of West Main Street | None | +1,316 | |
| Cottonwood River Tributary | Approximately 1,100 feet upstream of Upland Road | None | +1,307 | Unincorporated Areas of Marion County. |
| | Approximately 1,200 feet upstream of Tanglewood Street. | None | +1,322 | |
| Doyle Creek | Approximately 1.1 mile downstream of 105th Street | None | +1,272 | Unincorporated Areas of Marion County. |
| | Approximately 0.7 mile upstream of Maple Street | None | +1,367 | |
| Mud Creek | Approximately 1,000 feet upstream of the confluence with Cottonwood Creek. | None | +1,316 | Unincorporated Areas of Marion County, City of Marion. |
| | Approximately 1,200 feet upstream of the confluence with Clear Creek. | None | +1,319 | |
| Old Mud Creek Channel | Approximately 1,100 feet downstream of Commercial Street. | +1,303 | +1,299 | Unincorporated Areas of Marion County, City of Marion. |
| | Approximately 1.6 mile upstream of Main Street | None | +1,300 | |
| Old Mud Creek Channel Tributary. | At the confluence with Old Mud Creek Channel | +1,303 | +1,299 | City of Marion. |
| | At West Santa Fe Street | +1,303 | +1,304 | |
| Prairie Creek | At the confluence with Doyle Creek | None | +1,356 | Unincorporated Areas of Marion County. |
| | Approximately 0.7 mile upstream of Old Mill Road | None | +1,390 | |
| Spring Creek | At Peabody Street | None | +1,368 | Unincorporated Areas of Marion County. |
| | Approximately 1,325 feet upstream of 70th Street | None | +1,377 | |
| Tributary to Cottonwood River. | Approximately 1,375 feet downstream of West Main Street. | +1,304 | +1,299 | City of Marion. |
| | Approximately 75 feet downstream of West Main Street. | +1,304 | +1,299 | |

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| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **ADDRESSES** | | | | |
| **City of Marion** | | | | |
| Maps are available for inspection at City Hall, 208 East Sante Fe Street, Marion, KS 66861. | | | | |
| **Unincorporated Areas of Marion County** | | | | |
| Maps are available for inspection at the County Courthouse, 200 South 3rd Street, Marion, KS 66861. | | | | |
| **Shawnee County, Kansas, and Incorporated Areas** | | | | |
| Butcher Creek | Just upstream of Interstate 470 | None | +977 | City of Topeka, Unincorporated Areas of Shawnee County. |
| | Approximately 1,565 feet upstream of SE 45th Street | None | +994 | |
| Colly Creek | At the confluence with South Branch Shunganunga Creek. | None | +952 | City of Topeka, Unincorporated Areas of Shawnee County. |
| | Approximately 300 feet upstream of SW Gage Boulevard. | None | +988 | |
| Cross Creek | At the confluence with Kansas Creek | +918 | +919 | City of Rossville, Unincorporated Areas of Shawnee County. |
| | Approximately 0.6 mile upstream of U.S. Route 24 | +930 | +932 | |
| Deer Creek | At the confluence with Shunganunga Creek | +878 | +882 | City of Topeka, Unincorporated Areas of Shawnee County. |
| | Approximately 100 feet downstream of SE 45th Street | None | +967 | |
| Elevation Tributary | At the confluence with Shunganunga Creek | None | +976 | City of Topeka. |
| | At the confluence with Southwest Branch Elevation Creek. | None | +986 | |
| Indian Hills Tributary | At the confluence with Shunganunga Creek | None | +958 | City of Topeka, Unincorporated Areas of Shawnee County. |
| | Approximately 580 feet upstream of SW Urish Road | None | +998 | |
| Shunganunga Creek | At the confluence with the Kansas River | +874 | +873 | Unincorporated Areas of Shawnee County, City of Topeka. |
| | Approximately 280 feet upstream of Indian Hills Road | None | +1,013 | |
| Soldier Creek | At the confluence with the Kansas River | None | +880 | Unincorporated Areas of Shawnee County, City of Topeka. |
| | Approximately 0.6 mile upstream of NW Menoken Road. | None | +901 | |
| South Branch Shunganunga Creek. | At the confluence with Shunganunga Creek | +914 | +917 | City of Topeka, Unincorporated Areas of Shawnee County. |
| | Approximately 250 feet upstream of Burlingame Road | None | +953 | |
| Southeast Branch Elevation Creek. | At the confluence with Elevation Tributary | None | +986 | City of Topeka, Unincorporated Areas of Shawnee County. |
| | Approximately 0.7 mile upstream of SW Wanamaker Road. | None | +1,031 | |
| Southwest Branch Elevation Creek. | At the confluence with Elevation Tributary | None | +986 | City of Topeka. |
| | Approximately 0.5 mile upstream of SW 41st Street | None | +1,031 | |
| Wanamaker Main Branch | At the confluence with Kansas River | None | +885 | Unincorporated Areas of Shawnee County, City of Topeka. |
| | Approximately 300 feet upstream of SW Robinson Avenue. | None | +956 | |
| Wanamaker Northeast Branch. | At the confluence with Wanamaker Main Branch | None | +937 | City of Topeka. |
| | Approximately 0.4 mile upstream of SW Robinson Avenue. | None | +947 | |
| West Fork Butcher Creek | At the confluence with Butcher Creek | +944 | +943 | City of Topeka. |
| | Approximately 1,250 feet upstream of SE 45th Street | None | +1,000 | |

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

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**ADDRESSES**

**City of Rossville**
Maps are available for inspection at City Hall, 438 Main Street, Rossville, KS 66533.

**City of Topeka**
Maps are available for inspection at the Engineering Division, 620 Southeast Madison Street, Topeka, KS 66603.

**Unincorporated Areas of Shawnee County**
Maps are available for inspection at the County Engineer's Office, 1515 Northwest Saline Street, Topeka, KS 66618.

**Lowndes County, Mississippi, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Tombigbee River | Approximately 3.3 miles downstream of the confluence with James Creek. | +154 | +155 | Unincorporated Areas of Lowndes County, City of Columbus. |
| | Approximately 1.4 mile downstream of State Highway 50. | +177 | +178 | |
| Tombigbee River Split Flow | Approximately 2.3 miles downstream of the confluence with Moore Creek. | None | +166 | Unincorporated Areas of Lowndes County, City of Columbus. |
| | Approximately 1.2 mile upstream of the confluence with Moore Creek. | None | +168 | |

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**ADDRESSES**

**City of Columbus**
Maps are available for inspection at City Hall, 523 Main Street, Columbus, MS 39701.

**Unincorporated Areas of Lowndes County**
Maps are available for inspection at the County Courthouse, 505 2nd Avenue North, Columbus, MS 39701.

**Andrew County, Missouri, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Missouri River | Approximately 1,250 feet upstream of the Buchanan County boundary. | *821 | +825 | Unincorporated Areas of Andrew County, City of Amazonia. |
| | Approximately 1,200 feet downstream of the Doniphan County boundary. | *831 | +833 | |

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**ADDRESSES**

**City of Amazonia**
Maps are available for inspection at 441 Spring Street, Amazonia, MO 64421.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Unincorporated Areas of Andrew County** | | | | |
| Maps are available for inspection at 410 Court Street, Savannah, MO 64485. | | | | |
| **Cooper County, Missouri, and Incorporated Areas** | | | | |
| Missouri River | Approximately 1,500 feet downstream of the Moniteau County boundary. | None | +587 | Unincorporated Areas of Cooper County, City of Boonville. |
| | Approximately 2,500 feet downstream of the Saline County boundary. | None | +610 | |

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**ADDRESSES**

**City of Boonville**

Maps are available for inspection at 1200 Locust Street, Boonville, MO 65233.

**Unincorporated Areas of Cooper County**

Maps are available for inspection at 200 Main Street, Room 4, Boonville, MO 65233.

| **Moniteau County, Missouri, and Incorporated Areas** | | | | |
|---|---|---|---|---|
| Missouri River | Approximately 3,000 feet upstream of the Cole County boundary. | +573 | +574 | Unincorporated Areas of Moniteau County, City of Lupus. |
| | Approximately 375 feet downstream of the Cooper County boundary. | +588 | +587 | |

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**ADDRESSES**

**City of Lupus**

Maps are available for inspection at 3750 Main Street, Lupus, MO 65046.

**Unincorporated Areas of Moniteau County**

Maps are available for inspection at 200 East Main Street, Room 103, California, MO 65018.

| **Ray County, Missouri, and Incorporated Areas** | | | | |
|---|---|---|---|---|
| Crooked River | Approximately 2,700 feet downstream of State Highway 10. | +697 | +692 | Unincorporated Areas of Ray County. |
| | Approximately 10,500 feet upstream of State Highway 10. | +698 | +697 | |
| Fire Branch Crooked River | Approximately 1,125 feet upstream of West 196th Street. | +820 | +818 | Unincorporated Areas of Ray County. |
| | Approximately 2,450 feet upstream of West 196th Street. | +830 | +828 | |
| Fishing River | Approximately 100 feet downstream of West 60th Street. | +717 | +713 | Unincorporated Areas of Ray County, City of Orrick. |
| | Approximately 3,500 feet upstream of West 88th Street. | +723 | +721 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Keeney Creek | Approximately 2,350 feet upstream of the confluence with the Fishing River. | +714 | +712 | Unincorporated Areas of Ray County, City of Orrick. |
| | Approximately 3,000 feet upstream of West 73rd Street. | +739 | +740 | |
| Missouri River | Approximately 700 feet downstream of the Lafayette County boundary. | +692 | +689 | City of Camden, City of Hardin, City of Henrietta, Unincorporated Areas of Ray County. |
| | At Clay County boundary | +723 | +717 | |
| Tributary B | Approximately 7,500 feet upstream of Bollinger Road | +784 | +786 | Unincorporated Areas of Ray County. |
| | Approximately 10,000 feet downstream of State Highway V. | +787 | +789 | |
| West Fork Crooked River | Approximately 1,000 feet downstream of State Highway 13. | None | +729 | City of Richmond. |
| | Approximately 400 feet upstream of State Highway 13 | None | +733 | |

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**ADDRESSES**

**City of Camden**
Maps are available for inspection at 105 Walnut Street, Camden, MO 64017.

**City of Hardin**
Maps are available for inspection at 100 East Main Street, Hardin, MO 64035.

**City of Henrietta**
Maps are available for inspection at 406 Main Street, Henrietta, MO 64036.

**City of Orrick**
Maps are available for inspection at 107 Kirkham Street, Orrick, MO 64077.

**City of Richmond**
Maps are available for inspection at 205 Summit Street, Richmond, MO 64085.

**Unincorporated Areas of Ray County**
Maps are available for inspection at 100 West Main Street, Richmond, MO 64085.

**Stutsman County, North Dakota, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Spiritwood Lake | Approximately 124 feet upstream of 4713 Street SE | +1,451 | +1,448 | City of Spiritwood Lake City, Unincorporated Areas of Stutsman County. |

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**ADDRESSES**

**City of Spiritwood Lake City**
Maps are available for inspection at P.O. Box 642, Spiritwood Lake, ND 58402.

**Unincorporated Areas of Stutsman County**
Maps are available for inspection at 511 2nd Avenue Southeast, Jamestown, ND 58401.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Dawson County, Nebraska, and Incorporated Areas** | | | | |
| North Channel Platte River ... | Approximately 1.2 mile downstream of Cottonwood Drive. | +2,549 | +2,548 | City of Gothenburg. |
| | Just upstream of I–80 ..... | +2,566 | +2,566 | |
| Platte River ..... | Approximately 0.6 mile downstream of Plum Creek Parkway. | +2,380 | +2,381 | City of Gothenburg, City of Lexington, Unincorporated Areas of Dawson County. |
| | Approximately 2.2 miles upstream of Plum Creek Parkway. | +2,399 | +2,398 | |
| | Approximately 1.6 mile downstream of State Highway 47. | +2,551 | +2,550 | |
| | Approximately 2.2 miles upstream of State Highway 47. | +2,573 | +2,572 | |
| Spring Creek ..... | Between 0.5 mile north of Road 758 and 0.4 mile south of Prospect Road and between Road 431 and Road 437. | #1 | #0 | City of Lexington, Unincorporated Areas of Dawson County. |
| | Between 0.5 mile north of Road 758 and 0.4 mile south of Prospect Road and between Road 431 and Road 437. | #2 | #0 | |
| | Between 0.5 mile north of Road 758 and 0.4 mile south of Prospect Road and between Road 431 and Road 437. | None | #1 | |
| | Between 0.5 mile north of Road 758 and 0.4 mile south of Prospect Road and between Road 431 and Road 437. | #2 | #1 | |
| | Between 0.5 mile north of Road 758 and 0.4 mile south of Prospect Road and between Road 431 and Road 437. | None | #2 | |
| | Between 0.5 mile north of Road 758 and 0.4 mile south of Prospect Road and between Road 431 and Road 437. | #1 | #2 | |
| | Between 0.5 mile north of Road 758 and 0.4 mile south of Prospect Road and between 0.4 mile east of Road 431 and 500 feet west of Road 432. | None | #3 | |
| | Between 600 feet north of West 17th Street and 300 feet south of West 17th Street and between North Washington Street and North Monroe Street. | #1 | #3 | |
| | Between 1,000 feet north of Road 755 and 250 feet south of Road 755 and between Road 435 and 1,300 feet east of Road 435. | #2 | #3 | |

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**ADDRESSES**

**City of Gothenburg**
Maps are available for inspection at 409 9th Street, Gothenburg, NE 69138.

**City of Lexington**
Maps are available for inspection at 406 East 7th Street, Lexington, NE 68850.

**Unincorporated Areas of Dawson County**
Maps are available for inspection at 700 North Washington Street, Lexington, NE 68850.

| | | | | |
|---|---|---|---|---|
| **Otoe County, Nebraska, and Incorporated Areas** | | | | |
| Missouri River ..... | At easternmost tip of Otoe County limits ..... | +913 | +914 | Unincorporated Areas of Otoe County, City of Nebraska City. |
| | At State Highway 2/Burlington Northern Railroad ..... | +930 | +931 | |

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|---|---|---|---|---|
| | | Effective | Modified | |
| | At Everett Lane extended | +940 | +943 | |

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**ADDRESSES**

**City of Nebraska City**

Maps are available for inspection at 1409 Central Avenue, Nebraska City, NE 68410.

**Unincorporated Areas of Otoe County**

Maps are available for inspection at the County Courthouse, 1021 Central Avenue, Nebraska City, NE 68410.

**Sullivan County, New York (All Jurisdictions)**

| | | | | |
|---|---|---|---|---|
| Beaver Kill | Approximately 1.5 mile downstream of Old State Route 17. | None | +1,257 | Town of Rockland. |
| | At the confluence with Willowemoc Creek | +1,276 | +1,274 | |
| Callicoon Creek-East Branch Callicoon Creek. | At the confluence with the Delaware River | +756 | +758 | Town of Delaware, Village of Jeffersonville. |
| | Approximately 50 feet upstream of Jefferson Lake Dam. | +1,068 | +1,066 | |
| Cattail Brook | At the confluence with Willowemoc Creek | +1,420 | +1,418 | Town of Rockland. |
| | Approximately 1,324 feet upstream of Shandelee Road. | None | +1,522 | |
| Delaware River | At the Delaware County boundary | +487 | +490 | Town of Fremont, Town of Cochecton, Town of Delaware, Town of Highland, Town of Lumberland, Town of Tusten. |
| | At the Orange County boundary | +840 | +842 | |
| Lake Jefferson | Approximately 1,000 feet upstream of Lake Jefferson Dam. | None | +1,086 | Town of Delaware, Town of Bethel, Town of Callicoon. |
| | Approximately 0.9 mile upstream of Lake Jefferson Dam. | None | +1,086 | |
| Middle Mongaup River | At the confluence with the Mongaup River | None | +1,143 | Town of Bethel. |
| | Approximately 1.3 mile upstream of Strong Road | None | +1,223 | |
| Mongaup River (Swinging Bridge Reservoir). | Approximately 0.7 mile downstream of State Route 17B. | None | +1,075 | Town of Bethel. |
| | Approximately 1.2 mile upstream of Coopers Corner Road. | None | +1,143 | |
| Neversink River | Approximately 1.5 mile upstream of State Highway 17 | None | +1,090 | Town of Fallsburg. |
| | Approximately 3.0 miles upstream of State Highway 17. | None | +1,095 | |
| Sprague Brook | At the confluence with Willowemoc Creek | +1,509 | +1,511 | Town of Rockland. |
| | Approximately 480 feet upstream of the confluence with Willowemoc Creek. | +1,510 | +1,511 | |
| Stewart Brook | At the confluence with Willowemoc Creek | +1,289 | +1,288 | Town of Rockland. |
| | Approximately 1.6 mile upstream of Gulf Road | +1,393 | +1,392 | |
| Willowemoc Creek | At the confluence with Beaver Kill | +1,277 | +1,274 | Town of Rockland. |
| | Approximately 135 feet downstream of Hunter Lake Road. | None | +1,647 | |

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|---|---|---|---|---|
| | | Effective | Modified | |

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**ADDRESSES**

**Town of Bethel**
Maps are available for inspection at the Town Hall, 3454 Route 55, Bethel, NY 12786.

**Town of Callicoon**
Maps are available for inspection at the Callicoon Town Hall, 19 Legion Street, Jeffersonville, NY 12748.

**Town of Cochecton**
Maps are available for inspection at the Town Clerk's Office, 111 Bernas Road, Cochecton, NY 12726.

**Town of Delaware**
Maps are available for inspection at the Delaware Town Hall, 104 Main Street, Hortonville, NY 12745.

**Town of Fallsburg**
Maps are available for inspection at the Fallsburg Code Enforcement Office, 5250 Main Street, South Fallsburg, NY 12779.

**Town of Fremont**
Maps are available for inspection at the Fremont Town Clerk's Office, 895 County Road 94, Hankins, NY 12741.

**Town of Highland**
Maps are available for inspection at the Highland Town Hall, 4 Proctor Road, Eldred, NY 12732.

**Town of Lumberland**
Maps are available for inspection at the Lumberland Municipal Offices, 1054 Proctor Road, Glen Spey, NY 12737.

**Town of Rockland**
Maps are available for inspection at the Rockland Town Hall, 95 Main Street, Livingston Manor, NY 12758.

**Town of Tusten**
Maps are available for inspection at the Tusten Town Hall, 210 Bridge Street, Narrowsburg, NY 12764.

**Village of Jeffersonville**
Maps are available for inspection at the Village Hall, 17 Center Street, Jeffersonville, NY 12748.

**Richland County, Ohio, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Clear Fork Mohican River ..... | 0.72 mile above Benedict Road ..... | None | +1,062 | Unincorporated Areas of Richland County. |
| | 0.09 mile above State Route 95 ..... | None | +1,068 | |
| Clear Fork Mohican River ..... | 0.95 mile below Main Street ..... | None | +1,161 | Village of Lexington. |
| | 0.23 mile above Lexington Ontario Road ..... | None | +1,178 | |

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+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**Unincorporated Areas of Richland County**
Maps are available for inspection at 1495 West Longview Avenue, Mansfield, OH 44906.

**Village of Lexington**
Maps are available for inspection at 44 Main Street, Lexington, OH 44904.

**McCormick County, South Carolina, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Clark Hill Reservoir/Lake Thurmond. | Entire shoreline (within county) ..... | None | +339 | Unincorporated Areas of McCormick County, Town of Parksville. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **ADDRESSES** | | | | |
| **Town of Parksville** | | | | |
| Maps are available for inspection at the County Administrator's Office, 362 Airport Road, McCormick, SC 29835. | | | | |
| **Unincorporated Areas of McCormick County** | | | | |
| Maps are available for inspection at the County Administrator's Office, 362 Airport Road, McCormick, SC 29835. | | | | |
| **Polk County, Wisconsin, and Incorporated Areas** | | | | |
| Big Butternut Lake | Entire shoreline | None | +1216 | Unincorporated Areas of Polk County, Village of Luck. |
| Clam Falls Flowage | Entire shoreline | None | +1030 | Unincorporated Areas of Polk County. |
| Largon Lake | Entire shoreline | None | +1247 | Unincorporated Areas of Polk County. |
| Little Butternut Lake | Entire shoreline | None | +1210 | Unincorporated Areas of Polk County, Village of Luck. |
| Sand Lake | Entire shoreline | None | +1124 | Unincorporated Areas of Polk County. |
| White Ash Lake | Entire shoreline | None | +1123 | Unincorporated Areas of Polk County. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**ADDRESSES**

**Village of Luck**

Maps are available for inspection at 401 Main Street, Luck, WI 54853.

**Unincorporated Areas of Polk County**

Maps are available for inspection at Government Center, 100 Polk County Plaza, Balsam Lake, WI 54810.

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

**Sandra K. Knight,**

*Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010–2920 Filed 2–9–10; 8:45 am]

BILLING CODE 9110–12–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 10–141; MB Docket No. 09–179; RM–11568]**

### FM Table of Allotments, Chester, Georgia

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** The Audio Division dismisses a Petition for Rule Making filed by Georgia Eagle Broadcasting, Inc., requesting the allotment of Channel 244A at Chester, Georgia, as its first local transmission service. It is the Commission's policy to refrain from making a new allotment or reservation to a community absent an expression of interest.

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

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–179, adopted January 27, 2010, and released January 29, 2010. The full text of this Commission 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.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed).

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

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).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. For submitting comments, filers should follow the instructions provided on the website.

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

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

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

• The Commission's contractor will receive hand–delivered or messenger–delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.

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

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

People with Disabilities: To request materials in 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 & Government Affairs Bureau at 202–418–0530 (voice) , 202–418–0432 (tty).

**List of Subjects in 47 CFR Part 73**

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief,*

*Audio Division,*

*Media Bureau.*

[FR Doc. 2010–2857 Filed 2–9–10; 8:45 am]

BILLING CODE 6712–01–S

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS-R4-ES-2008-0104]**
**[MO 92210-0-0009-B4]**

**[RIN 1018-AU88]**

## Endangered and Threatened Wildlife and Plants; Listing with Designation of Critical Habitat for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period, availability of draft economic analysis, amended required determinations, and announcement of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designation of critical habitat for 3 mollusks, Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*), under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed listing and designation of critical habitat for the 3 mollusks, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule. We also announce a public hearing; the public is invited to review and comment on any of the above actions associated with the proposed listing and critical habitat designation at the public hearing or in writing.

**DATES:** *Written Comments:* We will consider public comments received or postmarked on or before March 12, 2010.

*Public Hearing:* We will hold a public hearing from 7 to 10 p.m. Central Time, on Tuesday, March 2, 2010, on the campus of Auburn University Montgomery, 7440 East Drive, Montgomery, Alabama, at the Taylor Center in conference room 223.

Maps of the critical habitat units and information on the species will be available for public review at the hearing location for 1 hour prior to the public hearing (6 to 7 p.m.).

**ADDRESSES:** *Written Comments:* You may submit comments by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS-R4-ES-2008-0104.

• *U.S. mail or hand-delivery:* Public Comments Processing, **Attn: FWS-R4-ES-2008-0104**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

*Public Hearing:* We will hold the public hearing on March 2, 2010 at 7 p.m. Central Time, at the campus of Auburn University Montgomery, Taylor Center-conference room 223, 7440 East Drive, Montgomery, Alabama. We will post all comments and the public hearing transcript on *http://www.regulations.gov.* This generally means that we will post any personal

information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Stephen Ricks, Field Supervisor, Mississippi Fish and Wildlife Office at 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601-321-1122); or by facsimile (601-965-4340). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

## Public Comments

We will accept written comments and information during this reopened comment period on the proposed listing and designation of critical habitat for Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail that was published in the **Federal Register** on June 29, 2009 (74 FR 31114), the DEA of the proposed designation of critical habitat for Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail, and the amended required determinations provided in this rule. Verbal testimony or written comments may also be presented during the public hearing (see the **Public Hearing** section below for more information). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate areas as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail habitat;
- What areas containing features essential to the conservation of the species should be included in the designation and why;
- Special management considerations or protections for the features essential to Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail conservation that have been identified in the proposed rule may need, including managing for the potential effects of climate change; and
- What areas not currently occupied by the 3 species are essential to the conservation of the species and why.

(3) Specific information on Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail and the habitat components (physical and biological features) essential to the conservation of these species.

(4) Any information on the biological or ecological requirements of these species.

(5) Land-use designations and current or planned activities in areas occupied by the species, and their possible impacts on the species and the proposed critical habitat.

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities and the benefits of including or excluding areas that are subject to these impacts.

(7) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation.

(8) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

You may submit your comments and materials concerning this proposed rule or DEA by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including your personal identifying information—will be posted on the website. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, 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. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used in preparing this proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number **FWS-R4-ES-2008-0104**, or by mail from the Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

## Public Hearing

We are holding a public hearing on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section. We are holding this public hearing to provide interested parties an opportunity to provide verbal testimony (formal, oral comments) or written comments regarding the proposed critical habitat designation, the associated DEA, and the amended required determinations section. An informational session will be held on the day of the hearing from 6:00 p.m. to 7:00 p.m. Central Time. During this session, Service biologists will be available to provide information and address questions on the proposed rule in advance of the formal hearing.

People needing reasonable accommodations in order to attend and participate in the public hearings should contact Stephen Ricks, Mississippi Fish and Wildlife Office, at 601-321-1122, as soon as possible (see **FOR FURTHER INFORMATION CONTACT** section). In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date. Information regarding this notice is available in alternative formats upon request.

## Background

We proposed to list the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*), as endangered species, with critical habitat under the Act, on June 29, 2009 (74 FR 31114).

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are endemic to the Coosa River drainage within the Mobile River Basin of Alabama, Tennessee, and Georgia. These 3 species have disappeared from large portions of their natural ranges due to the construction of dams that eliminated or reduced water currents and caused changes in habitat and water quality. The surviving populations are small, localized, and highly vulnerable to water quality and habitat deterioration.

We proposed to designate critical habitat concurrently with listing for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail under the Act. In total, approximately 258 kilometers

(km) (160 miles (mi)) of stream and river channels fall within the boundaries of the proposed critical habitat designation for the 3 species: 153 km (95 mi) for the Georgia pigtoe, 101 km (63 mi) for the interrupted rocksnail, and 28 km (17 mi) for the rough hornsnail. The proposed critical habitat is located in Cherokee, Clay, Coosa, Elmore and Shelby Counties, Alabama; Gordon, Floyd, Murray, and Whitfield Counties, Georgia; and Bradley and Polk Counties, Tennessee.

Section 3 of the Act defines critical habitat as 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 essential to the conservation of the species and that may require special management considerations or protection, and 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat are required to consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

**Draft Economic Analysis**

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the 3 mollusks. The DEA quantifies the economic impacts of all potential conservation efforts for the 3 mollusks, some of which will likely be incurred whether or not we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the species over the next 30 years, which we determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 30–year timeframe. The DEA estimates the baseline costs associated with potential future conservation efforts for the 3 mollusks to be $8.89 million to $9.16 million annually, assuming a seven percent discount rate. Ninety-six percent of baseline costs quantified in this analysis are conservation efforts related to lost hydropower production value at 3 facilities. The remaining four percent of potential post-designation baseline costs are related to transportation activities, water quality management activities, and National Forest management activities. The DEA anticipates that incremental costs associated with this rulemaking will be administrative in nature because the consideration of adverse modification for the 3 mollusks is not expected to result in significant additional conservation efforts and measures for the mollusks above the consideration of jeopardy in occupied habitat. Additionally, designated critical habitat for 11 other mussels with similar primary constituent elements and threats as the 3 mollusks overlap with all but 5 river miles of the proposed critical habitat for these 3 mussel species. Therefore, activities that are already considered and planned for the 11 other mussels are considered in the baseline cost verses the incremental cost of this proposed designation. As a result, the total incremental costs associated with this rule are estimated to be $354,000 over 30 years, or $43,000 annually, discounted at seven percent.

**Required Determinations—Amended**

In our June 29, 2009, proposed rule (74 FR 31114), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making this determination. In this document, we affirm the information in our proposed rule concerning: Executive Order (E.O.) 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, the National Environmental Policy Act, the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 12866 (*Regulatory Planning and Review*), E.O. 13211 (Energy Supply, Distribution, and Use), E.O. 12630 (Takings), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule

would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*) would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed listing rule and critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where the 3 mollusks are present, Federal agencies will also be required to consult with us under section 7 of the Act, due to the endangered status of the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the same consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*). Based on that analysis, impacts on small entities due to this rule are expected to be modest because the incremental costs of the rule are estimated to be administrative in nature. The only incremental impacts associated with this rulemaking are administrative costs of consultation under section 7 of the Act. The administrative costs described in Appendix B of the DEA are predominantly associated with water management, water quality, National Forest, and construction. The following percentages are estimated annualized incremental impacts by activities discounted at 7 percent: 42 percent transportation construction, 33 percent water quality, 18 percent national forest activities, and 7 percent water management. Tribal lands are not expected to be affected by the designation. Incremental costs to all parties are not expected to exceed $43,600 annualized (discounted at seven percent). Third parties (some of which may be small entities) would bear significantly less than this total—approximately $5,060 annualized, or less than 1 percent impact for all sectors. These potential impacts may result from consultations on changes in water management, actions that affect water quality, dredging activities, or other activities in the region. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

## Author

The primary author of this document is the staff of the Mississippi Fish and Wildlife Office (see **ADDRESSES** section).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 25, 2010

**Thomas L. Strickland**

*Assistant Secretary for Fish and Wildlife and Parks*

[FR Doc. 2010–2870 Filed 2–9–10; 8:45 am]

**BILLING CODE 4310–55–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 223 and 224

**[Docket No. 0911231415–0052–01]**

**RIN 0648–XT12**

## Endangered and Threatened Wildlife; Notice of 90–Day Finding on a Petition to List 83 Species of Corals as Threatened or Endangered Under the Endangered Species Act (ESA)

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

**ACTION:** 90–day petition finding; request for information.

**SUMMARY:** We (NMFS) announce a 90–day finding on a petition to list 83 species of corals as threatened or endangered under the ESA. We find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted for 82 species; we find that the petition fails to present substantial scientific or commercial information indicating that the petitioned action may be warranted for *Oculina varicosa*. Therefore, we initiate status reviews of 82 species of corals to determine if listing under the ESA is warranted. To ensure these status reviews are comprehensive, we solicit scientific and commercial information regarding these coral species.

**DATES:** Information and comments must be submitted to NMFS by April 12, 2010.

**ADDRESSES:** You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN),

0648-XT12, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*

Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814 (for species occurring in the Pacific Ocean); or Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701 (for species occurring in the Atlantic Ocean).

Facsimile (fax): (907) 586–7012 (for species occurring in the Pacific Ocean); (727) 824–5309 (for species occurring in the Atlantic Ocean).

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain a copy of this coral petition from the above addresses or online from the NMFS HQ website: *http://www.nmfs.noaa.gov/pr/species/invertebrates/.*

**FOR FURTHER INFORMATION CONTACT:** Lance Smith, NMFS Pacific Islands Region, (808) 944–2258; Jennifer Moore, NMFS Southeast Region, (727) 824–5312; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 20, 2009, we received a petition from the Center for Biological Diversity to list 83 species of coral as threatened or endangered under the ESA. The petitioner also requested that critical habitat be designated for these corals concurrent with listing under the ESA. The petition asserts that synergistic threats of ocean warming, ocean acidification, and other impacts affect these species, stating that immediate action is needed to reduce greenhouse gas concentrations to levels that do not jeopardize these species. The petition also asserts that the species are being affected by dredging, coastal development, coastal point source pollution, agricultural and land use practices, disease, predation, reef fishing, aquarium trade, physical damage from boats and anchors, marine debris, and aquatic invasive species. The petition briefly summarizes the description, taxonomy, natural history, distribution, and status for each petitioned species, and discusses the status of each oceanic basin's coral reefs. It also describes current and future threats that the petitioners assert are affecting or will affect these species.

The 83 species included in the petition are: *Acanthastrea brevis*, *Acanthastrea hemprichii*, *Acanthastrea ishigakiensis*, *Acanthastrea regularis*, *Acropora aculeus*, *Acropora acuminate*, *Acropora aspera*, *Acropora dendrum*, *Acropora donei*, *Acropora globiceps*, *Acropora horrida*, *Acropora jacquelineae*, *Acropora listeri*, *Acropora lokani*, *Acropora microclados*, *Acropora palmerae*, *Acropora paniculata*, *Acropora pharaonis*, *Acropora polystoma*, *Acropora retusa*, *Acropora rudis*, *Acropora speciosa*, *Acropora striata*, *Acropora tenella*, *Acropora vaughani*, *Acropora verweyi*, *Agaricia lamarcki*, *Alveopora allingi*, *Alveopora fenestrate*, *Alveopora verrilliana*, *Anacropora puertogalerae*, *Anacropora spinosa*, *Astreopora cucullata*, *Barabattoia laddi*, *Caulastrea echinulata*, *Cyphastrea agassizi*, *Cyphastrea ocellina*, *Dendrogyra cylindrus*, *Dichocoenia stokesii*, *Euphyllia cristata*, *Euphyllia paraancora*, *Euphyllia paradivisa*, *Galaxea astreata*, *Heliopora coerulea*, *Isopora crateriformis*, *Isopora cuneata*, *Leptoseris incrustans*, *Leptoseris yabei*, *Millepora foveolata*, *Millepora tuberosa*, *Montastraea annularis*, *Montastraea faveolata*, *Montastraea franksi*, *Montipora angulata*, *Montipora australiensis*, *Montipora calcarea*, *Montipora caliculata*, *Montipora dilatata*, *Montipora flabellata*, *Montipora lobulata*, *Montipora patula*, *Mycetophyllia ferox*, *Oculina varicosa*, *Pachyseris rugosa*, *Pavona bipartite*, *Pavona cactus*, *Pavona decussate*, *Pavona diffluens*, *Pavona venosa*, *Pectinia alcicornis*, *Physogyra lichtensteini*, *Pocillopora danae*, *Pocillopora elegans*, *Porites horizontalata*, *Porites napopora*, *Porites nigrescens*, *Porites pukoensis*, *Psammocora stellata*, *Seriatopora aculeata*, *Turbinaria mesenterina*, *Turbinaria peltata*, *Turbinaria reniformis*, and *Turbinaria stellula*. Eight of the petitioned species are in the Caribbean and belong to the following families: Agaricidae (1); Faviidae (3); Meandrinidae (2); Mussidae (1); Oculinidae (1). Seventy-five of the petitioned species are in the Indo-Pacific region, represented by five families (nine species) in Hawaii: Acroporidae (4); Agaricidae (1); Poritidae (1); Faviidae (2); Siderastreidae (1); and 11 families and one order in the rest of the Indo-Pacific region: Acroporidae (31); Agaricidae (7); Poritidae (6); Faviidae (2); Dendrophylliidae (4); Euphyllidae (4); Oculinidae (1); Pectiniidae (1); Mussidae (4); Pocilloporidae (3); Milleporidae (2); Order Helioporacea (1). All 83 species can be found in the United States, its territories (Puerto Rico, U.S. Virgin Islands, Navassa, Northern Mariana Islands, Guam, American Samoa, Pacific Remote Island Areas), or its freely associated states (Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau), though many occur more frequently in other countries.

The petition states that all of these species are classified as vulnerable (76 species), endangered (six species: *Acropora rudis*, *Anacropora spinosa*, *Montipora dilatata*, *Montastraea annularis*, *M. faveolata*, *Millepora tuberosa*), or critically endangered (one species: *Porites pukoensis*) by the World Conservation Union (IUCN). *Montipora dilatata* and *Oculina varicosa* are also on our Species of Concern list.

## ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (16 U.S.C. 1533(b)(3)(A)). Joint ESA-implementing regulations issued by NMFS and the U.S. Fish and Wildlife Service (FWS) (50 CFR 424.14(b)) define "substantial information" in this context as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.

In making a finding on a petition to list a species, the Secretary must consider whether the petition: (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved

and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. When it is found that substantial information indicating that the petitioned action may be warranted is presented in the petition, we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12–month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90–day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, a distinct population segment which interbreeds when mature (DPS) (16 U.S.C. 1532(16)). Because corals are invertebrate species, we are limited to assessing the status of species or subspecies of corals. A species or subspecies is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)).

**Biology of Coral Species**

Stony corals (Class Anthozoa, Order Scleractinia) are marine invertebrates that secrete a calcium carbonate skeleton. Stony corals can be hermatypic (significant contributors to the reef-building process) or ahermatypic, and may or may not contain endosymbiotic algae (zooxanthellae) (Schumacher and Zibrowius, 1985). The largest colonial members of the Scleractinia help produce the carbonate structures known as coral reefs in shallow tropical and subtropical seas around the world. The rapid calcification rates of these organisms have been linked to the mutualistic association with single-celled dinoflagellate algae, zooxanthellae, found in the coral tissues (Goreau *et al.*, 1979). Massive and branching stony corals are the major framework builders of shallow tropical reefs. Some stony corals occur in deep water and are azooxanthellate, but typically do not form extensive reefs, with few exceptions (e.g., *Oculina varicosa*; Reed, 1981). Corals provide substrate for colonization by benthic organisms, construct complex protective habitats for myriad other species, including commercially important invertebrates and fishes, and serve as food resources for a variety of animals.

**Analysis of Petition**

Of the 83 petitioned species, eight species occur in the U.S. waters of the Caribbean, and 75 occur in the U.S. waters of the Indo-Pacific. The petition includes species accounts (i.e., description of the species' morphology, life history, habitat, distribution, and loss estimates over 30 years (20 years into the past and 10 years into the future)) of each of the 83 species, threats facing each species, and descriptions of the status of coral reef ecosystems of the wider Caribbean and Indo-Pacific areas. The petition asserts that all of the petitioned species have suffered population reductions of at least 30 percent over a 30–year period, relying on information from the IUCN.

The majority of coral species included in this petition belongs to either the wider Caribbean or Indo-Pacific areas and occur in similar habitats and face the same threats. Eight of the petitioned species occur in the Caribbean, and 75 in the Indo-Pacific.

The Caribbean, according to the petitioner, has the largest proportion of corals classified as being in one of the high extinction risk categories by the IUCN. The petitioner asserts that the region suffered massive losses of corals in response to climate-related events of 2005, including a record-breaking series of 26 tropical storms and elevated ocean water temperatures. Further, the petitioner asserts that the U.S. Virgin Islands lost 51.5 percent of live coral cover, and that Florida, Puerto Rico, the Cayman Islands, St. Maarten, Saba, St. Eustatius, Guadeloupe, Martinique, St. Barthelemy, Barbados, Jamaica, and Cuba suffered bleaching of over 50 percent of coral colonies, citing Carpenter *et al.* (2008). The petitioner cites Gardner *et al.* (2003) in asserting that, over the three decades prior to the 2005 events, Caribbean reefs had already suffered an 80 percent decline in hard coral cover, from an average of 50 percent to an average of 10 percent throughout the region.

The abundance and trend information presented by the petitioner for each species is limited to an estimate of the percentage loss of its habitat and/or population over a 30–year period (including 20 years into the past and 10 years into the future), as assessed by the IUCN. However, the petition also asserts that these corals face significant threats. To support this assertion, the petitioner cites Alvarez-Filip *et al.* (2009) in noting the dramatic decline of the three-dimensional complexity of Caribbean reefs over the past 40 years, resulting in a phase shift from a coral-dominated ecosystem to fleshy macroalgal overgrowth in reef systems across the Caribbean. The petitioner notes that, in our 2008 critical habitat designation for elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals, we identified chronic overfishing of herbivorous species and the die-off of 95 percent of the regions' long-spined sea urchins (*Diadema antillarum*) in the early 1980s as primary factors in this ecological shift (73 FR 72210; November 26, 2008). The petitioner cites the same source in concluding that, in the absence of grazing pressure from herbivorous fish and urchins, fast-growing algae, macroalgae, and other epibenthic organisms easily out-compete coral larvae by preempting available space, producing toxic metabolites that inhibit larval settlement, and trapping excess sediment in algal turfs. The petitioner cites Gledhill *et al.* (2008) in asserting that ocean acidification led to a decrease in mean sea surface aragonite saturation state in the Greater Caribbean Region between 1996 and 2006. The petitioner states that Hoegh-Guldberg *et al.* (2007) found marked reductions in resilience accompanied by increased grazing requirements to facilitate reef recovery after modeling the impacts of a 20 percent decline in coral growth rate in response to ocean acidification on a Caribbean forereef.

Seventy-five percent of the world's coral reefs can be found in the Indo-Pacific, which stretches from the Indonesian island of Sumatra in the west to French Polynesia in the east (Bruno and Selig (2007), as cited by the petitioner). As recently as 1,000 to 100 years ago, this region averaged about 50 percent coral cover, but 20–50 percent of that total has been lost, according to the petitioner. The petitioner cites Bruno and Selig (2007), stating that regional total coral cover averaged 42.5 percent during the early 1980s, 36.1

percent in 1995, and 22.1 percent in 2003. The petitioner asserts, citing Bruno and Selig (2007), that this reduced coral cover was relatively consistent across 10 subregions of the Indo-Pacific in 2002–2003. Although these corals have recovered in the past (Colgan, 1987, as cited by the petitioner), anthropogenic stressors are increasing the frequency and intensity of mortality events and interfering with the natural ability of coral communities to recover (McClanahan *et al.*, 2004; Pandolfi *et al.*, 2003, as cited by the petitioner). The future of Indian Ocean reefs is a particular concern to the petitioner because over 90 percent of corals on many shallow water reefs died in 1998 in response to elevated sea surface temperatures, and average temperatures in the Indian Ocean are expected to rise above 1998 levels within a few decades (Sheppard, 2003, as cited by the petitioner). As elevated sea surface temperatures and associated climate-induced mass mortality events occur more frequently, it becomes less likely that there will be enough time between events for Indian Ocean reefs to recover (Sheppard, 2003, as cited by the petitioner).

The ESA requires us to determine whether species are threatened or endangered because of any of the following section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1)). The petition describes factors which it asserts have led to the current status of these corals, as well as threats which it asserts the species currently face, categorizing them under the section 4(a)(1) factors. The petition focuses on habitat threats, asserting that the habitat of the petitioned coral species, and indeed all reef-building coral species, is under threat from several processes linked to anthropogenic greenhouse gas emissions, including increasing seawater temperatures, increasing ocean acidification, increasing storm intensities, changes in precipitation, and sea-level rise. The petition also asserts that these global habitat threats are exacerbated by local habitat threats posed by ship traffic, dredging, coastal development, pollution, and agricultural and land use practices that increase sedimentation and nutrient-loading. The petition asserts that this combination of habitat threats has already impacted coral reef ecosystems on a global scale, and that these threats are currently accelerating in severity such that the quantity and quality of coral reef ecosystems are likely to be greatly reduced in the next few decades.

**Petition Finding**

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on that literature and information, we find that the petition meets the aforementioned requirements of the ESA regulations under 50 CFR 424.14(b)(2) for most of the species which are the subject of the petition. Specifically, we determine that the petition presents substantial information indicating that the requested listing actions may be warranted for 82 of the 83 subject species. As required by 50 CFR 424.14(b)(2), for the 82 species, the petition:

(1) clearly indicates the administrative measure recommended (listing as threatened or endangered) and gives the scientific and any common names of the species involved;

(2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(3) provides information regarding the status of the species over all or a significant portion of its range; and

(4) is accompanied by the appropriate supporting documentation for 82 of the 83 species in the form of bibliographic references and maps.

Further, it is reasonable to conclude, after reviewing the information presented in this petition, that these species may be threatened or endangered. A population decline of at least 30 percent throughout the Caribbean and Indo-Pacific regions, combined with large-scale threats of increased abundance of macroalgae (which compete for available space, produce toxins that inhibit larval settlement, and trap excess sediment), ocean acidification, decreased resilience of corals, and elevated sea surface temperatures (which cause mass mortalities of corals), could cause coral populations to collapse and make it difficult for them to recover.

However, we have determined that the petition does not present substantial scientific or commercial information that the petitioned action may be warranted as to *Oculina varicosa*. The petition cited only three references in the section addressing *O. varicosa*. The petition relied on the Species Account from the IUCN Redlist of Threatened Species for information on the population status and threats regarding this species. Read as a whole, however, the IUCN Species Account presents conflicting information and does not ultimately support the petition, as is discussed further below. The other two references included a general corals text describing morphology and habitat and a NMFS' Species of Concern fact sheet for *O. varicosa*, dated November 2007, which is also discussed further below.

The IUCN Species Account presents conflicting information on the threats affecting *O. varicosa* and ultimately does not support the petition. The Species Account states that deep-water populations off the coast of Florida to North Carolina (Oculina Banks) have undergone declines exceeding 50 percent since the 1970s due to destructive fishing practices, but also recognizes that there is no evidence of extensive declines beyond those areas or throughout the species' entire range, which includes shallow-water populations and deeper populations in the Gulf of Mexico in addition to the populations where declines have been observed (Aronson *et al.*, 2008). The IUCN Species Account also states that the species is "relatively common" throughout its range, but also states that there is "no species specific population information available" (Aronson *et al.*, 2008). Also, while many of the IUCN Species Accounts for species of corals that are found in other shallow tropical waters infer population information from habitat decline (a practice that is reasonable for species that actually occur within the declining habitat), the *O. varicosa* Species Account attempts to draw inappropriate inferences on this point. In particular, the Species Account infers that the shallow-water populations of *O. varicosa* have undergone population declines as a result of the threats that are affecting those other shallow-water coral reefs, even though the species does not occur in the same habitats as those other shallow-water tropical coral species. Similarly, while the IUCN Species Account states clearly that *O. varicosa* is not affected by disease and bleaching, it also appears to rely on the fact that the main threat to reefs is global climate change (in particular, temperature extremes leading to bleaching and increased susceptibility to disease). However, the only threat identified in the Species Account to actually affect *O. varicosa* is destructive fishing practices. NMFS identified *O. varicosa* as a Species of Concern in 1991 based on the documented declines of the species in

the deep-water Oculina Banks, off the Southeast United States (NMFS, 2007). A Species of Concern is defined as "species about which [NMFS] has some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA" (71 FR 61022; October 17, 2006). We maintain a fact sheet on our website for each Species of Concern, and these sheets are updated periodically. The *O. varicosa* fact sheet was updated, most recently on November 1, 2007 (*http://www.nmfs.noaa.gov/pr/pdfs/species/ivorytreecoral_detailed.pdf*).

The petition presents no new information to indicate that *O. varicosa* meets the definition of endangered or threatened or that better information has become available since we last updated the fact sheet. While we acknowledge that the largest known population of *O. varicosa*, in the Oculina Banks, has undergone extensive decline compared to 1970's levels (as the IUCN Species Account notes), we also note that this area has been protected as the Oculina Habitat Area of Particular Concern since 1984, prohibiting trawling, dredging, bottom longlines, and anchoring (NMFS, 2007). These are the only documented threats to *O. varicosa*; there are no known threats to the shallow-water populations. *Id.* While destructive fishing practices have resulted in a 50% decline in the deep-water populations, this threat has not been shown to affect the shallow-water populations throughout the species' range. Therefore, it is inappropriate to extrapolate the decline in the deep-water populations to a 30% decline throughout the species' range.

Viewing all the information cited by the petitioner in its entirety, we conclude that the petition fails to present substantial scientific or commercial information to suggest that the petitioned action may be warranted for *O. varicosa*. In particular, we note the species' wide distribution, the lack of rangewide declines, and the existing protections for the deep-water populations, alleviating our concerns stemming from the declines that occurred following the 1970s.

## Information Solicited

### *Information on Status of the Species*

As a result of this finding, we are commencing status reviews on all of the petitioned species (except *O. varicosa*) to determine whether listing any of these coral species under the ESA is in fact warranted. We intend that any final action resulting from these reviews be as accurate and as effective as possible, and consider the best available scientific and commercial information. Therefore, we open a 60–day public comment period to solicit information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of these 82 coral species throughout their range, including:

(1) Historical and current distribution and abundance of these species throughout their ranges (U.S. and foreign waters);

(2) historic and current condition of these species and their habitat;

(3) population density and trends;

(4) the effects of climate change on the distribution and condition of these coral species and other organisms in coral reef ecosystems over the short- and long-term;

(5) the effects of other threats including dredging, coastal development, coastal point source pollution, agricultural and land use practices, disease, predation, reef fishing, aquarium trade, physical damage from boats and anchors, marine debris, and aquatic invasive species on the distribution and abundance of these coral species over the short- and long-term; and

(6) management programs for conservation of these coral species, including mitigation measures related to any of the threats listed under (5) above.

We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

### *Information Regarding Protective Efforts*

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of a species and after taking into account efforts being made to protect the species (16 U.S.C. 1533(b)(1)(A)). Therefore, in making its listing determinations, we first assess the status of the species and identify factors that have led to its current status. We then assess conservation measures to determine whether they ameliorate a species' extinction risk (50 CFR 424.11(f)). In judging the efficacy of conservation efforts, we consider the following: the substantive, protective, and conservation elements of such efforts; the degree of certainty that such efforts will reliably be implemented; the degree of certainty that such efforts will be effective in furthering the conservation of the species; and the presence of monitoring provisions to determine effectiveness of recovery efforts and that permit adaptive management (Policy on the Evaluation of Conservation Efforts; 68 FR 15100; March 28, 2003). In some cases, conservation efforts may be relatively new or may not have had sufficient time to demonstrate their biological benefit. In such cases, provision of adequate monitoring and funding for conservation efforts is essential to ensure that the intended conservation benefits will be realized. We encourage all parties to submit information on ongoing efforts to protect and conserve any of these 82 coral species, as well as information on recently implemented or planned activities and their likely impact(s).

### *Information Regarding Potential Critical Habitat*

Critical habitat is defined in section 3(5) of the ESA as: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)). Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that they do not fund, authorize or carry out any actions that are likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

Section 4(a)(3)(A)(i) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species(16 U.S.C. 1533(a)(3)(A)(i)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). In advance of any determination to propose listing any of the petitioned coral species as threatened or endangered under the ESA, we solicit information that would assist us in developing a critical habitat proposal.

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat (50 CFR 424.12(b)) state that the agency

"shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection." Pursuant to the regulations, such requirements include, but are not limited to the following: (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, rearing of offspring, germination, or seed dispersal; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. *Id.*

Section 4(b)(2) of the ESA requires the Secretary to consider the "economic impact, impact on national security, and any other relevant impact" of designating a particular area as critical habitat (16 U.S.C. 1533(b)(2)). Section 4(b)(2) further authorizes the Secretary to exclude any area from a critical habitat designation if the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. *Id.* We seek information regarding the benefits of designating specific areas geographically throughout the range of these coral species as critical habitat. We also seek information on the economic impact of designating particular areas as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000, 2003), we seek information that would allow the monetization of these effects to the extent possible, as well as information on qualitative impacts to economic values. We also seek information on impacts to national security and any other relevant impacts of designating critical habitat in these areas.

In accordance with our regulations (50 CFR 424.13) we will consult, as appropriate, with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties.

## Peer Review

On July 1, 1994, NMFS, jointly with the FWS, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all "influential scientific information" and "highly influential scientific information" disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered "influential scientific information," we solicit the names of recognized experts in the field that could take part in the peer review process for this status review (see ADDRESSES). Independent peer reviewers will 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:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 4, 2010.

**Samuel D. Rauch III,**

*Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2010–2939 Filed 2–9–10; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 75, No. 27

Wednesday, February 10, 2010

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 4, 2010.

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

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

**Farm Service Agency**

*Title:* Agricultural Foreign Investment Disclosure Act Report.

*OMB Control Number:* 0560–0097.

*Summary of Collection:* The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) requires foreign investors to report in a timely manner all held, acquired, or transferred U.S. agricultural land to the U.S. Department of Agriculture (USDA) . Authority for the collection of the information was delegated by the Secretary of Agriculture to the Farm Service Agency (FSA). Foreign investors may obtain form FSA–153, AFIDA Report, from their local FSA county office or from the FSA Internet site. Investors are required to file a report within 90 days of the acquisition, transfer, or change in the use of their land.

*Need and Use of the Information:* The information collected from the AFIDA Reports is used to monitor the effect of foreign investment upon family farms and rural communities and in the preparation of a voluntary report to Congress and the President. Congress reviews the report and decides if regulatory action is necessary to limit the amount of foreign investment in U.S. agricultural land. If this information was not collected, USDA could not effectively monitor foreign investment and the impact of such holdings upon family farms and rural communities.

*Description of Respondents:* Business or other for-profit; Individuals or households; Farms.

*Number of Respondents:* 5,525.

*Frequency of Responses: Reporting:* On occasion.

*Total Burden Hours:* 2,631.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2010–2871 Filed 2–9–10; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### The U.S. Department of Agriculture (USDA) Proposes to Revise Three of Its Privacy Act Systems of Records

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** The U.S. Department of Agriculture (USDA) proposes to revise three of its Privacy Act systems of records.

**DATES:** *Effective Date:* This notice will be adopted without further publication in the **Federal Register** on April 12, 2010 unless modified by a subsequent notice to incorporate comments received from the public. While the Privacy Act requires an agency to solicit comments only on the routine uses of a system, USDA invites comments on all portions of this notice. Comments must be received by the contact person listed below on or before March 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jerry A. Chenault, Program Manager, Associate Chief Financial Officer for Financial Systems, 1400 Independence Avenue, SW., Room 3021A South Building, Washington, DC, 20250; telephone (202) 720–5957; electronic mail *jerry.chenault@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Currently, there are three separate System of Records Notices for the systems that encompass the Office of the Chief Financial Officer (OCFO) Financial Management Suite. The Financial Management Suite allows OCFO to process financial transactions electronically.

This new System of Records Notice consolidates and replaces the information contained in the three existing System of Records Notices. This notice also updates the information collected and lists routine uses required by OCFO to execute its function.

The systems affected by this Corporate Financial Management Systems suite are: USDA/OCFO—3, Billings and Collections Systems; USDA/OFM—4, Travel and Transportation System; and USDA/OFM—7, SF–1099 Reporting System. The purpose of the proposed revision is to replace the three named systems.

The OCFO restructured its Privacy Act system notices in order to address information contained in the systems more logically from a functional

perspective. The Financial Systems, which will encompass all of the current electronic applications that OCFO uses, would be represented in a single System of Records Notice.

Financial Systems consist of the electronic information technology systems that contain information concerning individuals and businesses that receive payments for providing goods and services to USDA. This proposed notice covers: (1) Individuals who have funds advanced to them for USDA official travel use, approving officials, and individuals who perform official USDA travel and are reimbursed with Government funds; (2) Individuals who receive payments in the form of rents, royalties, prizes, or awards; (3) Individuals who receive payments for non-personal service contracts, commissions, or compensation for services, which are subject to Form 1099 reporting requirements are included in the suite of systems; (4) USDA employees who have been issued a Government purchase card, Government fleet card or a Government travel card; and (5) Employee information necessary to record employee salary disbursements in the financial system that is essential for Internal Revenue Service income tax reporting. The employee records are also used to pay employees for travel reimbursement and any other miscellaneous payments due to the employee.

USDA determined that a consolidation of the multiple financial systems is the most efficient, logical, taxpayer-friendly, and user-friendly method of complying with the publication requirements of the Privacy Act. The subject records reflect a common purpose, common functions, and common user community. USDA hereby deletes the following systems of records: USDA/OCFO—3, Billings and Collections Systems; USDA/OFM—4, Travel and Transportation System; and USDA/OFM—7, Form 1099 Reporting System. A report on the new system of records, required by 5 U.S.C. 552a (r) as implemented by the Office of Management and Budget (OMB) Circular A–130, Management of Federal Information Resources was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Government Reform and Oversight, U.S. House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, OMB.

Dated: February 3, 2010.

**Thomas J. Vilsack,**

*Secretary.*

## Financial Systems, USDA/OCFO—10 System of Records

### SYSTEM NAME:

Financial Systems

### SECURITY CLASSIFICATION:

Unclassified

### SYSTEM LOCATION:

The systems are operated from USDA headquarters located at 1400 Independence Avenue, SW., Washington, DC 20250, with other operational locations within the continental United States.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Financial Systems contain information about individuals and businesses that receive payments for providing goods and services to the USDA. Individuals who have funds advanced to them for official travel use, approving officials, and individuals who perform official USDA travel and are reimbursed with Government funds are included in this system, as well as individuals (excluding USDA employees) who receive payments in the form of rents, royalties, prizes, or awards, individuals (excluding USDA employees) who receive payments for non-personal service contracts, commissions, or compensation for services that are subject to Form 1099 reporting requirements, and USDA employees who have been issued a purchase card, fleet card or travel card are included in the system. Employee information contained in the Financial Systems is used to record the financial impact of employee salary disbursements in the financial system and for Internal Revenue Service income tax reporting. In addition, the employee records are used to pay employees for travel reimbursement and any other miscellaneous payments due to the employee.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The Financial Systems establish several databases containing the individual's and business' name, address, Social Security number (SSN) (or employer identification number), ZIP code, amount of payment, and other information necessary to accurately identify covered payment transactions.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chief Financial Officers (CFO) Act of 1990.

### PURPOSE(S):

The records in this system are used to record the financial transactions of the USDA and provide payments to businesses that provide goods and services to the USDA and payments to employees.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

2. Referral to the Department of Justice (DOJ) when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the DOJ is a use of the information that is compatible with the purpose for which the records were collected.

3. Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation, or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the DOJ is a use of the information that is compatible with the

purpose for which the records were collected.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

5. Information from this system of records will be forwarded to the Internal Revenue Service for income tax purposes.

6. Release of information to other USDA agencies may be made for internal processing purposes.

7. Information will be reviewed during inquiry into payments to be made by the USDA to its employees.

8. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons as reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

9. USDA will disclose information about individuals from the system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101, *et seq.*); section 204 of the E–Government Act of 2002 (Pub. L. 107–347; 44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403 *et seq.*), or similar statutes requiring agencies to make public information concerning Federal financial assistance, including grants, sub-grants, loan awards, cooperative agreements, and other financial assistance; and contracts, purchase orders, task orders, and delivery orders.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored and maintained electronically on USDA-owned mainframes, servers, tapes, disks, and in file folders at USDA offices.

**RETRIEVABILITY:**

Records in the system are retrieved by SSNs or by employee identification numbers.

**SAFEGUARDS:**

Magnetic tape files and disk files are kept in a locked computer room and tape library, which can be accessed by authorized personnel only. File folders are maintained in a secured area and access is only permitted to authorized personnel. On-line access by USDA personnel is password protected. Data that is transmitted electronically is encrypted. There are Memoranda of Understanding and Interconnectivity Security Agreements to govern the transmission of Financial Systems data. There are Service Level Agreements with data centers that provide computing services for the Financial Systems. Contracts contain specific language for contractors to protect private information and follow USDA privacy policy.

**RETENTION AND DISPOSAL:**

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with the appropriate retention schedules.

**SYSTEM MANAGER(S) AND ADDRESS:**

USDA, Office of the Chief Financial Officer/Associate Chief Financial Officer for Financial Systems, 1400 Independence Avenue, SW., Room 3037 South Building, Washington, DC 20250.

**NOTIFICATION PROCEDURE:**

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Office of the Chief Financial Officer, Washington, DC office. The request for information should contain the individual's name, SSN or tax identification number (TIN) and address. Before information of any record is released, the system manager may require the individual to provide proof of identity or require the requester to furnish authorization from the individual to permit release of information.

**RECORD ACCESS PROCEDURES:**

An individual my obtain information as to the procedures for gaining access to a record in the system, which pertains to such individual, by submitting a request to the Privacy Act Officer, 1400 Independence Avenue, SW., South Building, Washington, DC 20250. The envelope and letters should be marked "Privacy Act Request." A request for information should contain name, address, and name of system of records, year of records in question, and any other pertinent information to help identify the file.

**CONTESTING RECORD PROCEDURES:**

Procedures for contesting records are the same as procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

**RECORD SOURCE CATEGORIES:**

Records are loaded from the USDA payroll system to create records of USDA employees. Vendors who do business with the USDA submit their information into the Central Contractor Registration, which is subsequently loaded into the Financial Systems. This information includes but is not limited to SSN, TIN, name, address, and bank electronic funds transfer information. Records are also directly loaded on-line into the Financial Systems by agency personnel.

[FR Doc. 2010–2969 Filed 2–9–10; 8:45 am]

**BILLING CODE 3410–90–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS-2010-0006]**

### Notice of Request for Extension of Approval of an Information Collection; Commercial Transportation of Equines for Slaughter

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the commercial transportation of equines to slaughtering facilities.

**DATES:** We will consider all comments that we receive on or before April 12, 2010.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-*

*2010-0006*) to submit or view comments and to view supporting and related materials available electronically.

● Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2010-0006, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0006.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

**FOR FURTHER INFORMATION CONTACT:** For information on regulations for the commercial transportation of equines to slaughtering facilities, contact Mr. Joseph Astling, Compliance Specialist, Animal and Plant Health Inspection Service, 4700 River Road Unit 33, Riverdale, MD 20737; (817) 247-3704. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

**SUPPLEMENTARY INFORMATION:**

*Title:* Commercial Transportation of Equines for Slaughter.

*OMB Number:* 0579-0160.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Federal Agriculture Improvement and Reform Act of 1996 ("the Farm Bill"), Congress gave responsibility to the Secretary of Agriculture to regulate the commercial transportation within the United States of equines for slaughter. Sections 901-905 of the Farm Bill (7 U.S.C. 1901 note) authorized the Secretary to issue guidelines for the regulation of commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. As a result of that authority, the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, established regulations in 9 CFR part 88, "Commercial Transportation of Equines for Slaughter."

The minimum standards cover, among other things, the food, water, and rest provided to such equines. The regulations require the owner/shipper of the equines to take certain actions in loading and transporting the equines and to certify that the commercial transportation meets certain requirements. Our regulations prohibit the commercial transportation to slaughter facilities of equines considered to be unfit for travel, the use of electric prods on such animals in commercial transportation to slaughter, and the use of double-deck trailers for commercial transportation of equines to slaughtering facilities.

These regulations require the use of two information collection activities: (1) The preparation of an owner-shipper certificate for each equine transported to slaughter and (2) the collection of business information from any individual or other entity found to be transporting horses to a slaughtering facility.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(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 our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.388552238 hours per response.

*Respondents:* Owners and shippers of slaughter horses; owners/operators of slaughtering facilities; drivers of transport vehicles.

*Estimated annual number of respondents:* 300.

*Estimated annual number of responses per respondent:* 22.333333.

*Estimated annual number of responses:* 6,700.

*Estimated total annual burden on respondents:* 2,603 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of February 2010.

**Kevin Shea**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010–2850 Filed 2–9–10: 8:45 am]

BILLING CODE 3410–34–S

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Dixie National Forest, UT, Kitty Hawk Administrative Site Master Development Plan

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to analyze the master development plan for the Kitty Hawk Forest Service Administrative Site within the city limits of Cedar City, Utah. The site is administered by the Cedar City Ranger District, Dixie National Forest, Utah. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by thirty days after publication of this Notice of Intent in the **Federal Register**. The draft environmental impact statement is expected in May, 2010. The final environmental impact statement is expected in September, 2010.

**ADDRESSES:** Send written comments to: Kitty Hawk Administrative Site Master Development Plan Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood Lane, Cedar City, Utah 84721. Electronic comments must be submitted in rich text format (.rtf), or Word (.doc) to *comments-intermtn-dixie@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Kitty Hawk Administrative Site Master Development Plan Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood Lane, Cedar City, Utah 84721.

**SUPPLEMENTARY INFORMATION:** The 14-acre Kitty Hawk Administrative Site is located in Cedar City at 1750 West Kitty Hawk Drive. The site is owned by the USDA-Forest Service and jointly occupied by the Dixie National Forest, the USDI-Bureau of Land Management Cedar City District Office and the USDI-National Park Service. The site is zoned as I&M1 (Industrial and Manufacturing). Management of the site is in compliance with City zoning as well as State and Federal regulations regarding administrative sites. The site has been developed over the past 30 years and currently has four permanent buildings, several parking areas, several sheds for equipment storage and open areas designated for a variety of vehicle and equipment storage.

Recent review indicates the need for a Master Development Plan to guide future development of the site. Preliminary analysis found that the presence of Utah prairie dogs (a Threatened species) on the site warranted an environmental impact statement of the new Master Development Plan.

The Proposed Action is a Master Development Plan (MDP) for the existing 14-acre administrative site. The MDP will detail planned facilities, other development and uses for the site into the foreseeable future.

Existing facilities include an Interagency Fire Center, Fire Cache, Old Fire Center/Future Building Pad and Fire Engine Building.

New facilities to be constructed include additions to the Interagency Fire Center, five new buildings (engine building, vehicle wash, HAZMAT storage, maintenance shop and equipment building.

Part of the site will be hardened for outside storage for ATV's, equipment, and supplies. Six large parking lots will also be developed.

*Possible Alternatives:* Two or more alternatives will be considered in the analysis. No action. Under this alternative, the existing administrative site will remain with no further development. This alternative will be fully evaluated and described.

Proposed Action (as described above).

*Additional Alternatives*—Additional alternatives may be developed in response to issues and resource conditions evaluated through the analysis.

*Responsible Official:* The responsible official for this EIS and the Record of Decision is: Robert G. MacWhorter, Forest Supervisor, Dixie National Forest, 1789 Wedgewood Lane, Cedar City, Utah 84721; FAX: (435) 865–3791.

*Nature of Decision To Be Made:* The Responsible Official will decide whether the proposed Master Development Plan would be adopted and the site developed accordingly.

*Scoping Process:* Public participation was initiated through scoping in December, 2009. A scoping notice was sent to individuals and organizations who are potentially affected parties and those that have expressed interest in projects. Comments and issues were received in response to scoping.

Scoping will continue. Public participation is especially important during scoping and review of the draft EIS. Individuals, organizations, Federal, State, and local agencies who are interested in or affected by the decision are invited to participate in the scoping process. This information will be used in the preparation of the draft EIS.

*Preliminary Issue.* The following issue was identified through public scoping and internal resource analyses:

The site has Utah prairie dog habitat and a colony of prairie dogs. This is a Threatened species listed under the Endangered Species Act. Consultation with the U.S. Fish and Wildlife Service have concluded that the prairie dog habitat will be adversely affected by the planned developments. Mitigation for the habitat loss will be developed during further consultation with USFWS.

*Comments Requested.* Comments will continue to be received and considered throughout the analysis process. Comments received in response to this notice and through scoping, including names and addresses of those who comment, will be considered part of the public record of this proposed action and will be available for public inspection. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A draft environmental impact statement will be prepared for comment. The draft EIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period for the draft environmental impact statement will be forty-five days from the date the EPA's notice of availability appears in the **Federal Register**. Comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel* (9th Circuit, 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final environmental impact statement. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215. To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and

discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The final EIS is scheduled for completion in September, 2010. The decision will be subject to review under Forest Service Appeal Regulations.

Dated: January 29, 2010.

**Robert G. MacWhorter,**

*Forest Supervisor, Dixie National Forest.*

[FR Doc. 2010–2516 Filed 2–9–10; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ouachita-Ozark Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Meeting notice for the Ouachita-Ozark Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, as part of Public Law 110–343.

**SUMMARY:** This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Ouachita-Ozark Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 as part of Public Law 110–343. Topics to be discussed include: General information, proposals, updates on current or completed Title II projects, and next meeting agenda.

**DATES:** The meeting will be held on March 2, 2010, beginning at 5:45 p.m. and ending at approximately 9 p.m.

**ADDRESSES:** The meeting will be held at the Janet Huckabee Arkansas River Valley Nature Center, 8300 Wells Lake Road, Barling, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. (501–321–5318).

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff, Committee members, and elected officials. 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. Individuals wishing to speak or propose agenda items must send their names and proposals to Bill Pell, DFO, P.O. Box 1270, Hot Springs, AR 71902.

Dated: February 3, 2010.

**Bill Pell,**

*Designated Federal Official.*

[FR Doc. 2010–2762 Filed 2–9–10; 8:45 am]

**BILLING CODE 3410–52–M**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**[Docket No. 0907141137–0079–07]**

**RIN 0660–ZA28**

### Broadband Technology Opportunities Program

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice announcing OMB approval of an information collection and publication of an OMB Control Number.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) announces that the Office of Management and Budget (OMB) has approved the collection of information contained in the Notice of Funds Availability (NOFA) for the Broadband Opportunities Program (BTOP) published on January 22, 2010.

**FOR FURTHER CONTACT INFORMATION:** For general inquiries regarding BTOP, contact Anthony Wilhelm, Director, BTOP, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, U.S. Department of Commerce (DOC), 1401 Constitution Avenue, NW., HCHB, Room 4887, Washington, DC 20230; Help Desk e-mail: *BroadbandUSA@usda.gov,* Help Desk telephone: 1–877–508–8364. Additional information regarding BTOP may be obtained at *http://www.ntia.doc.gov/broadbandgrants/.*

**SUPPLEMENTARY INFORMATION:** On January 22, 2010, NTIA published a Notice of Funds Availability (NOFA) (75 FR 3792) announcing general policy and application procedures for the Broadband Technology Opportunities Program (BTOP) established pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA). In this second round of funding, NTIA will award grants in three categories of eligible projects: Comprehensive Community Infrastructure (CCI), Public Computer Centers (PCC), and Sustainable Broadband Adoption (SBA).

The application requirements for the BTOP contained in the NOFA are an information collection subject to the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). However, NTIA indicated in the NOFA that the information collection associated with BTOP had not yet been approved by OMB and that it would publish a subsequent notice in the **Federal Register** when that event occurred.

By this notice, NTIA announces that OMB approved the amendment to the information collection approved under OMB Control Number 0660–0031. The expiration date for this information collection is July 31, 2010. This collection of information was approved by OMB in accordance with the emergency processing provisions under 5 CFR 1320.13 to allow NTIA to fulfill its ARRA requirements. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: February 5, 2010.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2010–2967 Filed 2–9–10; 8:45 am]

**BILLING CODE 3510–60–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–822]**

### Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 7, 2009, the Department of Commerce (the Department) published the preliminary

results of the administrative review of the antidumping duty order on stainless steel sheet and strip (S4) in coils from Mexico. *See Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order in Part,* 74 FR 39622 (August 7, 2009) (*Preliminary Results*). This review covers sales of subject merchandise made by ThyssenKrupp Mexinox S.A. de C.V. (Mexinox) for the period July 1, 2007, to June 30, 2008. Based on our analysis of the comments received, we have made changes to the margin calculation; therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

**DATES:** *Effective Date:* February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Patrick Edwards, Brian Davis, or Angelica Mendoza, 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) 482–8029, (202) 482–7924, and (202) 482–3019, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 7, 2009, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on S4 in coils from Mexico for the period July 1, 2007, to June 30, 2008. *See Preliminary Results.* In response to the Department's invitation to comment on the preliminary results of this review, Mexinox submitted a request for a public hearing and a case brief on September 4, 2009, and September 15, 2009, respectively. *See* Letter from respondent titled "Stainless Steel Sheet and Strip in Coils from Mexico—Request for Hearing," dated September 4, 2009; *see also* Case Brief from respondent titled "Stainless Steel Sheet and Strip in Coils from Mexico—Case Brief," dated September 15, 2009. Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless (collectively referred to as petitioner), submitted their rebuttal brief on September 24, 2009. *See* Letter from petitioner, titled "Stainless Steel Sheet and Strip in Coils from Mexico—Petitioner's Rebuttal Brief," dated September 24, 2009. A public hearing was held on October 2, 2009. *See* Transcript of "In the Matter of: The Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Mexico" dated October 9, 2009. On December 9, 2009, the Department published in the **Federal Register** our notice extending the time limit for this review until February 3, 2010. *See Stainless Steel Sheet and Strip in Coils from Mexico: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,* 74 FR 65100 (December 9, 2009).

## Period of Review

The period of review (POR) is July 1, 2007, to June 30, 2008.

## Scope of the Order

For purposes of the order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks

may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." [1]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6." [5]

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by interested parties in this administrative review are addressed in the Issues and Decision Memorandum, "Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico" (Issues and Decision Memorandum), from John M. Andersen, Acting Deputy Assistant Secretary for Import Administration, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated December 7, 2009, which are hereby adopted by this notice. A list of all issues, which parties have raised and to which we have responded, in the Issues and Decision Memorandum is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 1117 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly via the Internet at *www.ia.ita.doc.gov/fm/index.html.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

For purposes of the preliminary results, we accepted Mexinox's reporting of the handling expenses incurred by Mexinox Trading (Mexinox's home market affiliate) and imputed credit expenses based on reported payment dates. However, in order to be consistent with past administrative reviews of this case, we placed respondent on notice that we intended to request additional information after the issuance of the preliminary results regarding (1) the reported handling expenses, and (2) the actual date of payment for these sales, and address these issues in our final results. *See Preliminary Results* at 39630; *see also* Memorandum to the File, "Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico (A–201–822)," from Patrick Edwards and Brian Davis, Case Analysts, through Angelica

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Mendoza, Program Manager, dated July 31, 2009, at page 18.

Accordingly, on August 24, 2009, we requested Mexinox report, with regard to handling expenses, (1) a worksheet showing the total warehousing and distribution expenses (separated by warehouse) for all sales handled by Mexinox Trading during the POR, and (2) the total value of the sales on which these expenses were incurred. *See* Mexinox's September 8, 2009, response to the Department's August 24, 2009, supplemental questionnaire (SSSQR) at pages 2–4 and attachment B–36. Therefore, we have recalculated the handling expenses incurred by Mexinox Trading and applied the revised ratio to those home market sales for which Mexinox reported a handling expense. *See* Memorandum to the File, "Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico (A–201–822)" (Final Analysis Memorandum), from Brian Davis and Patrick Edwards, Case Analysts, through Angelica Mendoza, Program Manager, dated February 3, 2010, at pages 10 through 12.

Also on August 24, 2009, we requested that Mexinox (1) clarify whether or not it was able to calculate per-unit credit expenses based on the actual number of days between the date of shipment to the customer and the date of payment and, if so, (2) report the transaction-specific payment dates for each customer as well as imputed credit expenses based on those transaction specific dates. *See* Mexinox's September 8, 2009, response to the Department's August 24, 2009, supplemental questionnaire (SSSQR) at pages 4–8 and accompanying database revisions. Therefore, we have recalculated the handling expenses incurred by Mexinox Trading and applied the revised ratio to those home market sales for which Mexinox reported a handling expense.

We calculated imputed credit expenses based on the short-term borrowing rate associated with the currency of each home market sale transaction and using transaction-specific payment dates (as reported by Mexinox in its SSSQR at pages 4–7 and corresponding home market sales database) rather than customer-specific weighted average ones (as originally reported by Mexinox in its response to section B of the Department's antidumping duty questionnaire at page B–21 and attachment B–14). *See* Final Analysis Memorandum at 9 through 10; *see also* Issues and Decision Memorandum at Comment 5 for a further discussion of imputed credit expenses.

Our methodology for calculating handling charges and imputed credit expenses is consistent with past administrative reviews of this case. *See, e.g., Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 73 FR 45708 (August 6, 2008) at 45715 (unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 74 FR 6365 (February 9, 2009)), and accompanying Issues and Decision Memorandum at Comment 1 (for imputed credit expenses); *see also Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 43600 (August 6, 2007) at 43605 (unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 73 FR 7710 (February 11, 2008), and *Stainless Steel Sheet and Strip in Coils from Mexico: Amended Final Results of Antidumping Duty Administrative Review,* 73 FR 14215 (March 17, 2008)); *see also Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 35618 (June 21, 2006) at 35623 (unchanged in *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review,* 71 FR 76978 (December 22, 2006)).

Furthermore, based on our analysis of the comments received, we have made the following changes to the margin calculation:

- We have converted U.S. inventory carrying costs (INVCARU) to a hundred weight (CWT) basis.
- We included Ken-Mac Metals [6] sales that were further processed in the margin calculation.
- We excluded non-subject sales, made by Ken-Mac Metals, from the margin calculation.
- We applied a corrected net interest expense ratio to further processing costs reported by Ken-Mac Metals.
- We included fuel surcharges imposed by Ken-Mac Metals in the net U.S. price calculation.
- We calculated a single importer-specific assessment rate for Mexinox USA, Inc.
- We adjusted the assessment rate for the entered value of merchandise sold outside the United States.
- We recalculated Mexinox's imputed credit expenses to reflect transaction-specific payment dates (PAYDTACTH) as noted above.
- We have recalculated the handling expenses incurred by Mexinox's home market affiliate, Mexinox Trading, and applied the revised ratio to those home market sales for which Mexinox reported a handling expense, as discussed above.

These changes are discussed in the relevant sections of the Issues and Decision Memorandum and Final Analysis Memorandum.

[6] Ken-Mac Metals is an affiliated service center headquartered in Cleveland, Ohio, whose primary business is the resale and further-processing of aluminum, stainless steel, and other metals. *See* Mexinox's October 7, 2008, response to the Department's section A antidumping duty questionnaire at 15–18 for additional information regarding Ken-Mac's operations.

**Final Results of Review**

We determine the following weighted-average percentage margin exists for the period July 1, 2007 to June 30, 2008:

| Manufacturer/exporter | Weighted average margin (percentage) |
|---|---|
| ThyssenKrupp Mexinox S.A. de C.V. | 4.48 |

**Assessment**

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b). The Department calculated an assessment rate for each importer of the subject merchandise covered by the review. Upon issuance of the final results of this review, for any importer-specific assessment rates calculated in the final results that are above *de minimis (i.e.,* at or above 0.50 percent), we will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the per-unit dollar amount against each unit of merchandise on each of that importer's entries during the review period. *See* 19 CFR 351.212(b)(1). Pursuant to 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP 41 days after the date of publication of these 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 Mexinox for which Mexinox did not know the merchandise was destined for the United States. In

such instances, we will instruct CBP to liquidate unreviewed entries at the 30.69 percent all-others rate if there is no company-specific rate for an intermediary involved in the transaction.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, consistent with section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 30.69 percent, the all-others rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Mexico,* 64 FR 40560 (July 27, 1999). These deposit requirements, when imposed, shall remain in effect until further notice.

**Notifications to Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition 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 or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

## Appendix

**List of Issues in Issues and Decision Memorandum**

**General Issues**

Comment 1: Clerical Errors.
Comment 2: Offsetting for U.S. Sales that Exceed Normal Value.

**Sales Issues**

Comment 3: Date of Sale.
Comment 4: U.S. Indirect Selling Expenses.

**Adjustments to Normal Value**

Comment 5: Calculation of Credit Expenses.

**Cost of Production**

Comment 6: Whether to Apply an Alternative Cost Averaging Methodology.
Comment 7: General and Administrative Expense Ratio (Employee Profit Sharing).
Comment 8: General and Administrative Expense Ratio (Gains on Sale of Warehouse).
Comment 9: Financial Expenses.

[FR Doc. 2010–2987 Filed 2–9–10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–845]**

### Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 7, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from Japan. This review covers two producers/exporters of the subject merchandise to the United States. The period of review (POR) is July 1, 2007, through June 30, 2008.

Based on our analysis of the comments received, we have made certain changes to the margin calculations for Hitachi Cable Ltd. (Hitachi Cable) and Nippon Kinzoku Co., Ltd. (NKKN), producers/exporters selected for individual review. Therefore, the final results for Hitachi Cable and NKKN differ from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

This review covers two producers/exporters: Hitachi Cable and NKKN.

On August 7, 2009, the Department published in the **Federal Register** the preliminary results of the 2007–2008 administrative review of the antidumping duty order on SSSSC from Japan. *See Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 39615 (August 7, 2009) (Preliminary Results). We invited parties to comment on those preliminary results.

Since the *Preliminary Results*, we conducted the cost verification of Hitachi Cable from September 28 through October 2, 2009.

On October 28, 2009, we extended the deadline for the final results until no later than February 3, 2010. *See Stainless Steel Sheet and Strip in Coils from Japan: Notice of Extension of Time Limit for the Final Results of the 2007–2008 Administrative Review*, 74 FR 55539 (October 28, 2009).

On November 18, 2009, we received case briefs from the domestic producers of the subject merchandise (*i.e.*, AK Steel Corporation and Allegheny Technologies, Inc.) and NKKN. A rebuttal brief was received from Hitachi on November 25, 2009.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Scope of the Order**

For purposes of this order, the products covered are certain SSSSC. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more

of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note"' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[5]

## Period of Review

The POR is July 1, 2007, through June 30, 2008.

## Cost of Production

As discussed in the *Preliminary Results*, we conducted sales–below-cost investigations to determine whether Hitachi and NKKN made home market sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b)(1) of the Act. *See Preliminary Results*, 74 FR at 39620. For both respondents, we performed the cost test for these final results following the same methodology as in the *Preliminary Results*.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we find that Hitachi and NKKN made below–cost sales which were not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

## Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (the Decision Memo), which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, HCHB Room 1117, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/* . The paper copy and electronic version of the Decision Memo are identical in content.

## Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Hitachi and NKKN. These changes are discussed in the relevant sections of the Decision Memo.

## Final Results of Review

We determine that weighted–average dumping margins exist for the respondents for the period July 1, 2007, through June 30, 2008, as follows:

| Manufacturer/Exporter | Percent Margin |
|---|---|
| Hitachi Cable Ltd. ..... | 0.00 |
| Nippon Kinzoku Company, Ltd. ..... | 0.54 |

## Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.

In those instances where Hitachi and NKKN reported the entered value of their U.S. sales, we have calculated importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. In those instances where NKKN did not report the entered value of its U.S. sales, we have calculated importer–specific per–unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer–specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above de minimis (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis (i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these 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) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate established in the less–than-fair–value (LTFV) investigation if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

## Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for each specific company listed above will be the rates shown above, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will be 40.18 percent, the all–others rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), 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.

**Notification to Interested Parties**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**Appendix Issues in Decision Memo**

**Hitachi**

*Comment 1:* Bona Fides of Hitachi Cable's U.S. Sale

**NKKN**

*Comment 2:* Sample Sales in the U.S. Database

*Comment 3:* SAS Programming Errors

[FR Doc. 2010–2985 Filed 2–9–10; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–825]**

### Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 31, 2009, the Department of Commerce (Department) issued the preliminary results of administrative review of the countervailing duty order on polyethylene terephthalate film, sheet, and strip (PET film) from India for the period January 1, 2007 through December 31, 2007. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review*, 74 FR 39631 (August 7, 2009) (*Preliminary Results*). Based on the results of our analysis of the comments received, the Department has made certain revisions to the subsidy rates for the respondent, Jindal Poly Films Limited of India (Jindal), formerly named Jindal Polyester Limited (Jindal). The final subsidy rate for the reviewed company is listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0197.

**SUPPLEMENTARY INFORMATION:**

**Background**

Since the issuance of the *Preliminary Results*, the following events have occurred. The Department issued its third supplemental questionnaire to the Government of India (GOI) and to Jindal on August 6, 2009. The GOI and Jindal filed their responses on September 3, 2009, and on September 2, 2009, respectively. The Department set an initial briefing schedule on September 3, 2003, and revised it on September 8, 2009. Jindal filed a case brief on December 22, 2009, and the petitioners, Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), Inc., filed a rebuttal brief on January 4, 2010.

The Department issued its Post–Preliminary Determination on Invalidated Licenses under the Advance License Program (ALP) on December 23, 2009. *See Memorandum To Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from Barbara E. Tillman, Director, AD/CVD Operations, Office 6: Polyethylene Terephthalate Film, Sheet and Strip (PET film) from India: 2007 Administrative Review of the Countervailing duty Order; Post–Preliminary Determination* (December 23, 2009) (*Post–Preliminary Determination Memorandum*). Although the Department invited interested parties to comment, no comments were filed on the *Post–Preliminary Determination Memorandum*.

**Scope of the Order**

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed Polyethylene Terephthalate Film, Sheet and Strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

**Analysis of Comments Received**

All issues raised in the case brief and rebuttal brief by parties to this administrative review are addressed in the *Issues and Decision Memorandum in the Final Results of the Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, from John M. Anderson, Acting Deputy Assistant Secretary to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration* (February 3,

2010) (*Issues and Decision Memorandum*), which is hereby adopted by this notice. The *Issues and Decision Memorandum* also contains a complete analysis of the programs covered by this review, the methodologies used to calculate the subsidy rates, and discusses any changes to the subsidy rates. A list of the comments raised in the briefs and addressed in the *Issues and Decision Memorandum* is appended to this notice. The *Issues and Decision Memorandum* is on file in the Central Records Unit, Room 1117 of the main Department building, and can be accessed directly on the Web at http://ia.ita.doc.gov/frn.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have revised the calculations with respect to the benefit amount calculated with respect to on certain Export Promotion Capital Goods Scheme (EPCGS) licenses that the GOI issued prior to 2005. Specifically, we deducted the relevant application fees (as an offset) from the unpaid duty amounts that we use in our benefit calculations. For those EPCGS licenses treated as contingent liability loans, we will deducted the relevant application fees from the "principal" (i.e., unpaid duties). For those EPCGS licenses for which the GOI has formally waived the duties, we will deduct the relevant application fees from the amount of unpaid duties that is allocated. All changes are discussed in detail in the Issues and Decision Memorandum.

**Final Results of Review**

In accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.221(b)(5), we calculated individual *ad valorem* subsidy rates for Jindal, the only producer/exporter subject to review for the calendar year 2007, the period of review for this administrative review.

| Manufacturer/Exporter | Net Subsidy Rate |
|---|---|
| Jindal Poly Films Limited of India. ..... | 7.17 % |

**Assessment and Cash Deposit Instructions**

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by Jindal entered, or withdrawn from warehouse, for consumption on or after January 1, 2007 through December 31, 2007. We will also instruct CBP to collect cash deposits of estimated countervailing duties, at the above rate, on shipments of the subject merchandise by Jindal entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. The cash deposit rates for all companies not covered by this review are not changed by the results of this review.

**Return or Destruction of Proprietary Information**

This notice serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**APPENDIX I**

**LIST OF ISSUES ADDRESSED IN THE ISSUES AND DECISION MEMORANDUM**

**Benefit Calculation For the Export Promotion Capital Goods Scheme (EPCGS)**

*Comment 1:* Allocation of Benefit for License Number P/J/3092819

*Comment 2:* EPCGS Benefits on Capital Goods Used for Non–Subject Merchandise

*Comment 3:* Deduction of Certain Application Fees Paid on EPCGS Licenses

**Value Added Tax (VAT)**

*Comment 4:* Benefits Through Refunds of the VAT

**Advanced License Program (ALP)**

*Comment 5:* Countervailability of the ALP under the GOI's New Monitoring Procedures

[FR Doc. 2010–2986 Filed 2–9–10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

**[Docket 9–2010]**

### Foreign–Trade Zone 33—Pittsburgh, Pennsylvania, Expansion of Manufacturing Authority, Subzone 33E—DNP IMS America Corporation (Thermal Transfer Ribbon Printer Rolls), Mount Pleasant, Pennsylvania

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting an expansion of the scope of manufacturing authority approved within Subzone 33E, on behalf of DNP IMS America Corporation (DNP) in Mount Pleasant, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 4, 2010.

Subzone 33E (123 employees, 360 million square meters coating capacity) currently has authority for the manufacture of thermal transfer ribbon (TTR) (A(27f)-68–2009, 11/12/2009). The subzone (135,985 sq. ft., 3.12 acres) is located at 1001 Technology Drive, Mount Pleasant, Pennsylvania.

The current request involves the production of monochrome TTR printer rolls (some 336 million square meters capacity), using foreign–sourced master rolls of TTR, representing 71–87% of the value of the finished product. The scope otherwise would remain unchanged.

FTZ procedures could exempt DNP from customs duty payments on the foreign TTR master rolls used in export production. The company anticipates that some 10 percent of the plant's shipments will be exported. On its domestic sales, DNP would be able to choose the duty rate during customs entry procedures that apply to the finished TTR printer rolls (duty–free) for the foreign TTR master rolls (3.7%). FTZ procedures would further allow DNP to realize logistical benefits through the use of certain customs procedures and duty savings on scrap and waste for the new activity. The request indicates that the savings from FTZ procedures help improve the plant's international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case

record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 12, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to [].

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Diane Finver at Diane.Finver@trade.gov or (202) 482–1367.

Dated: February 4, 2010.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2010–2988 Filed 2–9–10; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 8–2010]**

### Foreign-Trade Zone 77—Memphis, TN Application for Subzone Cummins, Inc. (Engine Components Distribution) Memphis, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, grantee of FTZ 77, requesting special-purpose subzone status for the internal-combustion engine parts warehousing and distribution facility of Cummins, Inc. (Cummins), located in Memphis, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 4, 2010.

The Cummins facility (715 employees/23.3 acres/654,750 sq. ft.) is located at 4155 Quest Way in Memphis (Shelby County), Tennessee. The facility is used for warehousing and distribution of foreign and domestic-origin internal combustion engine (diesel and CNG) parts and components for the U.S. market and export. FTZ procedures would be utilized to support Cummins U.S.-based distribution activity. The foreign-origin parts and components that would be admitted to the proposed subzone for distribution include internal engine components, blocks, cylinder heads and related components, gaskets, seals, fasteners, springs, bearings, caps, clamps, v-belts, dampeners, articles of rubber, hoses, pipes and tubes, filters, gauges, glow plugs, shims, bushings, connectors, pumps, valves, flywheels, manifolds, exhaust components, gears, pulleys, oil coolers, water pumps, cable, motors, thermostats, electrical components, wiring harnesses, lights, fuel injection components, turbochargers, and block heaters (duty rate range: free—9.9%). The applicant is not seeking manufacturing or processing authority with this request.

FTZ procedures could exempt Cummins from customs duty payments on foreign parts and components that are re-exported (about 16% of shipments). On domestic shipments, duty payments would be deferred until the foreign merchandise is shipped from the facility and entered for U.S. consumption. Subzone status would further allow Cummins to realize logistical benefits through the use of weekly customs entry procedures. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is April 12, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 26, 2010.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* **FOR FURTHER INFORMATION** contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: February 4, 2010.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2010–2989 Filed 2–9–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XU29**

### Western Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Western Pacific Fishery Management Council will hold public informational meetings on potential management measures for non-commercial fishing in the Rose Atoll Marine National Monument, Marianas Trench National Marine Monument, and Pacific Remote Islands Marine National Monument.

**DATES:** The meetings will be held on February 12, 2010, Tutuila, American Samoa; March 11, 2010, Rota, CNMI; March 12, 2010, Tinian, CNMI; and March 13, 2010, Saipan, CNMI. See **SUPPLEMENTARY INFORMATION** for specific times of the meetings.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for specific locations.

**FOR FURTHER INFORMATION CONTACT:** Eric Kingma, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** In January 2009, former President George W. Bush designated the Rose Atoll, Marianas Trench, and Pacific Remote Islands as Marine National Monuments (Presidential Proclamations 8335, 8336 and 8337). In the Presidential Proclamations establishing these monuments, the Secretaries of Commerce and the Interior (Secretaries) were instructed to prohibit commercial fishing within the boundaries of the monuments, except for the Marianas Trench Marine National Monument where commercial fishing is only prohibited in the Islands Unit. For the Rose Atoll Monument, the Secretaries were instructed to consider permitting non-commercial and sustenance fishing and, after consultation with the American Samoa government, permitting traditional indigenous fishing. For the Islands Unit of the Marianas Trench Marine National

Monument, the Secretaries are to ensure that any sustenance, recreational, or traditional indigenous fishing in the Islands Unit be managed as a sustainable activity. Proclamation 8335 also provided that Marianas Trench Marine National Monument management plans shall provide for traditional access by indigenous persons, as identified by the Secretaries in consultation with the Commonwealth of the Northern Marianas Islands (CNMI) government, for culturally significant subsistence, cultural and religious uses within the Islands Unit. Presidential Proclamation 8337 for the Pacific Remote Islands Marine National Monument states that non-commercial fishing may be permitted and directs the Secretaries to provide a process to ensure that recreational fishing be sustainable. The Presidential Proclamations establishing the monuments identified the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*) as the statutory authority to develop regulations related to fisheries. In following the MSA process to promulgate fishing regulations for the Rose Atoll, Islands Unit of the Marianas Trench, and Pacific Remote Islands Marine National Monuments, the National Marine Fisheries Service (NMFS), which acts on behalf of the Secretary of Commerce, has requested that the Western Pacific Fishery Management Council undertake the process to recommend definitions and fishing regulations for the types of fishing activities mentioned above.

The Western Pacific Fishery Management Council will hold public meetings to gather information and views from the public regarding potential management measures for non-commercial fishing in the Rose Atoll, Islands Unit of the Marianas Trench, and Pacific Remote Islands Marine National Monuments as follows:

**1. February 12, 2010. Tutuila, American Samoa.**

From 5 p.m. to 9 p.m. at Sadies by the Sea. Main Rd, Pago Pago, Tutuila, American Samoa 96799.

**2. March 11, 2010, Rota, CNMI.**

From 6 p.m. to 9 p.m. at the Rota Round House. Rota, CNMI 96951

**3. March 12, 2010, Tinian, CNMI.**

From 6 p.m. to 9 p.m. at the Tinian Elementary School. San Jose Village, Tinian 96952

**4. March 13, 2010, Saipan, CNMI.**

From 6 p.m. to 9 p.m. at the Fiesta Resort and Spa, Coral Tree Avenue, Saipan, MP 96950

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Kingma (see **FOR FURTHER INFORMATION**) at least 3 days prior to the meeting date.

Dated: February 4, 2010.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–2862 Filed 2–9–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Sea Grant Advisory Board

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the Agenda below.

**DATES:** The announced meeting is scheduled for Tuesday March 9—Wednesday March 10, 2010.

**ADDRESSES:** The meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle Northwest, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Andrus, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11704, Silver Spring, Maryland 20910, 301–734–1088.

**SUPPLEMENTARY INFORMATION:** The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established by Section 209 of the Sea Grant Program Improvement Act of 1976 (Pub. L. 94–461, 33 U.S.C. 1128). The duties of the Board were amended by the National Sea Grant College Program Amendments Act of 2008 (Pub. L. 110–394). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

The agenda for the meeting can be found at *http://www.seagrant.noaa.gov/leadership/advisoryboard/agenda_0310.pdf.*

Dated: February 4, 2010.

**Mark E. Brown,**

*Chief Financial Officer/Chief Administrator Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2010–2940 Filed 2–9–10; 8:45 am]

**BILLING CODE 3510–KA–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Request for New Collection—3038–NEW, Registration Under the CEA—Proposed Questionnaire to Regulation 30.10 Relief Recipients (17 CFR Part 30)

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice (Correction)—Proposed Questionnaire.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. The Division of Clearing and Intermediary Oversight (DCIO) of the Commodity Futures Trading Commission (CFTC) is proposing to send a questionnaire to obtain updated information on the current laws and market developments of each jurisdiction in which exemptive relief was granted by the Commission pursuant to Regulation 30.10. Please note that the designation for submission of comments has changed.

**DATES:** Comments must be received by April 12, 2010.

**ADDRESSES:** Interested persons should submit their views and comments to Andrew Chapin, Associate Director, or Andrea Musalem, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to number (202) 418–5528, or by electronic mail to *amusalem@cftc.gov* or *achapin@cftc.gov.* Reference should be made to "Commission Regulation 30.10 Questionnaire."

**FOR FURTHER INFORMATION CONTACT:** Andrew Chapin, Associate Director, or Andrea Musalem, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5167.

**SUPPLEMENTARY INFORMATION:**

## I. Background

CFTC Regulation 30.10 allows persons located and doing business outside the U.S., who are subject to a comparable regulatory framework in the country in which they are located, to seek an exemption from the application of certain of the Part 30 regulations. Regulation 30.10 expressly states that, upon petition, the Commission may exempt any person from any requirement of the Part 30 regulations. If the Commission grants an exemption, persons located and doing business outside the U.S. may solicit or accept orders directly from U.S. customers for foreign futures or options transactions without registering under the Act as FCMs.

A petition for exemption pursuant to Regulation 30.10 is typically filed on behalf of persons located and doing business outside the U.S. that seek access to U.S. customers by (1) a governmental agency responsible for implementing and enforcing the foreign regulatory program, or (2) a self-regulatory organization (SRO) of which such persons are members. A petitioner who seeks an exemption pursuant to Regulation 30.10, based on substituted compliance with a non-U.S. regulatory framework that is comparable to the Act and rules thereunder, must set forth with particularity the comparable regulations applicable in the jurisdiction in which that person is located. In essence, a petitioner under Regulation 30.10 must present, with particularity, the factual basis for a finding of comparability and the reasons why the policies and purposes of the Commission's regulatory program are met, notwithstanding any differences of degree or kind in the petitioner's regulatory program.

Appendix A to Part 30 (Appendix A) articulates standards to be used by staff in assessing whether a foreign regulatory system is comparable.[1] These standards involve inquiry into the following areas: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) minimum sales practice standards, including disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; (6) compliance; and (7) information-sharing.

## II. The Proposed Questionnaire

Currently, there are 13 foreign entities[2] (two regulators and 11 futures exchanges) that have a Regulation 30.10 exemption some of which date back to the late eighties, early nineties. Consequently, the Commission's Division of Clearing and Intermediary Oversight (DCIO) would like to embark upon a program whereby each year, DCIO sends out a questionnaire to exemption recipients inquiring as to material and other relevant changes that impacted or could impact the fundamentals for which exemptive relief was granted in the first place.

The proposed 2010 Questionnaire will ask the following questions:

The following questions relate to material changes that have occurred since the original filing of the 30.10 petition. Please answer the following questions in detail.

1. Have there been any material changes with regards to the identity or organization of the original Petitioner (i.e. change in control, change in name, change in structure, etc.)?

2. Has there been a change in the role of the government, the regulator, or the self-regulatory organization(s) which has or could potentially impact their supervision of and their enforcement powers over the exchange and its members?

3. Has there been any material change in the legal framework which impacted or could impact any of the following:

a. Registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted;

b. Minimum financial requirements for those persons that accept customer funds;

c. Protection of customer funds from misapplication;

d. Recordkeeping and reporting requirements;

e. Minimum sales practice standards, including disclosure of risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; and

f. Compliance (*i.e.* any change in oversight structure which impacted or could impact the governmental authority or the self-regulatory organization's ability to audit Part 30 firms for compliance with, or take action against persons that violate the requirements of the Part 30 program).

4. What changes, if any, have occurred in insolvency laws as they affect futures customers? If there have been changes to insolvency laws, have the changes occurred within the past two to three years? To what extent do you view any recently proposed changes to insolvency laws as resulting from the 2008–09 financial crisis?

5. Security futures products have both an equity component and a futures component. Consequently, in what accounts are security futures products held (i.e. the equity account, the futures account, or a combined account)? Are security futures products subject to separate disclosure and margin requirements than those required for plain vanilla futures products?

6. Please provide an updated list of all firms with relief under the Regulation 30.10 exemption.

7. Since the granting of the original exemption, please affirm whether 30.10 firms have been subject to arbitration and/or disciplinary proceedings arising from transactions with U.S. customers. To the best extent possible, please provide the number of times and a brief description of such proceedings.

8. Please provide the name and contact information for individuals to whom follow up questions might be directed.

## III. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[3] The proposed Questionnaire discussed herein would affect foreign futures exchanges and/or foreign securities regulators who sought and obtained Regulation 30.10 exemptive relief on behalf of its members and/or regulatees.

[1] "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules," 17 CFR Part 30, Appendix A.

[2] The 13 foreign entities are represented by the following jurisdictions: the United Kingdom, Australia, Brazil, Germany, Canada, France, Spain, New Zealand, Singapore, Taiwan, and Japan.

[3] 47 FR 18618–18621 (April 30, 1982).

Foreign regulators and exchanges are not included in the definition of "small entities" per 47 FR 18618 and 66 FR 42256. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b) that this proposed Questionnaire will not have an economic impact on a small entities. Nonetheless, the Commission specifically requests comment on the impact this proposed Questionnaire may have on small entities. Nonetheless, the Commission specifically requests comment on the impact this proposed Questionnaire may have on small entities—New Collection—3038.XXXX.

*B. Paperwork Reduction Act*

When publishing a proposed questionnaire, the Paperwork Reduction Act of 1995 [4] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this Questionnaire proposal, solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (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 the 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.

The Commission has submitted this proposed Questionnaire and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire New Collection—3038–XXXX—including this proposed Questionnaire, is as follows:

*Average burden hours per response:* One hour/question.

*Number of questions:* 13.

*Number of respondents:* 13.

*Frequency of response:* Annually.

[4] Public Law 104–13 (May 13, 1995).

Persons wishing to comment on the estimated paperwork burden associated with this proposed Questionnaire should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington DC 20581, (202) 418–5160.

Dated: February 4, 2010.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010–2821 Filed 2–9–10; 8:45 am]

BILLING CODE P

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, February 10, 2010, 2–4 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTER TO BE CONSIDERED:**

**Compliance Weekly Report—Commission Briefing**

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: February 2, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–2809 Filed 2–9–10; 8:45 am]

BILLING CODE 6355–01–M

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

Time and Date: Wednesday, February 10, 2010, 9 a.m.–12 Noon.

Place: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

Status: Open to the Public—Commission Briefing.

Matter To Be Considered: Unblockable Drains/Minimum State Requirements for Grants/Public Accommodations-Virginia Graeme Baker Pool and Spa Safety Act.

For a recorded message containing the latest agenda information, call (301) 504–7948.

Contact Person for More Information: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: February 2, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–2811 Filed 2–9–10; 8:45 am]

BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–OS–0015]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Deputy Under Secretary of Defense (Industrial Policy), DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Deputy Under Secretary of Defense (Industrial Policy) announces a proposed new public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 12, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal**

**Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Under Secretary of Defense (Industrial Policy), ATTN: Paul Halpern, 241 18th Street South, Suite 501, Arlington, VA 22202 or call at 703–607–4058.

*Title and OMB Number:* Survey of Foreign Acquired Domestic Facilities with Defense Capabilities; OMB Control Number 0704–TBD.

*Needs and Uses:* As part of its industrial base oversight responsibilities, DoD is planning to assess in a preliminary way the impact on the U.S. industrial base of the increasing foreign ownership of U.S. defense-relevant firms. Specifically, DoD will evaluate the extent to which foreign acquired firms (1) expanded domestically vs. off-shored production and R&D capabilities; and (2) remained reliable suppliers to defense customers. This assessment is limited to a sample of firms that were DoD suppliers when they were foreign-acquired acquired in 2003 or 2004 and that the Office of the Under Secretary of Defense for Acquisition, Technology & Logistics determined at that time possessed defense critical technology under development.

*Affected Public:* Business or other for profit.

*Annual Burden Hours:* 430 hours.

*Number of Respondents:* 86.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 5 hours.

*Frequency:* One-time.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The Deputy Under Secretary of Defense (Industrial Policy) has responsibility to assess the performance of the industrial base relevant to defense which includes the traditional defense industrial base as well as many dual use and commercial firms that supply goods and services to the defense sector. Because of the value of the U.S. dollar until recently relative to the currencies of many of its trading partners and the profitability of the defense sector over the past five years, an increasing number of defense-relevant firms have been acquired by foreign firms.

As part of its industrial base oversight responsibilities, DoD is planning to assess in a preliminary way the impact on the U.S. industrial base of the increasing foreign ownership of U.S. defense-relevant firms.

DoD will use the information collected to assess the extent to which the foreign-acquired sample of U.S. firms expanded U.S. facilities and/or off-shored them and whether they remained reliable suppliers to their defense agency customers. For the sample of firms surveyed, this assessment will attempt to address:

(a) Growth or contraction in the firm size (measured in sales, capacity utilization, employment and production facility size) since being foreign acquired and the extent to which product lines are still produced in the U.S.;

(b) Growth or contraction in R&D since being foreign acquired and the extent to which R&D is still performed primarily in the U.S.;

(c) Growth or contraction in number of defense contracts and whether any such contracts were terminated and why;

(d) Decisions not to participate in any defense-related contract competitions since being foreign-acquired and why.

Dated: February 1, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–2915 Filed 2–9–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DOD–2009–OS–0172]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by March 12, 2010.

*Title and OMB Number:* Customer Satisfaction Surveys—Generic Clearance; OMB Control Number 0704–0403.

*Type of Request:* Extension.

*Number of Respondents:* 12,150.

*Responses Per Respondent:* 1.

*Annual Responses:* 12,150.

*Average Burden Per Response:* .4 minutes.

*Annual Burden Hours:* 810 hours.

*Needs and Uses:* The information collection requirement is necessary to assess the level of service the DTIC provides to its current customers. The surveys will provide information on the level of overall customer satisfaction as well as on customer satisfaction with several attributes of service that impact the level of overall satisfaction. These customer satisfaction surveys are required to implement Executive Order 12862, "Setting Customer Service Standards." Respondents are DTIC registered users who are components of the DoD, military services, other Federal Government Agencies, U.S. Government contractors, and universities involved in federally funded research. The information obtained by these surveys will be used to assist agency senior management in determining agency business policies and processes that should be selected for examination, modification, and reengineering from the customer's perspective. These surveys will also provide statistical and demographic basis for the design of follow-on surveys. Future surveys will be used to assist monitoring of changes in the level of customer satisfaction over time.

*Affected Public:* Business or other for-profit; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DoD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: February 1, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–2912 Filed 2–9–10; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–OS–0017]**

### Proposed Collection; Comment Request

**AGENCY:** Defense Logistics Agency, DOD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995, the Defense Logistics Agency* announces a proposed public information collection and seeks public comment on the provisions thereof. *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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 12, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Logistics Agency, ATTN: Ms. Mickey Slater, J–651, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060, or call (703) 767–2171.

*Title; Associated Form; and OMB Number:* Vehicle Registration System (VRS); Facility Access Records—Vehicle Registration Form; OMB Control Number 0704–TBD.

*Needs and Uses:* DLA Enterprise Support—Columbus (DES–C) is responsible for controlling access to the Defense Supply Center, Columbus (DSCC). A person who lives or works on a DLA installation or often uses DLA facilities is required to register his/her privately-owned vehicle (POV) as recorded in the Vehicle Registration System (VRS) as required under the provisions outlined in AR 190–5/OPNAV 11200.5D/AFI 31–218(I)/MCO 5110.1D/DLAR 5720.1, *Motor Vehicle Traffic Supervision.* Registering POVs identifies the vehicle as being one that is legitimately authorized on a DLA installation thereby providing an increased level of security and ensuring that only those authorized have access to the installation. The information collected is stored in the VRS database. It is used by the installation police in traffic and parking enforcement. The DESC Parking Administrator uses the information to track parking infractions, and to identify special parking privileges; such as, carpool, executive, or disabled parking.

*Affected Public:* Individuals; businesses or other for profit; not-for-profit institutions.

*Annual Burden Hours:* 2500.

*Number of Respondents:* 15,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 0.17 hours (10 minutes).

*Frequency:* Annually.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

*Respondents are individuals who work at or visit the Defense Supply Center, Columbus (DSCC). Registering POVs identifies the vehicle as being one that is legitimately authorized on a DLA installation thereby providing an increased level of security and ensuring that only those authorized have access to the installation. The information collected is stored in the VRS database.*

Dated: February 1, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–2916 Filed 2–9–10; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2010–0004]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Office of the Judge Advocate General (OJAG) announces the submission of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 12, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Judge

Advocate General, ATTN: Special Assistant for Transformation (SAT), 1322 Patterson Ave SE., Washington Navy Yard, DC 20374–5066, or call SAT at 202–685–5185

*Title; Associated Form; and OMB Number:* JAGC Applicant Survey; OMB Control Number 0703–TBD.

*Needs and Uses:* The U. S. Navy Judge Advocate General requires a method to improve recruiting and accession board processes in order to recruit and select the best individuals as judge advocates. A survey will allow the JAG Corps to assess whether certain traits and/or behaviors are indicators of future success in the JAG Corps. If the survey is found to be predictive, it will be a reliable, valid, and fair tool to be used in recruiting and selection decisions.

*Affected Public:* Individuals applying to be judge advocates in the U. S. Navy JAG Corps.

*Annual Burden Hours:* 200.

*Number of Respondents:* approximately 800.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 15 minutes.

*Frequency:* Survey will be available to individuals who submit an application throughout the year.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

There are three main facets of a JAG Corps applicant: objective measures such as Law School Admission Test (LSAT) score and grade point average; subjective measures such as personality traits and values; and performance in a structured interview. All three facets must be considered to have a thorough assessment of each applicant. Currently no databases or surveys exist that can provide information on the subjective measures. Routinely administered surveys are the most accurate and cost-effective means for determining personality and value indicators of JAG Corps applicants. As survey responses are collected and work performances assessed, correlations will be analyzed. If survey responses are proven to be predictive of future success in the JAG Corps, the survey will become a mandatory part of the application and will be scored and considered by the accession board along with the objective measures and interview results.

Dated: February 2, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–2913 Filed 2–9–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2010–0005]**

### Notice of Proposed Information Collection; Naval Special Warfare Recruiting Directorate

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The Naval Special Warfare (NSW) Recruiting Directorate announces the submission of a public information collection and seeks public comment on the provisions thereof. *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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 12, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information or to obtain a copy of the proposal and associated collection instruments, write to the Director, Naval Special Warfare Recruiting Directorate, 2446 Trident Way, San Diego, CA 92155, or contact Commander Scott Greenfield, telephone (619) 437–5406.

*Title; Associated Form; and OMB Number:* Naval Special Warfare Recruiting Directorate Sponsor Application; OMB Control Number 0703–TBD.

*Needs and Uses:* This collection of information is necessary to: (1) Help determine the eligibility and overall compatibility between individuals interested in potentially pursuing a career as a Navy Sea Air Land (SEAL), or Navy Special Warfare (NSW) Combatant Craft Crewman (SWCC) operator; (2) enable the NSW Recruiting Directorate to provide appropriate career and training preparation information to prospective Navy SEAL recruits; and (3) enable the NSW Recruiting Directorate to better allocate limited resources in establishing relationships with the Naval Special Warfare community and prospective candidates based on the alignment of the prospective candidate profile with individuals who have been historically successful in completing Navy SEAL accession training.

*Affected Public:* Individuals interested in becoming Navy SEAL or SWCC operators interested in receiving information and who elect to provide their information.

*Annual Burden Hours:* 2000.

*Number of Respondents:* up to 2000 per year.

*Responses per Respondent:* 1.

*Average Burden per Response:* 1 hour.

*Frequency:* Information will be gathered on an ongoing basis from interested individuals, each individual will need to provide their data only once. However, they will have the opportunity to update or remove their information at their discretion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection:**

An analysis of the information collected is made to determine potential eligibility to potentially become an NSW recruit (Navy SEAL or SWCC), to determine which information is most appropriate to send to each prospective NSW recruit (e.g. how to improve their swim times, profiles of Navy SEALs similar to theirs, general information about Naval Special Warfare), and the alignment of an individual's profile with historical success at Navy SEAL training.

Dated: February 2, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–2914 Filed 2–9–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### U.S. Air Force Academy Board of Visitors; Notice of Meeting

**AGENCY:** U.S. Air Force Academy Board of Visitors.

**ACTION:** Meeting notice.

**SUMMARY:** Pursuant to 10 USC 9355, the US Air Force Academy (USAFA) Board of Visitors (BoV) will meet in Harmon Hall, 2304 Cadet Drive, Suite 3300 at the United States Air Force Academy in Colorado Springs, CO on 26–27 February 2010. The meeting session will begin at 2 p.m. on 26 February. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to the Secretary of the Air Force has determined that portions of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that two portions of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force Pentagon address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Any oral presentations before the BoV shall be in accordance with 41 CFR 102–3.140(d), section 10(a)(3) of the FACA, and this paragraph. The DFO and BoV Chairperson may, if desired, allot a specific amount of time for members of the public to present their issues for BoV review and discussion. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

**FOR FURTHER INFORMATION CONTACT:** To attend this BoV meeting, contact Mr. David Boyle, USAFA Programs Manager, Directorate of Force Development, Deputy Chief of Staff, Manpower and Personnel, AF/A1DOA, 2221 S. Clark St., Ste. 500, Arlington, VA, 22202, (703) 604–8158. If members of the public would like to attend, please contact the USAFA Public Affairs Office, (719) 333–7731 for information on access to the Academy meeting site.

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 2010–2905 Filed 2–9–10; 8:45 am]

BILLING CODE 5001–05–P

## ELECTION ASSISTANCE COMMISSION

### Publication of State Plan Pursuant to the Help America Vote Act

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice.

**SUMMARY:** Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plans previously submitted by New Jersey and Wisconsin.

**DATES:** This notice is effective upon publication in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

*Submit Comments:* Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

**SUPPLEMENTARY INFORMATION:** On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the third revision to the State plan for Puerto Rico.

The amendment to Puerto Rico's State Plan provides changes to the HAVA Committee and key Comisión Estatal de Elecciones staff as well as actual costs and estimated new expenditures in various categories of election equipment, materials, supplies, maintenance and services. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. Puerto Rico confirms that its amendments to the State plan were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from February 10, 2010, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

### Chief State Election Official

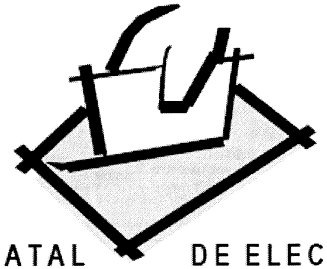
The Honorable Héctor J. Conty Pérez, President, Comisión Estatal de Elecciones, P.O. Box 195552, San Juan, Puerto Rico 00919–5552, Phone: (787) 777–8675. Thank you for your interest in improving the voting process in America.

Dated: February 3, 2010.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

**BILLING CODE 6820–KF–P**



COMISION ESTATAL DE ELECCIONES
ESTADO LIBRE ASOCIADO DE PUERTO RICO

# Help America Vote Act of 2002

# 2010 Revisions
## (Update to Puerto Rico's State Plan - initial Plan submitted in Aug. 2003; two subsequent Plan Revisions submitted in 2004 and 2005)

December 13, 2009

Dear Puerto Rico Voters:

The Comisión Estatal de Elecciones de Puerto Rico (CEE or Commission) issued an initial implementation plan on August 14, 2003 (2003 Implementation Plan) as required under the Help America Vote Act of 2002 (HAVA). In December 2004, the Commission issued revisions to that initial plan (2004 Revisions) and did so again in December 2005 (2005 Revisions). Most of the changes in the 2004 and 2005 Revisions (published in the Federal Register in January 2005 and February 2006, respectively) served to document the amounts spent and the progress made regarding various, significant electoral improvements and also to highlight contemplated additional election improvements. Additionally, the 2005 Revisions encompassed the plan for expenditure of additional federal HAVA funds appropriated by Congress in 2005.

This document reflects the 2010 Revisions to the HAVA state plan. It is submitted to propose plans for expenditure of additional HAVA funds appropriated by Congress in Fiscal Year 2008 and 2009. Additionally, the 2010 Revisions re-format the budgetary plan using ranges of estimated expenditures by category. This new approach provides flexibility to accommodate differences between estimated expenditures and actual costs in various categories of election equipment, materials, supplies, maintenance and services to meet the needs of Puerto Rico's electorate.

This 2010 Revisions document is being made available for thirty days to solicit public comment and review as required by HAVA. The Commission disseminated copies of a draft document through the HAVA Committee on its December 9, 2009 meeting. Public notice of the 2010 Revisions was subsequently released on December 13, 2009 and was posted in two local newspapers and on the websites of the Government of Puerto Rico and the Commission.

The Commission continues to appreciate the time and suggestions given by the members of the Puerto Rico HAVA Advisory Committee. This diverse group represents multiple constituencies of Puerto Rico's electorate.

Sincerely,

Héctor J. Conty Pérez
President

Table of Contents


| | Page |
|---|---|
| Introduction | 4 |
| **Section 1 –** Achieving Compliance with HAVA in Puerto Rico | |
| • Voting Systems Standards in §301 of HAVA | 4 |
| • Computerized Statewide Voter Registration List Requirements | |
| • Activities for Achieving Compliance with Title III and | |
| • Election Administration Improvements | 6 |
| **Section 6 –** Budget for Title III Requirements | 8 |
| **Section 12 –** Changes from the Previous Revised Plan | 10 |
| **Section 13 –** Changes to HAVA Committee & Key CEE staff | 10 |
| Compliance Issues | 11 |


***Introduction***

Since receipt of initial HAVA funding in 2003 and during the ensuing four years, the CEE has utilized HAVA funding to make significant progress toward improving election administration in Puerto Rico and for compliance with the provisions of the U.S. Help America Vote Act (HAVA). Required reports of expenditures have been filed annually with the U.S. Election Assistance Commission (EAC) regarding expenditure of HAVA 101 and 251 funds. Additionally, reports have been filed each year with the U.S. Health and Human Services Department (HHS) to document expenditure of HAVA 261 funds to make improvements in voting accessibility for voters with disabilities.

This HAVA State Plan revision is filed both to fulfill requirements to describe plans for expenditure of new HAVA requirements payments approved by the U.S. Congress in fiscal year (FY) 2008 and 2009 and to amend the previously approved 2005 Revisions to the State Plan. Consequently, it addresses use of unexpended balances of existing HAVA funding from former years with the exception of HAVA 261 funds as no changes are projected for use of those funds.

Based on EAC advisory instructions allowing states to request FY 2008 and 2009 requirements payments at the same time, this document requests a combined appropriation of $2,666,032 for both FY 2008 and 2009. The requirement has been met to make available five percent state matching funds in order to apply for the newly available HAVA funds.

***CHANGES TO STATE PLAN:***

***SECTION I – Achieving Compliance with HAVA in Puerto Rico***

*§301* ***Voting Systems***

Because there was no federal office on the ballot in Puerto Rico for the 2006 election cycle (the term for Puerto Rico's Resident Commissioner to the U.S. Congress is for four years coinciding with the US Presidential elections), the CEE applied due diligence and continued to examine all available voting equipment options in preparation for the 2008 election cycle.

After extensive research and evaluation of all options, including every model of direct record electronic (DRE) voting system as well as all available ballot marking devices that maintain the tradition of paper ballots used in Puerto Rico (such as Automark and Vote by Phone), the Commission selected the IVS Vote by Phone system to comply with HAVA's disability accessibility requirement. Following an RFP process, a lease contract for an initial pilot program was issued to IVS in advance of the June 1, 2008 Democratic Primary Election.

The IVS system was successfully deployed in conjunction with the June 1, 2008 Election and was well-received by blind and disabled voters. Subsequently, use of the IVS Vote by Phone system was expanded island-wide through a renewed lease agreement with the vendor for the November 2008 General Election. This decision was applauded by disability access advocacy groups including membership of the CEE's HAVA Advisory Committee.

***§303 – Computerized Statewide Voter Registration List Requirements***

After several years of extensive work and testing following new system procurement, Puerto Rico went live with the of a new statewide voter registration system on June 30, 2007. The architecture of the system uses a P.C. client-server network that enables on-line, real-time access at both CEE headquarters and at the 102 Juntas de Inscripción Permanente (JIPs) which are the voter registration locations. Additionally, the system provides access to voters remotely through the deployment of mobile units.

This system replaced the previous mainframe system in which voter registration records were maintained in batch mode. The new system was deployed in stages beginning with the roll-out of the voter identification card component in September 2006 and continuing through the complex addition of the demographic information of all 2.3 million voters into the system by June 30, 2007. The system assigns a unique voter identification number to each registrant in real-time. However, verification with driver's license numbers from Puerto Rico's Department of Transportation (DTOP) continued to be processed in batch mode without the benefits of real-time processing.

The next voter registration system enhancement will enable the system to capture and verify driver's license numbers on-line, in real-time at CEE headquarters, JIPs and all mobile units. This State Plan revision outlines necessary actions to accomplish this objective. Capturing and verifying driver's license records from DTOP in real-time, including social security number validation, will allow registrants immediate confirmation of identify and verification of their voter eligibility status. Implementation of this next phase is described later in this document under the heading Planned Activities.

*Background*

As fully explained in a previously submitted HAVA State Plan, voter registration activity in Puerto Rico occurs in-person at the 102 JIPs across the island. Mail-in voter registration is prohibited except for those voters covered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and no government agencies other than local JIP registration boards may process voter registrations. Puerto Rico is exempt from the National Voter Registration Act (NVRA) provisions that pertain to mail-in registrations and to other agencies offering registration services. Similarly, Puerto Rico is exempt from HAVA Section (303)(a)(2) encompassing felons and death records because convicted felons have the right to vote. The CEE does coordinate its voter registration list with Civil Registry records which include death records.

The voter registration system contains records of driver's license numbers from the Department of Transportation and Public Works (DTOP) for voters who have a driver's license. When registering, or re-registering to vote at a JIP, each registrant's information is entered into the system and verified at the JIP comparing the DTOP information. Following this process, each voter is issued a photo identification card which contains a unique number. For those few voters without a driver's license, the voter provides the last four digits of his/her social security number (SSN). Additionally, all voter registration records in Puerto Rico contain a unique number attached to each registrant in the system. As a result, checking for duplicate registrations is a regular, ongoing process at all JIPs.

The CEE and DTOP signed an agreement on December 29, 2005 which was subsequently signed by the Social Security Administration on January 12, 2006 for DTOP and SSN to develop a system to share information. The technical work to accomplish this objective is ongoing between DTOP and SSN.

***Planned Activities for Achieving Compliance with Title III and Election Administration Improvements***

With regard to improving election administration, the following new and revised projects have been identified to amend the State Plan:

- Modernizing Vote Tabulation

  Looking ahead to the next election in Puerto Rico in 2012 with a race for a federal election office on the ballot, the CEE plans to continue to explore all available options in order to select a voting system prior to that election that complies with provisions of HAVA. This may include continuation of a lease contract for use of a vote-by-phone system or the lease or purchase of any other type of HAVA-compliant voting system or a combination of the two. This plan provides the flexibility to make that decision in sufficient time to deploy the new voting equipment, train poll workers and educate voters on use of the system prior to the next federal election cycle.

  Puerto Rico's has maintained a tradition of hand-counted paper ballots which has been the model for all past elections. The CEE wishes to improve electoral operations by computerizing the vote tabulation system. Procurement and deployment of a new voting system would not only meet all HAVA requirements, but would also achieve the objective of modernizing and speeding up the vote tabulation process.

- Voice Activation Project

The toll free number for the CEE has been widely used by voters since installation in 2004. The system is advertised to voters via the CEE's outreach materials and website. Voters insert their voter ID number and select from prompts that lead to customized services such as the location of their JIP or assigned polling place. Voters that do not have their voter ID number are transferred to an operator who provides this information.

The CEE is planning to upgrade this automated phone service. Currently, provisional voters are advised of their provisional ballot status via a post-election mailing from the CEE. Voter's whose ballots are not counted are advised to go to the closest JIP to clarify the status of their registration and to receive a new voter ID card. Plans are underway to add a message regarding provisional ballot status to the CEE's voice activation system. The expectation for completion is prior to the 2012 election.

Improving the Voter Registration Process

The development and purchase of equipment for the new voter registration system in 2006, as described earlier in this document, established on-line, real-time operation at CEE headquarters, the JIPs and the mobile registration units. The next step will enhance the system by enabling verification of voters' identity against the most current drivers' license and social security records by providing real-time access to this data. Implementation of this next phase will enhance service to all registrants by providing immediate identify and verification of their voter eligibility status.

This plan allocates HAVA funding to accomplish this next step of voter registration modernization. The plan calls for purchase of sufficient hardware, software and necessary peripheral equipment to implement these improvements for all the JIP offices and mobile voter registration units prior to the 2012 election.

Improving HAVA Administration

The CEE plans to complete the ongoing process of converting paper voter registration records to microfilm and, to further enhance storage of back-up voter registration data, to digitize the records in electronic format. The plan calls for allocating sufficient funds to contract with a vendor with expertise in this technology in order to speed up completion of this process to maintain secure voter registration data in multiple formats.

The CEE also plans to purchase additional equipment to expand the capability of tracking the assembly and distribution of voting supplies and materials. The new equipment will streamline operations and dispatch of supplies to the voting locations.

***SECTION 6 – Budget for Title III Requirements***

**Appropriated HAVA funds**

| | | |
|---|---|---|
| HAVA Title I (101) Funds: | $ 3,151,144 | (FY 2003) |
| HAVA Title II (251) Funds: | $ 830,000 | (FY 2003) |
| | $ 1,489,361 | (FY 2004) |
| **Newly appropriated HAVA funds** | $ 1,426,017 | (FY 2008) |
| | $ 1,240,015 | (FY 2009) |
| **Puerto Rico Matching Funds** | $ 122,072 | (FYs 2003-07) |
| | $ 140,318 | (FYs 2008-09) |
| **Interest Earned (through 9/09)** | $ 503,663 | (HAVA & State Matching) |
| **Total Funds** | **$ 8,902,590** | |

**Total Expended (through 9/09)**

| | |
|---|---|
| HAVA 101 funds | $ 1,622,952 |
| HAVA 251 funds & state match | $ 840,990 |
| **Subtotal** | $ 2,463,942 |

**Available Funds (as of 9/09)**

| | |
|---|---|
| HAVA 101 funds | $ 1,528,192 |
| HAVA 251 funds & state match | $ 1,600,442 |
| Interest | $ 503,663 |
| **Subtotal** | $ 3,632,297 |

**Newly appropriated HAVA funds**

| | |
|---|---|
| HAVA FY 2008 funds | $ 1,426,017 |
| HAVA FY 2009 funds | $ 1,240,015 |
| State Match 2008/2009 funds | $ 140,318 |
| **Subtotal** | $ 2,806,350 |

**Total Available Funds** **$ 6,438,647**

Detailed below are estimates for the anticipated cost of planned activities that the CEE will carry out with the remaining available funding of $6,438,648 as a result of the revisions outlined in this State Plan. The CEE has estimated ranges of costs in each category in order maintain flexibility and to assure sufficient funds within each category in recognition of the variation and uncertainty of needed expenditures prior to the procurement process.

| Ranges of Estimated Expenditures on Title III Requirements | | | |
|---|---|---|---|
| | HAVA 101 | HAVA 251 | 5% state match (and interest) |
| **Sec. 301 – Voting System Requirements** | | | |
| Lease or purchase new voting system | $100,000 to $1,000,000 | $250,000 to $3,000,000 | |
| Voting aids and commodities for voters with disabilities | $10,000 to $100,000 | | |
| Training poll workers and conducting voter outreach on use of new voting equipment | $25,000 to $100,000 | | |
| **Sec. 302 – Provisional Voting and Voter Information** | | | |
| Voice activated information and other available and/or posted voter information | | $5,000 to $25,000 | |
| | | | |
| **Sec. 303 – Computerized voter registration and verification requirements** | | | |
| Upgrade of voter registration system | $500,000 to $1,250,000 | | |
| Verification of data assignments (GIS) | | $100,000 to $500,000 | |
| Mobile unit equipment and computers | | $25,000 to $400,000 | |
| DTOP/SSA VR project | | | |
| | $10,000 to $70,000 | | |
| **Improving HAVA administration** | | | |
| Implementation planning, training & execution, and oversight and management | $250,000 to $700,000 | | |
| Fund for Warranties, Repairs and other needs for HAVA projects | $100,000 to $250,000 | | |
| Convert voter registration files from paper to microfilm and electronic, digitized format | $50,000 to $200,000 | | |
| Mechanized controls for election materials | $10,000 to $30,000 | | |
| **Available funding (as of 9/09)** | $1,528,192 | $1,529,223 | $71,219 |
| **Appropriated HAVA funds FY 08 & 09** | | $2,666,032 | $140,318 |
| **Interest on HAVA 251 & state match funds (as of 9/09)** | | | $503,663 |
| **TOTAL Available funds** | $1,528,192 | $4,195,255 | $715,199 |
| | | | $6,438,647 |

The chart above reflects HAVA funding in ranges to provide maximum flexibility as the CEE develops implementation plans to purchase election equipment, supplies and services to enhance the voting experience for all Puerto Rico's voters. In no event will expenditures exceed the maximum amounts allocated in each category.

***SECTION 12 – Changes from the Previous Plans***

As suggested by the U.S. Election Assistance Commission and as done with previous plan revisions, only the changes as described in this State Plan Revision 2010 document will be published in the Federal Register in order to limit expenditure of federal funds for publication while meeting the requirement to document and publish substantive changes to the State Plan regarding allocation of HAVA funding.

***SECTION 13 – Changes to HAVA Committee & Key CEE staff***

Puerto Rico's HAVA Advisory Committee continues to be a diverse group of citizens including members of the Elections Commission (CEE) and representatives from the Commission's local offices through the representation of the political party Commissioners at the Commission. Additionally, advocacy groups, local government offices, regional and local representatives from various interest organizations have joined and attended the Committee's regular meetings such as:

- The National Federation of the Blind - Puerto Rico's affiliate
- University of Puerto Rico's AssistiveTechnology Program (PRAT)
- Veterans Ombudsman Office
- Ombudsman for Elderly Persons
- Ombudsman for Patients
- Civil Rights Commission
- Metropolitan Public Transportation Authority (AMA)
- Blind Veterans Association
- Commission for Persons with Disabilities - Puerto Rico's Bar Association

Key CEE staff and titles have changed as follows:

- María D. Santiago Rodríguez, First Vice President, CEE
- Néstor J. Colón Berlingeri, Second Vice President, CEE
- Andrés Miranda Rosado, Third Vice President, CEE

The CEE vice-presidents are responsible for management and measurement of progress regarding HAVA State Plan revisions described in this document.

***Compliance issues***

The CEE previously filed with the EAC a plan for the implementation of the uniform, non-discriminatory administrative complaint procedures required under HAVA section 402 and continues to maintain those procedures.

Additionally, the CEE certifies compliance with each of the following federal laws as they apply to the Act including:

- The Voting Rights Act of 1965;

- The Voting Accessibility for the Elderly and Handicapped Act;
- The Uniformed and Overseas Citizens Absentee Voting Act;
- The National Voter Registration Act of 1993;
- The Americans with Disabilities Act of 1990; and
- The Rehabilitation Act of 1973.

The CEE has always met HAVA requirements regarding maintenance of effort (MOE) and certifies commitment to continuing to meet MOE requirements during ensuing years in which HAVA funds are expended. Additionally to the extent that any portion of the Title II requirements payment is used for activities other than meeting the requirements of Title III, the CEE certifies that proposed uses of the requirements payment are not inconsistent with the requirements of Title III.

[FR Doc. 2010–2919 Filed 2–9–10; 8:45 am]

BILLING CODE 6820–KF–C

## DEPARTMENT OF ENERGY

### Office of Science; High Energy Physics Advisory Panel

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

**DATES:** Thursday, March 11, 2010; 10 a.m. to 6 p.m. and Friday, March 12, 2010; 8:30 a.m. to 2 p.m.

**ADDRESSES:** Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814.

**FOR FURTHER INFORMATION CONTACT:** John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–1298

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

*Tentative Agenda:* Agenda will include discussions of the following:

Thursday, March 11, 2010 and Friday, March 12, 2010.

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 or *John.Kogut@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for public review and copying within 90 days on the High Energy Physics Advisory Panel Web site. Minutes will also be available by writing or calling John Kogut at the address and phone number listed above.

Issued at Washington, DC, on February 3, 2010.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010–2931 Filed 2–9–10; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Biological and Environmental Research Advisory Committee

**AGENCY:** Department of Energy; Office of Science.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

**DATES:** Tuesday, February 23, 2010, 9 a.m. to 5:15 p.m. and Wednesday, February 24, 2010, 8:30 a.m. to 12 p.m., E.S.T.

**ADDRESSES:** Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Thomassen, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Phone 301–903–9817; fax (301) 903–5051 or e-mail: *david.thomassen@science.doe.gov.* The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/berac/announce.html.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

*Tentative Agenda:*

- Report From the Office of Science
- Report From the Office of Biological and Environmental Research
- News From the Biological Systems Science and Climate and Environmental Sciences Divisions
- Updates on the Environmental Molecular Sciences Laboratory and the Next Generation Ecosystem Experiment
- Reports on the Atmospheric System Research Science Plan and the Subsurface Environmental Systems Science Workshop
- Discussions on the Climate Research Roadmap, BER Grand Challenge Workshop, Complex Systems Science
- New Business
- Public Comment

*Public Participation:* The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://www.science.doe.gov/ober/berac/Minutes.html.*

Issued in Washington, DC, on February 2, 2010.

**Rachel M. Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010–2933 Filed 2–9–10; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### DOE/NSF Nuclear Science Advisory Committee

**AGENCY:** Department of Energy, Office of Science.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

**DATES:** Friday, February 26, 2010, 9 a.m. to 5 p.m.

**ADDRESSES:** Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–0536.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

*Tentative Agenda:* Agenda will include discussions of the following:

**Friday, February 26, 2010**

- Perspectives From Department of Energy and National Science Foundation.
- Presentation and Discussion of the Committee of Visitors Report.
- Public Comment (10-minute rule).

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available on the U.S. Department of Energy's Office of Nuclear Physics Web site for viewing.

Issued in Washington, DC, on February 4, 2010.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010–2932 Filed 2–9–10; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

February 3, 2010.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER00–1372–006; ER07–496–003.

*Applicants:* Alcoa Power Generating Inc.; Alcoa Power Marketing LLC.

*Description:* Alcoa Power Generating Inc et al request for exemption from the Triennial Market Power Update Reporting requirements for Category 2 Sellers for the Northwest Region.

*Filed Date:* 02/01/2010.

*Accession Number:* 20100203–0212.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER01–3103–021.

*Applicants:* Astoria Energy LLC.

*Description:* Astoria Energy LLC Submits Order 697 C Report.

*Filed Date:* 02/02/2010.

*Accession Number:* 20100202–5083.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 23, 2010.

*Docket Numbers:* ER01–1822–007.

*Applicants:* Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP.

*Description:* Notification of Non-Material Change in Status of Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP.

*Filed Date:* 02/02/2010.

*Accession Number:* 20100202–5161.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 23, 2010.

*Docket Numbers:* ER01–596–011; ER01–560–017; ER01–2690–015; ER02–963–015; ER01–2641–017; ER02–2509–012; ER05–524–010; ER03–720–016; ER02–77–015; ER02–553–015; ER00–840–014; ER01–137–012; ER98–1767–020; ER99–2992–013; ER99–3165–014; ER94–389–036; ER02–1942–014; ER09–43–004; ER00–1780–013; ER01–557–017; ER01–559–017.

*Applicants:* Alabama Electric Marketing, LLC; Big Sandy Peaker Plant, LLC; California Electric Marketing, LLC; Crete Energy Venture, LLC; High Desert Power Project, LLC; Kiowa Power Partners, LLC; Lincoln Generating Facility, LLC; New Covert Generating Company, LLC; New Mexico Electric Marketing, LLC; Rolling Hills Generating, L.L.C.; Tenaska Alabama Partners, L.P.; Tenaska Alabama II Partners, L.P.; Tenaska Frontier Partners, Ltd.; Tenaska Gateway Partners, Ltd.; Tenaska Georgia Partners, L.P.; Tenaska Power Services Co.; Tenaska Virginia Partners, L.P.; Tenaska Washington Partners, L.P.; Texas Electric Marketing, LLC; University Park Energy, LLC; Wolf Hills Energy, LLC.

*Description:* Tenaska MBR Sellers submits quarterly report for the third quarter of 2009.

*Filed Date:* 02/01/2010.

*Accession Number:* 20100203–0211.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER02–2551–005.

*Applicants:* Cargill Power Markets, LLC.

*Description:* Cargill Power Markets, LLC submits the notification of non-material change in status.

*Filed Date:* 01/29/2010.

*Accession Number:* 20100202–0255.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER06–220–004; ER09–1677–003; ER06–686–004; ER06–215–004; ER96–2652–059; ER99–4228–012; ER99–4229–012; ER99–4231–011; ER99–852–013; ER08–589–004; ER08–1397–002; ER99–666–009; ER08–293–004; ER06–222–004; ER09–712–003; ER09–712–003; ER07–1138–003; ER06–223–004; ER08–297–004; ER06–736–003; ER99–3693–008; ER08–650–002; ER08–692–002; ER05–1389–005; ER06–221–004; ER07–645–002; ER02–2263–011; ER01–2217–009; ER06–224–004; ER08–931–005; ER08–337–006; ER07–301–002; ER10–607–001; ER10–608–001; ER10–610–001; ER10–609–001; ER10–611–001; ER10–612–001; ER05–1282–004.

*Applicants:* Bendwind, LLC; Big Sky Wind, LLC; DeGreeff DP, LLC; DeGreeffpa, LLC; CL Power Sales Eight, L.L.C.; CP Power Sales Nineteen, L.L.C.; CP Power Sales Seventeen, L.L.C.; CP Power Sales Twenty, L.L.C.; Edison Mission Marketing & Trading, Inc.; Edison Mission Solutions, L.L.C.; Elkhorn Ridge Wind, LLC; EME Homer City Generation, L.P.; Forward WindPower, LLC; Groen Wind, LLC; High Lonesome Mesa, LLC; Hillcrest Wind, LLC; Jeffers Wind 20, LLC; Larswind, LLC; Lookout WindPower, LLC; Midway-Sunset Cogeneration Company; Midwest Generation, LLC; Mountain Wind Power, LLC; Mountain Wind Power II, LLC; San Juan Mesa Wind Project, LLC; Sierra Wind, LLC; Sleeping Bear, LLC; Southern California Edison Company; Sunrise Power Company, LLC; TAIR Windfarm, LLC; Walnut Creek Energy, LLC; Watson Cogeneration Company; Wildorado Wind, LLC; Coalinga Cogeneration Company; Kern River Cogeneration Company; Mid-Set Cogeneration Company; Salinas River Cogeneration Company; Sycamore Cogeneration Company; Sargent Canyon Cogeneration Company; Storm Lake Power Partners I LLC.

*Description:* Edison International, on behalf of all of its affiliates with market based rate authority etc submits notice of change in status.

*Filed Date:* 01/29/2010.

*Accession Number:* 20100203–0213.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER06–1185–004.

*Applicants:* Pace Global Asset Management, LLC.

*Description:* Pace Global Asset Management, LLC submits compliance filing.
*Filed Date:* 01/29/2010.
*Accession Number:* 20100202–0252.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER07–527–004.
*Applicants:* Longview Fibre Paper and Packaging, Inc.
*Description:* Longview Fibre Paper and Packaging, Inc submits a redlined and clean version of its revised tariff to reflect that Longview Fibre is a Category 1 Seller etc.
*Filed Date:* 01/29/2010.
*Accession Number:* 20100202–0256.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER07–1372–017; ER09–1126–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits a compliance of filing of proposed revisions to its Energy and Operating Reserve markets.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100202–0257.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER09–1110–002; ER09–1114–003.
*Applicants:* RRI Energy Florida, LLC; RRI Energy Services, Inc.
*Description:* Notice of Change in Status of RRI Florida MBR Companies.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100203–0209.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER09–1307–002.
*Applicants:* EnergyConnect, Inc.
*Description:* EnergyConnect, Inc. submits revised tariff sheets and redlined version.
*Filed Date:* 01/29/2010.
*Accession Number:* 20100202–0251.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER09–1619–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc submits their compliance filing pursuant to FERC's 12/31/09 Order accepting Tariff Revisions.
*Filed Date:* 01/29/2010.
*Accession Number:* 20100203–0201.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–27–002.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc submits proposed revisions to attachment RR–1 to its Open Access Transmission, Energy and Operating Reserve Markets Tariff in compliance with the Commission directives.
*Filed Date:* 01/28/2010.
*Accession Number:* 20100202–0253.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 18, 2010.

*Docket Numbers:* ER10–35–002.
*Applicants:* Xcel Energy Services Inc.
*Description:* Refund Report of Xcel Energy Services Inc.
*Filed Date:* 02/03/2010.
*Accession Number:* 20100203–5033.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 24, 2010.

*Docket Numbers:* ER10–183–001.
*Applicants:* Otter Tail Power Company.
*Description:* Otter Tail Power Co *et al* submits certain revisions to the Energy and Operating Markets Tariff in compliance with the December 30 Order.
*Filed Date:* 01/29/2010.
*Accession Number:* 20100202–0262.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–249–002.
*Applicants:* Illinois Power Company.
*Description:* Illinois Power Co. *et al* submits a compliance filing of revised pages to the Joint Ownership Agreement.
*Filed Date:* 01/29/2010.
*Accession Number:* 20100202–0263.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–298–001.
*Applicants:* E.ON U.S. LLC.
*Description:* Louisville Gas and Electric Company *et al* submits an executed Network Integration Transmission Service Agreement *et al.*
*Filed Date:* 02/02/2010.
*Accession Number:* 20100203–0210.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 23, 2010.

*Docket Numbers:* ER10–463–001.
*Applicants:* Florida Power Corporation.
*Description:* Progress Energy Service Co., LLC submits notice of cancellation.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100202–0258.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–523–001.
*Applicants:* New England Power Company.
*Description:* National Grid submits Sixth Revised Service Agreement 20 for Mass Electric to replace the incorrect Service Agreement revision submitted on 12/30/09.
*Filed Date:* 01/29/2010.
*Accession Number:* 20100202–0264.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–560–001.
*Applicants:* Commonwealth Edison Company.
*Description:* Commonwealth Edison Company submits errata filing to Transmission Interconnection Upgrade Agreement among ComEd, Northern Indiana Public Service Company, *et al.*
*Filed Date:* 01/29/2010.
*Accession Number:* 20100203–0203.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–574–001.
*Applicants:* NRG Solar Blythe LLC.
*Description:* NRG Solar Blythe LLC submits the revised FERC Electric tariff, First Revised Volume 1 of NRG, including a revised citation to the unpublished letter order granting NRG certain waivers and blanket authorizations etc.
*Filed Date:* 01/29/2010.
*Accession Number:* 20100202–0261.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–583–001.
*Applicants:* Monarch Global Energy, Inc.
*Description:* Monarch Global Energy, Inc. submits amended petition for acceptance of initial rate schedule, waiver and blanket authority.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100203–0202.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–678–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits an errata to the submission of revisions to the SPP Tariff.
*Filed Date:* 02/02/2010.
*Accession Number:* 20100202–0260.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 23, 2010.

*Docket Numbers:* ER10–704–000.
*Applicants:* Portland General Electric Company.
*Description:* Portland General Electric Company submits First Revised Rate Schedule FERC No. 185 General Transmission Agreement for Integration of Resources with Bonneville Power Administration etc.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100202–0232.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–705–000.
*Applicants:* National Grid Generation LLC.
*Description:* National Grid Generation, LLC submits Original Sheet

69 *et al* to FERC Electric Rate Schedule 1.

*Filed Date:* 02/01/2010.

*Accession Number:* 20100202–0231.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–713–000.

*Applicants:* PJM Interconnection, L.L.C., Progress Energy Carolinas, Inc.

*Description:* PJM Interconnection, LLC submits a Joint Operating Agreement executed on 2/2/2010, and designated as PJM FERC Electric tariff Rate Schedule 50 and Carolina Power & Light Company FERC Electric Tariff Rate Schedule 188.

*Filed Date:* 02/02/2010.

*Accession Number:* 20100202–0254.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 23, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA08–14–007.

*Applicants:* Midwest Independent Transmission System.

*Description:* The Midwest Independent Transmission System Operator, Inc submits Notification filing pursuant to Sections 19.9 & 32.5 to its Open Access Transmission, Energy and Operating Reserve Markets Tariff etc.

*Filed Date:* 01/29/2010.

*Accession Number:* 20100201–0219.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010–2885 Filed 2–9–10; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9113–4]**

## Agency Information Collection Activities OMB Responses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** ACTION: Notice.

**SUMMARY:** This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR Number 2300.04; Regulation to Establish Mandatory Reporting of Greenhouse Gases (Change: Add two forms); 40 CFR parts 86, 89, 90, 94, 98, 600, 1033, 1039, 1042, 1045, 1048, 1051, 1054 and1065 was approved on 01/05/2010; OMB Number 2060–0629; expires on 11/30/2012; Approved without change.

EPA ICR Number 1686.07; NESHAP for the Secondary Lead Smelter Industry; 40 CFR part 63, subpart A and 40 CFR part 63, subpart X; was approved on 01/12/2010; OMB Number 2060–0296; expires on 01/31/2013; Approved without change.

EPA ICR Number 1900.04; NSPS for Small Municipal Waste Combustors; 40 CFR part 60, subpart A and 40 CFR part 60, subpart AAAA; was approved on 01/12/2010; OMB Number 2060–0423; expires on 01/31/2013; Approved without change.

EPA ICR Number 1730.08; NSPS for Hospital/Medical/Infectious Waste Incinerators; 40 CFR part 60, subpart A and 40 CFR part 60 subpart Ec; was approved on 01/14/2010; OMB Number 2060–0363; expires on 01/31/2013; Approved without change.

EPA ICR Number 2177.03; NSPS for Stationary Combustion Turbines; 40 CFR part 60, subpart A and 40 CFR part 60, subpart KKKK; was approved on 01/21/2010; OMB Number 2060–0582; expires on 01/31/2013; Approved without change.

EPA ICR Number 1088.12; NSPS for Industrial-Commercial-Institutional Steam Generating Units; 40 CFR part 60, subpart A and 40 CFR part 60, subpart Db; was approved on 01/21/2010; OMB Number 2060–0072; expires on 01/31/2013; Approved without change.

EPA ICR Number 1061.11; NSPS for the Phosphate Fertilizer Industry; 40 CFR part 60, subparts A, T, U, V, W, and X, was approved on 01/21/2010; OMB Number 2060–0037; expires on 01/31/2013; Approved without change.

EPA ICR Number 1052.09; NSPS for Fossil-Fuel-Fired Steam Generating Units; 40 CFR part 60, subpart A and 40 CFR part 60, subpart D; was approved on 01/21/2010; OMB Number 2060–0026; expires on 01/31/2013; Approved without change.

EPA ICR Number 1772.05; EPA's ENERGY STAR Program in the Commercial and Industrial Sectors (Renewal); was approved on 01/21/2010; OMB Number 2060–0347; expires on 01/31/2013; Approved without change.

EPA ICR Number 2362.02; Information Collection Effort for New and Existing Coal- and Oil-fired Electric Utility Steam Generating Units; was approved on 01/26/2010; OMB Number 2060–0631; expires on 12/31/2012; Approved with change.

EPA ICR Number 0262.13; RCRA Hazardous Waste Permit Application and Modification, Part A (Renewal); 40 CFR 270.11, 270.13, 270.70, and 270.72, was approved on 01/26/2010; OMB Number 2050–0034; expires on 07/31/2012; Approved without change.

EPA ICR Number 1093.09; NSPS for Surface Coating of Plastic Parts for Business Machines; 40 CFR part 60, subpart A and 40 CFR part 60, subpart TTT; was approved on 01/28/2010; OMB Number 2060–0162; expires on 01/31/2013; Approved without change.

EPA ICR Number 1128.09; NSPS for Secondary Lead Smelters; 40 CFR part 60, subpart A and 40 CFR part 60, subpart L; was approved on 01/28/2010; OMB Number 2060–0080; expires on 01/31/2013; Approved without change.

*Comment Filed*

EPA ICR Number 2378.01; Revisions to Pb Ambient Air Monitoring Requirements—Proposed Rule; in 40 CFR part 58; OMB filed comment on 01/04/2010.

Dated: February 9, 2010.

**John Moses,**

*Director, Collections Strategies Division.*

[FR Doc. 2010–2982 Filed 2–9–10; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9112–9]**

## Local Government Advisory Committee; Notice of Charter Renewal

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Charter Renewal.

The Charter for the Environmental Protection Agency's Local Government's Advisory Committee (LGAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The purpose of LGAC is to provide advice and recommendations to EPA's Administrator on ways to improve its partnership with Local Governments and provide more efficient and effective environmental protection.

It is determined that LGAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Frances Eargle, Designated Federal Officer, LGAC, U.S. EPA (mail code 1301A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or *eargle.frances@epa.gov.*

Dated: January 29, 2010.

**David G. McIntosh,**

*Associate Administrator, Office of Congressional & Intergovernmental Relations.*

[FR Doc. 2010–2978 Filed 2–9–10; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0054; FRL–8810–9]**

## Disulfoton Registration Review Decision; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's registration review decision for the pesticide disulfoton, case 0102. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

**FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information, contact*: Eric Miederhoff, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8028; fax number: (703) 308–8090; e-mail address: *miederhoff.eric@epa.gov.*

*For general information on the registration review program, contact*: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0054. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

### II. Background

*A. What Action is the Agency Taking?*

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's registration review decision for disulfoton, case 0102. Disulfoton is an organophosphate insecticide used in agricultural settings on a variety of food and non-food/non-feed crops and in residential settings on ornamentals.

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in FIFRA. EPA has considered disulfoton in light of the FIFRA standard for registration. The Disulfoton Decision document in the docket describes the Agency's rationale for issuing a registration review decision for this pesticide.

In addition to the registration review decision document, the registration review docket for disulfoton also includes other relevant documents related to the registration review of this case. The proposed registration review decision was announced on October 23, 2009, and the public was invited to submit any comments or new information. During the 60–day comment period, no public comments were received.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review*. Links to earlier documents related to the registration

review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/disulfoton/index.htm.*

*B. What is the Agency's Authority for Taking this Action?*

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

**List of Subjects**

Environmental protection, Registration review, Pesticides and pests, Disulfoton.

Dated: January 29, 2010.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2010–2669 Filed 2–9–10; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2010–0001; FRL–8811–3]**

## SFIREG Pesticide Operations and Management Working Committee Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG), Pesticide Operations and Management (POM) Working Committee will hold a 2-day meeting, beginning on March 29, 2010 and ending March 30, 2010. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on Monday, March 29, 2010 from 8:30 a.m. to 5 p.m. and 8:30 a.m to 12 noon on Tuesday March 30, 2010.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at the Ocean Plaza Resort, 15th Street, on Tybee Island, GA.

**FOR FURTHER INFORMATION CONTACT:** Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561; fax number: (703) 308–1850; e-mail address: *kendall.ron@epa.gov* or contact Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; telephone number (302) 422–8152; fax (302) 422–2435; e-mail address: *grierstaytonaapco-sfireg@comcast.net.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

*B. How Can I Get Copies of this Document and Other Related Information?*

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2010–0001. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

### II. Background

Topics may include but are not limited to:

1. Supplemental labeling: Regulatory issues, expiration dates, etc.
2. Suggested updates to the Section 24(c) guidance document.
3. Discussion of label quality initiatives (training, SLITS, QA).
4. Review of EPA/FDA Standard Operating Procedures document for pesticide residues in food commodities.
5. POM potential role in review of new labels.
6. FIFRA compliances and Organic Materials Review Institute (OMRI) products.
7. Reviewing and updating the Label Review Manual.
8. Soil fumigant label changes for 2010/11 and compliance strategies

### III. How Can I Request to Participate in this Meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

**List of Subjects**

Environmental Protection, Pesticide and pest.

Dated: February 2. 2010.

**Jay S. Ellenberger,**

*Director, Field and External Affairs Division, Office of Pesticide Programs.*

[FR Doc. 2010–2790 Filed 2–10–10; 8:45 a.m.]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2010–0110; FRL–8811–1]**

## Pesticide Product; Registration Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application to register a new use for a pesticide product containing a currently registered active ingredient, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this notice of such application, pursuant to section 3(c)(4) of FIFRA.

**DATES:** Comments must be received on or before March 12, 2010.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number specified in Unit II. of the **SUPPLEMENTARY INFORMATION**, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation

(8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to the docket ID number specified for the pesticide of interest as shown in the registration application summary. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the registration application summary using the instructions provided under **FOR FURTHER INFORMATION CONTACT.**

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Registration Application

EPA received an application as follows to register a new use for a pesticide product containing a currently registered active ingredient pursuant to the provisions of section 3(c) of FIFRA, and is publishing this notice of such application pursuant to section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

*Registration Number*: 71693–1. *Docket Number*: EPA–HQ–OPP–2010–0089. *Company Name and Address*: Arizona Cotton Research and Protection Council, 3721 East Wier Avenue, Phoenix, AZ 85040–2933. *Active Ingredient*: *Aspergillus flavus* AF36. *Proposed Use*: On corn.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 29, 2010.

**Keith A. Matthews,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 2010–2679 Filed 2–9–10; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9113–3]**

### Science Advisory Board Staff Office; Notification of a Public Teleconference of the Health Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis (Council)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Health Effects Subcommittee (HES) of the Advisory Council on Clean Air Compliance Analysis (Council). The HES, supplemented with additional members from the Council, will discuss its draft peer review report on EPA's health benefits analyses and uncertainty analyses in the Second Section 812 Prospective Benefit-Cost Study of the Clean Air Act.

**DATES:** The public teleconference will be held on Tuesday, March 2, 2010 from 12:30 p.m. to 2 p.m. (Eastern Time).

**ADDRESSES:** The public teleconference will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wants further information concerning the teleconference may contact Dr. Marc Rigas, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9978; fax (202) 233–0643; or e-mail at *rigas.marc@epa.gov.* General information concerning the Council can be found on the EPA Web site at *http://www.epa.gov/council.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the Health Effects Subcommittee (HES) of the Advisory Council on Clean Air Compliance Analysis (Council) will hold a public teleconference to discuss its peer review report to EPA. The Council was established in 1991 pursuant to the Clean Air Act (CAA) Amendments of 1990 (see 42 U.S.C. 7612) to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the CAA on the public health, economy, and environment of the United States. The Council is a Federal Advisory Committee chartered under FACA. The HES will provide advice through the Council and will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Pursuant to Section 812 of the 1990 Clean Air Act Amendments, EPA conducts periodic studies to assess benefits and costs of the EPA's regulatory actions under the Clean Air Act. The Council has provided advice on an EPA retrospective study published in 1997 and an EPA prospective study completed in 1999. EPA initiated a second prospective study to evaluate the costs and benefits of EPA Clean Air programs for years 1990–2020.

The Council HES met on December 15–16, 2009 to review the health-related chapters and associated appendices of the EPA's Second Section 812 Prospective Analysis of the Clean Air Act [**Federal Register** Notice dated November 27, 2009 (74 FR 62307–62308). Materials from the December meeting are posted on the Council web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/0E2E2DB24DAC1AA385257623006 6C8E0?OpenDocument.* The purpose of this upcoming teleconference is for the HES to discuss its draft report. The draft committee report will be submitted to the Council for its consideration and approval. Additional information about this advisory activity may be found on the Council Web site at *http://www.epa.gov/advisorycouncilcaa.* A meeting agenda and draft HES report will be posted at this Council Web site prior to the meeting.

*Availability of Meeting Materials:* A meeting agenda and materials in support of the teleconference will be placed on the Council Web site at *http://www.epa.gov/advisorycouncilcaa* in advance of the teleconference. For technical questions and information concerning EPA's draft benefits and uncertainty documents for the Second Section 812 Prospective Study, please contact Mr. Jim Democker at (202) 564–1673 or *democker.jim@epa.gov.*

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the March 2, 2010 teleconference, interested parties should notify Dr. Marc Rigas, DFO, by e-mail no later than February 25, 2010. Individuals making oral statements will be limited to three minutes per speaker. *Written Statements:* Written statements should be received in the SAB Staff Office by February 25, 2010 so that the information may be made available to the HES members for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Dr. Rigas at the phone number or e-mail address noted above, preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: February 4, 2010.

**Anthony F. Maciorowski,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2010–2980 Filed 2–9–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0979; FRL–8810–2]**

### Malathion, Diquat Dibromide, Metam-potassium and Metam-sodium; Notice of Receipt of Requests to Amend Pesticide Registrations to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily amend their registrations to delete uses in certain pesticide registrations containing the pesticides malathion, diquat dibromide, metam-potassium, and metam-sodium. The requests would terminate malathion use in or on animal premises and barns used for dairy and livestock. The requests would terminate diquat dibromide use in or on sorghum and soybean (seed crop only). The requests would terminate metam-sodium and metam-potassium soil fumigant uses (agricultural application) for certain products. The requests would not terminate the last malathion, diquat dibromide, metam-potassium, and metam-sodium products registered for

use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** For malathion products (EPA Registration Nos. 4787–46 and 67760–40) and diquat dibromide products (EPA Registration No. 100–1061) comments must be received on or before March 12, 2010. For metam-sodium and metam-potassium products (EPA Registration Nos. 1448–74, 1448–83, 1448–85, 1448–107, 1448–361, and 1448–362) comments must be received on or before August 9, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0979, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2009-0979. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Eric Miederhoff, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8028; fax number: (703) 308–7070; e-mail address: *miederhoff.eric@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from several registrants requesting that EPA amend product registrations as follows:

1. In a letter dated December 17, 2009, Cheminova, A/S, and Cheminova, Inc.,

requested that EPA amend its malathion product registrations to delete certain uses which are identified in Table 1 of Unit III. Malathion is a broad-spectrum organophosphate insecticide.

2. In a letter dated November 10, 2009, Syngenta Crop Protection, Inc., requested that EPA amend its diquate dibromide pesticide product registrations to delete certain uses which are identified in Table 1 of Unit III. Diquat dibromide is a non-selective contact algicide, defoliant, desiccant and herbicide.

3. In a letter dated October 30, 2009, Buckman Laboratories requested that EPA amend its metam-sodium and metam-potassium pesticide product registrations to delete certain uses which are identified in Table 1 of Unit III. Metam-sodium and metam-potassium are broad-spectrum fumigants with fungicidal, bactericidal, algicidal, herbicidal, insecticidal, nematicidal, and antimicrobial properties.

## III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to delete uses of malathion, diquat dibromide, metam-potassium, and metam-sodium product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The malathion and diquat dibromide registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

The metam-potassium and metam-sodium registrant has not requested that EPA waive the 180–day comment period. EPA will provide a 180–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

Table 1 lists the products with pending requests for amendment of the pesticide registrations.

TABLE 1. — PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

| EPA Registration No. | Product Name | Active Ingredient | Delete from Label |
|---|---|---|---|
| 100-1061 | Reglone Desiccant Herbicide | Diquat dibromide | Sorghum (seed crop only) Soybean (seed crop only) |
| 1448-74 | PNMDC | Metam-potassium | Soil fumigant uses (agricultural application) |
| 1448-83 | SNMDC | Metam-sodium | Soil fumigant uses (agricultural application) |
| 1448-85 | Busan 1020 | Metam-sodium | Soil fumigant uses (agricultural application) |
| 1448-107 | Metam Concentrate | Metam-sodium | Soil fumigant uses (agricultural application) |
| 1448-361 | Busan 1236 | Metam-sodium | Soil fumigant uses (agricultural application) |
| 1448-362 | Busan 1180 | Metam-potassium | Soil fumigant uses (agricultural application) |
| 4787-46 | Atrapa®8E | Malathion | Animal premise and barns used for dairy and livestock |
| 67760-40 | Fyfanon®57% EC | Malathion | Animal premise and barns used for dairy and livestock |

Table 2 includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Company Number | Company Name and Address |
|---|---|
| 100 | Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419-8300 |
| 1448 | Buckman Laboratories, 1236 N. McLean Blvd., Memphis, TN 38108-1241 |
| 4787 | Cheminova, A/S, P.O. Box 110566, One Park Drive, Suite 150, Research Triangle Park, NC 27709 |
| 67760 | Cheminova, Inc., Washington Office, 1600 Wilson Boulevard, Suite 700, Arlington, VA 22209 |

## IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

## V. Procedures for Withdrawal of Request

For malathion products (EPA Registration Nos. 4787–46 and 67760–40) and diquat dibromide products (EPA Registration No. 100–1061) registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Eric Miederhoff using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than March 12, 2010.

For metam-sodium and metam-potassium products (EPA Registration Nos. 1448–74, 1448–83, 1448–85, 1448–107, 1448–361, and 1448–362) registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Eric Miederhoff using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than August 9, 2010.

This written withdrawal of the request for use deletion will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of the use deletion amendment and all other provisions of any earlier cancellation action are controlling.

## VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to these requests for amendments to delete uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1 in Unit III. The Agency proposes to authorize registrants to sell or distribute products under the previously approved labeling for a period of 12 months after approval of the revision, unless other restrictions have been imposed.

If the requests for voluntary use deletions are granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of products whose labels include the deleted uses until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the product whose label includes the deleted uses. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. The Agency will publish the cancellation order in the **Federal Register**.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 3, 2010.

**Peter Caulkins,**

*Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2010–2966 Filed 2–9–10; 8:45 am]

BILLING CODE 6560–50–S

# EXPORT-IMPORT BANK OF THE UNITED STATES

## Sunshine Act Meeting

**ACTION:** Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

**TIME AND PLACE:** Thursday, February 11, 2010 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

**OPEN AGENDA ITEMS:** Item No. 1: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2010.

**PUBLIC PARTICIPATION:** The meeting will be open to public observation for Item No. 1 only.

**FURTHER INFORMATION:** For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (202) 565–3957.

**Jonathan J. Cordone,**

*Senior Vice President, and General Counsel.*

[FR Doc. 2010–2848 Filed 2–9–10; 8:45 am]

BILLING CODE 6690–01–M

# FEDERAL COMMUNICATIONS COMMISSION

## Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

February 4, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Persons wishing to comments on this information collection should submit comments on or before April 12, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

**SUPPLEMENTARY INFORMATION:**

OMB Control No: 3060–1134.

Title: Schools and Libraries Universal Service Support Program ("E–Rate") Broadband Survey.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not–for–profit institutions and state, local or tribal government.

Number of Respondents: 25,000 respondents; 25,000 responses.

Estimated Time Per Response: .25 hours.

Frequency of Response: One–time and on occasion reporting requirements.

Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in 47 U.S.C. sections 151–154, 201–205, 218–220, 254, 303(r), and 403.

Total Annual Burden: 12,500 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Although it is unlikely that the survey will solicit any confidential information, pursuant to 47 CFR 0.459 of the Commission's rules, a respondent may request that information submitted to the Commission not be put in the public record. The respondent must state the reasons, and the facts on which those reasons are based, for withholding the information from the public record. The appropriate Bureau or Office Chief of the Commission may grant a confidentiality request that presents, by a preponderance of the evidence, a case for non–disclosure consistent with the Freedom of Information Act (FOIA), 5 U.S.C. section 552. If a confidentiality request is denied, the respondent has five days to appeal the decision before the Commission. If the appeal before the Commission is denied, the respondent has five days to seek a judicial stay.

Need and Uses: The Commission will submit this information collection as an extension to the OMB after this 60 day comment period in order to obtain the full three year clearance from them. The Commission sought and received emergency OMB approval in January 2010 for this information collection. The Commission has not changed any of the reporting requirements. There is no change in the Commission's burden estimates.

The American Recovery and Reinvestment Act of 2009 authorized the FCC to create the national Broadband Plan that shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. Consistent with this effort, the Commission seeks to conduct a survey of all applicants under the Schools and Libraries Universal Service Program, also known as the E–Rate Program, to determine the current state of broadband usage and access within schools and libraries in the United States in order to determine how to best address their educational and technological needs as part of the National Broadband Plan. The National Broadband Plan is now due to congress by March 17, 2010.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–2963 Filed 2–9–10; 8:45 am]

**BILLING CODE 6712–01–S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection Being submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

February 4, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Persons wishing to comments on this information collection should submit comments on or before March 12, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

**SUPPLEMENTARY INFORMATION:**

OMB Control No: 3060–XXXX.

Title: Sections 1.49 and 1.54, Forbearance Petition Filing Requirements.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for–profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time Per Response: 640 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 151, 154(i), 154(j), 155(c), 160, 201 and 303(r).

Total Annual Burden: 6,400 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission will submit this information collection during this comment period in order to obtain the full three year clearance from the Office of Management and Budget (OMB). This is a new information collection in which the Commission estimates a 6,400 hour increase in the agency's total annual burden.

Under section 10 of the Communications Act of 1934, as amended, telecommunications carriers may petition the Commission to forbear from applying to a telecommunications carrier any statutory provision or Commission regulation. When a carrier petitions the Commission for forbearance, section 10 requires the Commission to make three determinations with regard to the need for the challenged provision or regulation. If the Commission fails to act within one year (extended by three additional months, if necessary), the petition is "deemed granted" by operation of law. These determinations will promote competitive market conditions.

Under the new filing procedures, the Commission requires that petitions for forbearance must "complete as filed" and explain in detail what must be included in the forbearance petition. The Commission also incorporates by reference it rule, 47 CFR 1.49, which states the Commission's standard "specifications as to pleadings and documents." Precise filing requirements are necessary because of section 10's strict time limit for Commission action. Also, commenters must be able to understand clearly the scope of the petition in order to comment on it. Finally, standard filing procedures inform petitioners precisely what the Commission expects from them in order to make the statutory determinations that the statute requires.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–2907 Filed 2–8–10; 8:45 am]

**BILLING CODE 6712–01–S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collections Being Reviewed by the Federal Communications Commission, Comments Requested

02/04/2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

**DATES:** Persons wishing to comment on this information collection should submit comments by April 12, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via e–mail at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), via e–mail at PRA@fcc.gov and to Cathy.Williams@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060–0837.

Title: Application for DTV Broadcast Station License.

Form Number: FCC Form 302–DTV.

Type of Review: Reinstatement without change of a previously approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions.

Number of Respondents and Responses: 300 respondents and 300 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 600 hours.

Total Annual Costs: $133,800.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to

submit confidential information to the Commission.

Needs and Uses: The Commission is requesting reinstatement of OMB control number 3060–0837. In 2008, we merged the requirements that were previously under this OMB control number into an existing information collection OMB control number 3060–0029, Application for TV Broadcast Station License, FCC Form 302–TV. Although the requirements were merged under the supporting statement, the forms themselves remained separate and only shared the same OMB control number. Since that time, we find the merging of these requirements under one OMB control number as ineffective causing delays for submission to OMB for review especially when the various requirements were revised by multiple Commission actions.

Form 302–DTV is used by licensees and permittees of Digital TV ("DTV") broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 C.F.R. Sections 73.1675(c) or 73.1690(c).

OMB Control Number: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC Form 349.

Type of Review: Reinstatement without change of a previously approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions; State, local or tribal government.

Number of Respondents and Responses: 1,200 respondents and 1,200 responses.

Estimated Time per Response: 1 to 1.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,500 hours.

Total Annual Costs: $4,598,100.00.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: The Commission is requesting reinstatement of OMB control number 3060–0405. In 2008, we merged the requirements that were previously under this OMB control number into an existing information collection, OMB control number 3060–0029, Application for TV Broadcast Station License, FCC Form 302–TV. Although the requirements were merged under the supporting statement, the forms themselves remained separate and only shared the same OMB control number. Since that time, we find that the merging of these requirements under one OMB control number is ineffective, causing delays in submissions to OMB for review, especially when the various requirements were revised by multiple and simultaneously adopted Commission actions.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

Form 349's Newspaper Notice (third party disclosure) requirement; 47 CFR § 73.3580. Form 349 also contains a third party disclosure requirement, pursuant to Section 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three–week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers Section 73.3527.

OMB Control Number: 3060–0029.

Title: Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station.

Form Number: FCC Form 340.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions; State, local or tribal government.

Number of Respondents and Responses: 2,710 respondents and 2,710 responses.

Estimated Time per Response: 2 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 6,700 hours.

Total Annual Costs: $27,894,950.00.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On April 7, 2009, the Commission adopted a Notice of Proposed Rule Making in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09–52, FCC 09–30, 24 FCC Rcd 5239 (2009). On January 28, 2010, the Commission adopted a First Report and Order in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09–52, FCC 10–24. In the First Report and Order, the Commission adopted the Tribal Priority proposed in the Notice of Proposed Rule Making, with some modifications. Under the Tribal Priority, a Section 307(b) priority will apply to an applicant meeting all of the following criteria: (1) the applicant is either a federally recognized Tribe or tribal consortium, or an entity 51 percent or more owned or controlled by a Tribe or Tribes (with the Tribes or entities occupying tribal lands that are covered by at least 50 percent of the daytime principal community contour of the proposed facility); (2) at least 50 percent of the daytime principal community contour of the proposed facilities covers tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on tribal lands; and (4) the applicant proposes the first local tribal–owned noncommercial educational transmission service at the proposed community of license. The proposed Tribal Priority would apply, if applicable, before the fair distribution analysis currently used by noncommercial educational applicants. The Tribal Priority does not prevail over an applicant proposing first overall

reception service to a significant population.

FCC Form 340 and its instructions are being revised to accommodate those applicants qualifying for the new Tribal Priority. Specifically, we are adding new Questions 1 and 2, which seek information as to the applicant's eligibility for the Tribal Priority and direct applicants claiming the priority to prepare and attach an exhibit, to Section III. The instructions for Section III have been revised to assist applicants with completing the new questions and preparing the exhibit.

Also, the Commission is removing FCC Form 302–DTV, Application for Digital Television Broadcast Station License, and FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, from this information collection to allow the Commission to more effectively mange the information collections. FCC Form 302–DTV will have its previous OMB control number reinstated (3060–0837) and FCC Form 349 will have its previous OMB control number reinstated as well (3060–0405).

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions; State, local or tribal government.

Number of Respondents and Responses: 4,453 respondents and 7,889 responses.

Estimated Time per Response: 3 to 6.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 19,561 hours.

Total Annual Costs: $85,096,314.00.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09–52, FCC 10–24. The Order adopts changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b) of the Communications Act of 1934, as amended (the "Act"). With regard to AM application processing, the Commission adopted a proposal to explicitly prohibit the downgrading of proposed AM facilities that receive a dispositive preference under Section 307(b) of the Act and thus are not awarded through competitive bidding. Specifically, an AM applicant that receives a dispositive preference under Section 307(b) will not be allowed to later modify that proposal to serve a smaller population or otherwise negate the factors that led to the award of the preference. The Commission imposed these restrictions for a period of four years of on–air operations. These procedural safeguards are necessary to protect the integrity of our Section 307(b) analyses.

Consistent with actions taken by the Commission in the Order, FCC Form 301 has been revised to add questions, specifically asking the applicants to certify that the construction permit application complies with the four year service requirements. The instructions for FCC Form 301 have been revised to assist applicants with completing the new questions.

OMB Control Number: 3060–0996.

Title: AM Auction Section 307(b) Submissions.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions; State, local or tribal government.

Number of Respondents and Responses: 160 respondents and 160 responses.

Estimated Time per Response: 0.5 to 3 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

Total Annual Burden: 375 hours.

Total Annual Costs: $71,200.00.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09–52, FCC 10–24. The Order adopts changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b). In the Order, the Commission added a new Section 307(b) priority that would apply only to Native American and Alaska Native Tribes, tribal consortia, and majority tribal–owned entities proposing to serve tribal lands. The priority is only available when all of the following conditions are met: (1) the applicant is either a federally recognized Tribe or tribal consortium, or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities will cover tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on tribal lands; and (4) in the commercial AM service, the applicant must propose first or second aural reception service or first local commercial tribal–owned transmission service to the proposed community of license, which must be located on tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims. The Commission will dismiss, without further processing, the previously filed AM auction filing window application and technical proposal of any applicant that fails to file an amendment addressing the Section 307(b) criteria, where required. Mutually exclusive AM applicants may not use this as an opportunity to change the technical proposal specified in the AM auction filing window application. The Section 307(b) amendment must be based on the technical proposal as specified in the AM auction filing window application.

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Forms 314 and 315.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions; State, local or tribal government.

Number of Respondents and Responses: 4,820 respondents and 12,520 responses.

Estimated Time per Response: 2 to 6 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303(b) and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 18,443 hours

Total Annual Costs: $36,168,450.00

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09–52; FCC 10–24. The Order adopts rule changes designed to streamline and clarify certain procedures associated with the award of broadcast radio construction permits by competitive bidding. In the Order, the Commission also adopted a priority under Section 307(b) of the Communications Act of 1934, as amended, to assist federally recognized Native American Tribes and Alaska Native Villages ("Tribes"), enrolled members of Tribes, and entities primarily owned or controlled by Tribes or enrolled members of Tribes, in obtaining broadcast radio construction permits designed primarily to serve tribal lands (the "Tribal Priority"). Applicants affiliated with Tribes who meet certain conditions regarding tribal membership and signal coverage qualify for the Tribal Priority, which in most cases will enable the qualifying applicants to obtain construction permits without proceeding to competitive bidding, in the case of commercial stations, or to point system evaluation, in the case of noncommercial educational ("NCE") stations. Once a permit is obtained, it cannot be assigned or transferred to another person or entity for a period beginning with issuance of the construction permit until the station has completed four years of on–air operations, unless the assignee or transferee also qualifies for the Tribal Priority.

Consistent with actions taken by the Commission in the Order, the following changes are made to Forms 314 and 315: Section I of each form includes a new question asking applicants to indicate whether any of the authorizations involved in the transaction were obtained (or, in the case of non–reserved band commercial FM stations) the allotment for the station was obtained through the Tribal Priority. The instructions for Section I of Forms 314 and 315 have been revised to assist applicants with completing the new questions.

OMB Control Number: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions; State, local or tribal government.

Number of Respondents and Responses: 750 respondents and 750 responses.

Estimated Time per Response: 1.5 to 4.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,231 hours

Total Annual Costs: $711,150.00

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09–52, FCC 10–24. The Order adopts rule changes designed to streamline and clarify certain procedures associated with the award of broadcast radio construction permits by competitive bidding. To prevent unjust enrichment by parties that acquire broadcast construction permits through the use of a bidding credit in an auction, Section 73.5007(c) of the Rules requires reimbursement to the Commission of all or part of the bidding credit upon a subsequent assignment or transfer of control, if the proposed assignee or transferee is not eligible for the same percentage of bidding credit. The rule is routinely applied to "long form" assignment or transfer applications filed on FCC Forms 314 and 315. In the Order, the Commission also sought to clarify that the unjust enrichment payments to the government must be made even when an assignment or transfer is pro forma in nature and therefore filed on FCC Form 316. This ensures that applicants do not use the summary pro forma assignment and transfer procedures to circumvent the unjust enrichment requirements.

Consistent with actions taken by the Commission in the Order, FCC Form 316 has been revised to add the broadcast auction–based questions presently included on FCC Forms 314 and 315, specifically asking the applicants to certify that the proposed assignment or transfer complies with the unjust enrichment provisions of the Commission's competitive bidding rules. The instructions for FCC Form 316 have been revised to assist applicants with completing the new questions.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–2906 Filed 2–9–10; 8:45 am]

**BILLING CODE 6712–01–S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

February 4, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Persons wishing to comments on this information collection should submit comments on or before March 12, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

**SUPPLEMENTARY INFORMATION:**

OMB Control No: 3060–1128.

Title: National Broadband Plan Survey of Consumers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for–profit.

Number of Respondents: 5,100 respondents; 5,100 responses.

Estimated Time Per Response: .33 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in the Broadband Data Improvement Act of 2008, Pub. L. No. 110–385 and the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5.

Total Annual Burden: 1,683 hours.

Privacy Act Impact Assessment: No personally identifiable information will be transmitted to the Commission from the survey contractor as a matter of vendor policy.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Need and Uses: The Commission requested emergency OMB approval in October 2009 for this information collection which is only granted for six months. The Commission is now seeking an extension in order to obtain the full three year clearance from the OMB. There is no change in the reporting requirements. There is no change to the Commission's burden estimates.

This collection of information will be accomplished through a national telephone survey of 5,000 consumers and face–to–face workshops with approximately 100 individuals throughout the United States. Consistent with one of the key reasons for this information collection, workshop participants will be non–adopters of broadband. The reason for holding these workshops is to elicit more in–depth responses from individuals to the questions being asked of non–adopters in the telephone survey. The workshops will add a narrative dimension to the reasons for non–adoption to the statistical information being collected in the telephone survey.

The Commission's Office of Strategic Planning and Policy Analysis will use the information collected under this survey to help determine the extent of broadband Internet adoption, and use the data to inform policy recommendations under the National Broadband Plan. Information on consumers without broadband Internet at home will be used to carefully identify the nature and extent of the problem and use to develop policy recommendations through the National Broadband Plan which is due to congress on March 17, 2010.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–2910 Filed 2–9–10; 8:45 am]

BILLING CODE 6712–01–S

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update Listing of Financial Institutions in Liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: February 4, 2010.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

| FDIC Ref. No. | Bank name | City | State | Date closed |
|---|---|---|---|---|
| 10178 | American Marine Bank | Bainbridge Island | WA | 1/29/2010 |
| 10174 | Bank of Leeton | Leeton | MO | 1/22/2010 |
| 10171 | Barnes Banking Company | Kaysville | UT | 1/15/2010 |
| 10175 | Charter Bank | Santa Fe | NM | 1/22/2010 |
| 10176 | Columbia River Bank | The Dalles | OR | 1/22/2010 |
| 10180 | Community Bank and Trust | Cornelia | GA | 1/29/2010 |
| 10172 | Evergreen Bank | Seattle | WA | 1/22/2010 |
| 10179 | First National Bank of Georgia | Carrollton | GA | 1/29/2010 |
| 10177 | First Regional Bank | Los Angeles | CA | 1/29/2010 |
| 10181 | Florida Community Bank | Immokalee | FL | 1/29/2010 |
| 10168 | Horizon Bank | Bellingham | WA | 1/08/2010 |
| 10182 | Marshall Bank, N.A. | Hallock | MN | 1/29/2010 |
| 10173 | Premier American Bank | Miami | FL | 1/22/2010 |
| 10169 | St. Stephen State Bank | St. Stephen | MN | 1/15/2010 |
| 10170 | Town Community Bank and Trust | Antioch | IL | 1/15/2010 |

[FR Doc. 2010–2868 Filed 2–9–10; 8:45 am]

BILLING CODE 6714–01–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0007]**

## Federal Acquisition Regulation; Submission for OMB Review; Summary Subcontract Report

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning summary subcontract report. A request for public comments was published in the **Federal Register** at 74 FR 61354, on November 24, 2009. No comments were received.

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 March 12, 2010.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control Number 9000–0007, Summary Subcontract Report, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rhonda Cundiff, Contract Policy Branch, GSA, (202) 501–0044 or via e-mail at *Rhonda.cundiff@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR Subpart 19.7.

### B. Annual Reporting Burden

*Number of Respondents:* 4,253.

*Responses Per Respondent:* 1.66.

*Total Responses:* 7,098.

*Average Burden Hours Per Response:* 15.9008.

*Total Burden Hours:* 112,864.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0007, Summary Subcontract Report, in all correspondence.

Dated: February 4, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 2010–2898 Filed 2–9–10; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0136]**

## Federal Acquisition Regulation; Submission for OMB Review; Commercial Item Acquisitions

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. A request for public comments was published in the **Federal Register** at 74 FR 58628, on November 13, 2009. No comments were received.

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 and ways to enhance the quality, utility, and clarity of the information to be collected. This information will be collected electronically when the online representations and certifications application (ORCA) is activated.

**DATES:** Submit comments on or before March 12, 2010.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 9000–0136, Commercial Item Acquisitions, in all correspondences.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Contract Policy Branch, GSA (202) 208–4949 or e-mail at *michaelo.jackson@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DoD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. They were designed to simplify solicitations and contracts for commercial items.

Information is used by Federal agencies to facilitate the acquisition of commercial items and services.

### B. Annual Reporting Burden

*Respondents: 37,500.*
*Responses per Respondent: 34.*
*Total Responses: 1,275,000.*
*Hours per Response: .312.*
*Total Burden Hours: 397,800.*
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: February 4, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 2010–2900 Filed 2–9–10; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0132]**

## Federal Acquisition Regulation; Submission for OMB Review; Contractors' Purchasing Systems Reviews

**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.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning contractors' purchasing systems reviews. A request for public comments was published in the **Federal Register** at 74 FR 61354 on November 24, 2004. No comments were received.

*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 March 12, 2010.

**ADDRESSES:** Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Review, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rhonda Cundiff, Contract Policy Branch, GSA, (202) 501–0044 or e-mail at *Rhonda.cundiff@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

### B. Annual Reporting Burden

*Number of Respondents:* 1,580.
*Responses per Respondent:* 1.
*Total Responses:* 1,580.
*Average Burden per Response:* 17.
*Total Burden Hours:* 26,860.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: February 4, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 2010–2899 Filed 2–9–10; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Misconduct in Science; Correction

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Correction of notice.

**SUMMARY:** This document corrects typographical errors that appeared in the notice published in the January 28, 2010, **Federal Register** entitled "Findings of Misconduct in Science."

**DATES:** *Effective Date:* February 10, 2010.

*Applicability Date:* The correction notice is applicable for the Findings of Misconduct in Science notice published on January 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Karen Gorirossi or Sheila Fleming at 240–453–8800.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 2010–1706 of January 28, 2010 (75 FR 4566), there were two typographical errors. The errors are identified and corrected in the Correction of Errors section below.

**II. Correction of Errors**

In FR Doc. 2010–1706 of January 28, 2010 (75 FR 4566), make the following corrections:

1. On page 4566, second column, first paragraph, change the date of January 7, 2010, to January 5, 2010, so that the first paragraph reads as follows: "Summary: Notice is hereby given that on January 5, 2010, the Department of Health and Human Services (HHS) Debarring Official, on behalf of the Secretary of HHS, issued a final notice of debarment based on the misconduct in science findings of the Office of Research Integrity (ORI) in the following case:"

2. On page 4566, third column, last line of the first paragraph, change the date of January 7, 2010, to January 5, 2010, so that the last line of this paragraph reads as follows: "Thus, the scientific misconduct findings set forth above became effective, and the following administrative actions have been implemented for a period of three (3) years, beginning on January 5, 2010."

Dated: January 29, 2010.

**John Dahlberg,**

*Director, Division of Research Investigations, Office of Research Integrity.*

[FR Doc. 2010–2488 Filed 2–9–10; 8:45 am]

BILLING CODE 4160–17–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–10–0488]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Restrictions on Interstate Travel of Persons (OMB Control No. 0920–0488)—Extension—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Centers for Disease Control and Prevention is requesting OMB approval to extend the information collection request, Restrictions on Interstate Travel of Persons (OMB Control No. 0920–0488). This information collection request is scheduled to expire on February 28, 2010.

CDC is authorized to collect this information under 42 CFR 70.5 (Certain communicable diseases; special requirements). This regulation requires that any person who is in the communicable period for cholera, plague, smallpox, typhus, or yellow fever or having been exposed to any such disease is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

Control of disease transmission within the States is considered to be the province of State and local health authorities, with Federal assistance being sought by those authorities on a cooperative basis without application of Federal regulations. The regulations in 42 Part 70 were developed to facilitate Federal action in the event of large outbreaks requiring a coordinated effort involving several states, or in the event of inadequate local control. While it is not known whether, or to what extent situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is now commonplace. Should these situations arise, CDC will use the reporting and recordkeeping requirements contained in the regulations to carry out quarantine responsibilities as required by law.

The only cost to respondents is their time to submit the application materials. The estimated annualized burden for this data collection is 3,601 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Regulation | Respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| 42 CFR 70.3 Application to the State of Destination for a permit. | Traveler | 2,000 | 1 | 15/60 |
| | Attending physician | 2,000 | 1 | 15/60 |
| 42 CFR 70.3 Copy of material submitted by applicant and permit issued by State health authority. | State health authority | 8 | 250 | 6/60 |
| 42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel. | Master of a vessel or person in charge of conveyance. | 1,500 | 1 | 15/60 |
| 42 CFR 70.4 Copy of material submitted or state or local health authority under this provision. | State health authority | 20 | 75 | 6/60 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Regulation | Respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| 42 CFR 70.5 Application for a permit to move from State to State while in the communicable period. | Traveler | 3,750 | 1 | 15/60 |
| | Attending physician | 3,750 | 1 | 15/60 |

Dated: February 4, 2010.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2010–2917 Filed 2–9–10; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–10–0128]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Congenital Syphilis (CS) Case Investigation and Report Form (CDC73.126), OMB No. 0920–0128, (exp. 02/28/2010)—revision—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The purpose of the proposed revision is to continue data collection for congenital syphilis case investigations with a revised "Congenital Syphilis (CS) Case Investigation and Report Form" (CDC73.126). The CS Form is currently approved under OMB No. 0920–0128. This request is to extend clearance for 0920–0128 for an additional three years with revisions to the instrument, and decrease in the burden hours. The instrument is revised to exclude "reporting city" and "resident city" information blocks from the CS Form.

Reducing congenital syphilis is a national objective in the Department of Health and Human Services (DHHS) Report entitled *Healthy People 2010 (Vol. I and II).* Objective 25–9 of the DHHS document states the goal to "reduce congenital syphilis to 1 new case per 100,000 live births." In order to meet this national objective, an effective surveillance system for congenital syphilis must be continued to monitor current levels of disease and progress towards the year 2010 objective. These data will also be used to develop intervention strategies and to evaluate ongoing control efforts. There is no cost to respondents other than their time. In addition to modifications to the form, seven reporting areas have stopped using the paper collection form and are now reporting CS data electronically. As a result, the total estimated annualized burden hours have been reduced from 130 to 63.

ESTIMATED ANNUALIZED BURDEN HOURS

| Types of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| State Health Departments | Congenital Syphilis (CS) Case Investigation and Report. | 10 | 11 | 20/60 |
| Territorial Health Agencies | Congenital Syphilis (CS) Case Investigation and Report. | 3 | 11 | 20/60 |
| City and county health departments | Congenital Syphilis (CS) Case Investigation and Report. | 4 | 11 | 20/60 |

Dated: February 3, 2010.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2010–2909 Filed 2–9–10; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–10–0818]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Cost and Follow-up Assessment of Administration on Aging (AoA)—Funded Fall Prevention Programs for

Older Adults—Extension (OMB no. 0920–0818, exp. 7/31/10)—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC received OMB approval (0920–0818) to collect data for the Cost and Follow-up Assessment of Fall Prevention Programs. This approval expires on 7/31/10. In June 2009, all Matter of Balance programs implemented a new consent form. This form asked participants for permission for CDC to contact them six months after they finished the program to complete a survey. For this reason, we will not begin administering the follow-up survey to Matter of Balance participants until January 2010. At this time we are requesting a three-year extension to collect data.

NCIPC seeks to examine cost of implementing each of the three AoA funded fall prevention programs for older adults (Stepping On, Moving for Better Balance and Matter of Balance) and to assess the maintenance of fall prevention behaviors among participants six months after completing the Matter of Balance program. To assess the maintenance of fall prevention behaviors, CDC will conduct telephone interviews of 425 Matter of Balance program participants six months after they have completed the program. The interview will assess their knowledge and self-efficacy related to falls as taught in the course, their activity and exercise levels, and their reported falls both before and after the program. The results of the follow-up assessment will determine the extent to which preventive behaviors learned during the Matter of Balance program are maintained and can continue to reduce fall risk. The cost assessment will calculate the lifecycle cost of the Stepping On, Moving for Better Balance, and Matter of Balance programs. It will also include calculating the investment costs required to implement each program, as well as the ongoing operational costs associated with each program. These costs will be allocated over a defined period of time, depending on the average or standard amount of time these programs continue to operate (standard lifecycle analysis ranges from five to 10 years). As part of the lifecycle cost calculation, these data will allow us to compare program costs and to identify specific cost drivers, cost risks, and unique financial attributes of each program. Local program coordinators for the 200 sites in each of the AoA-funded states will collect the cost data using lifecycle cost spreadsheets that will be returned to CDC for analysis. The results of these studies will support the replication and dissemination of these fall prevention programs and enable them to reach more older adults. The Survey Screen takes 3 minutes, the survey instrument takes forty-five minutes, and the cost tool takes two hours to complete.

There are no costs to respondents other than their time. The total estimated annual burden is 248 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| Follow-up Survey Screen for Matter of Balance—Introduction Script | 167 | 1 | 3/60 |
| Follow-up Survey for Matter of Balance | 142 | 1 | 45/60 |
| Cost assessment of AoA-funded fall prevention programs | 66 | 1 | 2 |

Dated: February 4, 2010.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2010–2908 Filed 2–9–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### HIV/AIDS Bureau; Policy Notice 99–02 Amendment #1

**AGENCY:** Health Resources and Services Administration (HRSA).

**ACTION:** Notice of rescinded Policy Notice 99–02, Amendment #1.

**SUMMARY:** The HRSA HIV/AIDS Bureau (HAB) Policy Notice 99–02 established general policies regarding the use of Title XXVI of the Public Health Service (PHS) Act, Ryan White HIV/AIDS Program funds for housing referral services and short-term or emergency housing needs. Amendment #1 to Policy Notice 99–02, effective March 27, 2008, modified Policy Notice 99–02 by imposing a 24-month cumulative cap on short-term and emergency housing assistance. HRSA's Administrator is undertaking a comprehensive review of the Housing Policy, and is therefore directing that Amendment #1 to Policy Notice 99–02 be rescinded, effective immediately.

**SUPPLEMENTARY INFORMATION:** Following the rescission of Amendment #1 to Policy Notice 99–02, Ryan White HIV/AIDS Program, grantees will not be required to enforce the amendment for beneficiaries that might be at or near the 24-month cumulative cap on short-term and emergency housing assistance. At the same time, grantees will benefit from general policy guidance with regard to the use of Ryan White HIV/AIDS Program funds for housing referral services and short-term or emergency housing needs. A comprehensive review of the Housing Policy will permit HRSA's Administrator time to evaluate completely all aspects of it. The Policy Notice is amended to address updated nomenclature, and is reprinted below for ease of reference.

**DATES:** Amendment #1 to Policy Notice 99–02 is rescinded effective February 10, 2010.

### HRSA and HIV/AIDS Bureau (HAB) Policy Notice 99–02

*Document Title: The Use of Ryan White HIV/AIDS Program Funds for Housing Referral Services and Short-Term or Emergency Housing Needs*

The following Policy establishes guidelines for allowable housing-related expenditures under the Ryan White HIV/AIDS Program. The purpose of all Ryan White HIV/AIDS Program funds is to ensure that eligible HIV-infected persons and families gain or maintain access to medical care.

A. Funds received under the Ryan White HIV/AIDS Program (Title XXVI of the PHS Act) may be used for the following housing expenditures:

i. Housing referral services defined as assessment, search, placement, and advocacy services must be provided by case managers or other professionals who possess a comprehensive

knowledge of local, State, and Federal housing programs and how they can be accessed; or

ii. Short-term or emergency housing defined as necessary to gain or maintain access to medical care and must be related to either:

a. Housing services that include some type of medical or supportive service: including, but not limited to, residential substance abuse or mental health services (not including facilities classified as an Institute of Mental Diseases under Medicaid), residential foster care, and assisted living residential services; or

b. Housing services that do not provide direct medical or supportive services, but are essential for an individual or family to gain or maintain access and compliance with HIV-related medical care and treatment. Necessity of housing services for purposes of medical care must be certified or documented.

B. Short-term or emergency assistance is understood as transitional in nature and for purposes of moving or maintaining an individual or family in a long-term, stable living situation. Thus, such assistance cannot be permanent and must be accompanied by a strategy to identify, relocate, and/or ensure the individual or family is moved to, or capable of maintaining, a long-term, stable living situation.

C. Housing funds cannot be in the form of direct cash payments to recipients for services and cannot be used for mortgage payments.

D. The Ryan White HIV/AIDS Program must be the payer of last resort. In addition, funds received under the Ryan White HIV/AIDS Program must be used to supplement, but not supplant funds currently being used from local, State, and Federal Agency programs. Grantees must be capable of providing HAB with documentation related to the use of funds as the payer of last resort and the coordination of such funds with other local, State, and Federal funds.

E. Housing-related expenses are limited to Parts A, B, and D of the Ryan White HIV/AIDS Program, and are not allowable expenses under Part C.

Dated: February 5, 2010.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. 2010–2926 Filed 2–9–10; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Expert Meeting on Measurement Criteria for Children's Health Insurance Program; Reauthorization Act Pediatric Quality Measures

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ).

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting to identify measurement criteria for use in carrying out the Pediatric Quality Measures Program (PQMP) under Section 1139A(b) of the Social Security Act as enacted in the Children's Health Insurance Program Reauthorization Act (CHIPRA).

**DATES:** The meeting will be held on Wednesday, February 24, 2010, from 10 a.m. to 5 p.m. and Thursday, February 25, 2010, from 8 a.m. to 4 p.m.

**ADDRESSES:** Agency for Healthcare Research and Quality Eisenberg Building, 540 Gaither Rd., Rockville, MD 20850 and by public webcast.

**FOR FURTHER INFORMATION CONTACT:** Maushami DeSoto, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427–1546. For press-related information, please contact Karen Migdail at (301) 427–1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Michael Chew, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144, no later than February 20, 2010.

**SUPPLEMENTARY INFORMATION:**

### I. Purpose

In early 2009, CHIPRA (Pub. L. 111–3) reauthorized the Child Health Insurance Program (CHIP) originally established in 1997, and in Title IV of the law, added a number of new provisions designed to improve health care quality and outcomes for children. AHRQ is working closely with the Centers for Medicare and Medicaid Services (CMS) and the CHIPRA Federal Quality Workgroup in implementing these provisions. For more information about AHRQ's role in carrying out the quality provisions of CHIPRA, and for a list of an initial core set of children's healthcare quality measures voluntary use by Medicaid programs and Children's Health Insurance Programs and the health plans and providers of care that the programs engage with, mandated by the Act, that has been identified and posted for public comment, *see http://www.ahrg.gov/chip/chipraact.htm*.

CHIPRA further directed the Secretary to establish a Pediatric Quality Measures Program (PQMP) to strengthen and expand the initial core measure set required under its section 401(a). The statutory goal of the PQMP is to produce an improved core set of children's healthcare quality measures for use by public and private programs, health insurers, providers and patients, by January 1, 2013. In order to achieve this goal, measurement criteria to develop and enhance pediatric health care measures need to be identified and framed for use by those who will be developing and enhancing the measures under the PQMP. The PQMP objectives are to: Expand, improve and strengthen the initial core measure set and existing pediatric measures used by public and private health care purchasers and advance the development of new and emerging quality measures; and thereby, increase the portfolio of evidence-based and consensus-based, pediatric quality measures available to public and private purchasers of children's health care services, providers, and consumers as well as for use by policymakers at all political levels, including use in mandated reports to Congress on voluntary State reporting and on any need for further legislation.

In accordance with statutory requirements, the measures to be developed or enhanced under this program will cover a range of pediatric preventive services, treatments and services for both acute and chronic conditions, including health services to correct or ameliorate the effects of physical and mental conditions; and health services to aid in the growth and development of children with special health care needs; and measure and duration of health care coverage. Said measures are to be designed to ensure that data collected are comparable at the State, health plan and provider levels, risk-adjusted if appropriate, and periodically updated. In addition, pursuant to section 401(s) of CHIPRA, measures are to be able to identify disparities by race and ethnicity, socioeconomic status, and special healthcare needs.

### II. Agenda

On Wednesday, February 24, 2010, the meeting will convene at 10 a.m. The meeting will focus on engaging invited experts and public participants in identifying criteria for pediatric quality measures to be used by PQMP grant and contract program awardees beginning in September 2010. The agenda will cover

discussions of key measure criteria in existence and participants will be asked to identify criteria suitable for the measure development and enhancement work to be supported by the PQMP program.

A more specific proposed agenda and instructions for public access to the meeting will be posted before the meeting at *http://www.ahrg.gov/chip/chipraact.htm.* The final agenda, including the time for public comment during the meeting, will be available on the AHRQ Web site at *http://www.ahrg.gov/chip/chipraact.htm* no later than February 14, 2010. A transcript of the meeting will be available within 21 business days after the meeting.

Dated: February 2, 2010.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2010–2873 Filed 2–9–10; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 25, 2010, 1 p.m. to February 25, 2010, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 1, 2010, 75 FR 5092.

The meeting will be held February 22, 2010, from 11 a.m. to 2 p.m. The meeting location remains the same.

The meeting is closed to the public.

Dated: February 2, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–2886 Filed 2–9–10; 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: Auditory, Pain and Chemosensation.

*Date:* March 1–2, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Lynn E. Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Drug Discovery and Development.

*Date:* March 1–2, 2010.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892. 301–435–1180. *ruvinser@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Microvascular Interactions.

*Date:* March 3, 2010.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Manjit Hanspal, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, 301–435–1195, *hanspalm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowship: Chemical and Bioanalytical Sciences.

*Date:* March 4, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, (301) 435–1267, *beusend@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Topics in Cancer Research.

*Date:* March 8–9, 2010.

*Time:* 10 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Program Project: National Radiotracer Resource Center.

*Date:* March 14–16, 2010.

*Time:* 6 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Parkway Hotel, 4550 Forest Park Avenue, St. Louis, MO 63108.

*Contact Person:* Keith Crutcher, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.

*Date:* March 15–16, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.

*Contact Person:* Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR Panel: Cancer Health Disparities.

*Date:* March 15–16, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Monaco, 700 F Street, NW., Washington, DC 20001.

*Contact Person:* Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: CDIN and CNN Member Applications II.

*Date:* March 15, 2010.

*Time:* 11 a.m. to 2 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:* Jerry L. Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Asthma and Lung Host Defense.

*Date:* March 16, 2010.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Everett E. Sinnett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PCMB Special Emphasis Panel.

*Date:* March 16, 2010.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Stem Cells and Development.

*Date:* March 16, 2010.

*Time:* 12 p.m. to 1:30 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:* James Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR 09–129: Roadmap HTS Assay for MLPCN.

*Date:* March 18, 2010.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Nikko, 222 Mason Street, San Francisco, CA 24102.

*Contact Person:* James J. Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov*.

*Name of Commitee:* Center for Scientific Review Special Emphasis Panel, Small Business: Digestive Sciences.

*Date:* March 18–19, 2010.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov*.

*Name of Committee:* AIDS and Related Research Integrated Review Group, AIDS Discovery and Development of Therapeutics Study Section.

*Date:* March 19, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Mandarin Oriental, 1330 Maryland Avenue, SW., Washnigton, DC 20024.

*Contact Person:* Eduardo A. Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@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: February 2, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–2876 Filed 2–9–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Human Immunodeficiency Virus (HIV) Prevention Projects for Community Based Organizations, PS 10–1003, 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 meetings:

*Time and Date:*

8 a.m.–7 p.m., March 4, 2010 (Closed).

8 a.m.–7 p.m., March 5, 2010 (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 "HIV Prevention Projects for Community Based Organizations, PS10–1003." This meeting will be subsequent to the February 7–13, 2010 meeting published in the **Federal Register** on November 19, 2010, Volume 74, Number 222, Page 59985. A second meeting is necessary due to the number of applications received and unanticipated scheduling conflicts for a significant number of the appointed reviewers.

*Contact Person for More Information:* Barbara Stewart, Deputy Director, Extramural Programs, National Center for HIV, Hepatitis and Sexually Transmitted Diseases Prevention, 1600 Clifton Road, NE., Mail Stop E–60, Atlanta, Georgia 30333, Telephone (404)498–2273, E-mail *BStewart@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office,Centers for Disease Control and Prevention.*

[FR Doc. 2010–2918 Filed 2–9–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, National Cooperative Drug Discovery and Development Groups (NCDDDG).

*Date:* March 1, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of

Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Fellowships and Dissertations.

*Date:* March 2, 2010.

*Time:* 12 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

*Contact Person:* Serena P. Chu, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609, 301–443–0004, *sechu@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Human Connectome Review.

*Date:* March 5, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

*Contact Person:* Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, ITVC Conflicts.

*Date:* March 8, 2010.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

*Contact Person:* Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 3, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–2897 Filed 2–9–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

*Date:* February 24–25, 2010.

*Time:* 7:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda-By Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817. 301–594–4952. *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 29, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–2889 Filed 2–9–10; 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: Trafficking, Opioid Receptors, Addiction, and Antidepressants.

*Date:* March 3, 2010.

*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:* Joanne T. Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; BMIT/CMIP/MEDI Imaging Applications.

*Date:* March 3, 2010.

*Time:* 12 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@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: February 3, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–2888 Filed 2–9–10; 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: DNA Repair and Tumorigenesis.
*Date:* March 3, 2010.
*Time:* 9 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).
*Contact Person:* Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Genes, Genomes, and Genetics.
*Date:* March 4, 2010.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
*Contact Person:* Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Diabetes, Obesity and Nutrition.
*Date:* March 4–5, 2010.
*Time:* 10 a.m. to 2 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
*Contact Person:* Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Biobehavioral and Behavioral Processes Across the Lifespan.
*Date:* March 8–9, 2010.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
*Contact Person:* Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Neuropharmacology.
*Date:* March 11–12, 2010.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.
*Contact Person:* Aidan Hampson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892, (301) 435–0634, *hampsona@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.
*Date:* March 11–12, 2010.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
*Contact Person:* Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Risk Prevention and Health Behavior.
*Date:* March 11, 2010.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

(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: February 2, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–2887 Filed 2–9–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 74 FR 68630–68631, dated December 28, 2009) is amended to reflect the Order of Succession for the Centers for Disease Control and Prevention.

*Section C–C, Order of Succession:* Delete in its entirety Section C–C, Order of Succession, and insert the following:

During the absence or disability of the Director, Centers for Disease Control and Prevention (CDC), or in the event of a vacancy in that office, the first official listed below who is available shall act as Director, except that during a planned period of absence, the Director may specify a different order of succession:

1. Principal Deputy Director, CDC.
2. Deputy Director for Infectious Diseases.
3. Associate Director for Science.
4. Deputy Director for Noncommunicable Diseases, Injury and Environmental Health.

Dated: January 28, 2010.

**William P. Nichols,**

*Acting Chief Orating Officer, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 2010–2763 Filed 2–9–10; 8:45 am]

**BILLING CODE 4160–18–M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2010–0030]**

### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0086

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0086, Great Lakes Pilotage. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before April 12, 2010.

**ADDRESSES:** To avoid duplicate submissions to the docket [USCG–2010–0030], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand deliver:* 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.

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW. Stop 7101, Washington DC 20593–7101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

## Public Participation and Request for Comments

The Coast Guard invites comments on whether this ICR should be granted based on the collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

*Submitting comments:* If you submit a comment, please include the docket number [USCG–2010–0030], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–1/2 by 11 inches, suitable for copying and electronic filing. If you submit them 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 will address them accordingly.

*Viewing comments and documents:* Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0030" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received in 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 Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

## Information Collection Request

*Title:* Great Lakes Pilotage.

*OMB Control Number:* 1625–0086.

*Summary:* The Office of Great Lakes Pilotage is seeking an extension of OMB's approval for Great Lakes Pilotage data collection requirements for the three U.S. pilot associations it regulates. This extension would require continued submission of data to an electronic collection system. This system is identified as the Great Lakes Electronic Pilot Management System which will eventually replace the manual paper submissions currently used to collect data on bridge hours; vessel delay, detention, cancellation, and moveage; pilot travel; revenues; pilot availability; and related data. This extension ensures the required data is available in a timely manner and allows immediate accessibility to data crucial from both an operational and rate-making standpoint.

*Need:* To comply with the statutory and regulatory requirements respecting the rate-making and oversight functions imposed upon the agency.

*Forms:* None.

*Respondents:* The three U.S. pilot associations regulated by the Office of Great Lakes Pilotage.

*Frequency:* Daily.

*Burden Estimate:* The estimated burden remains the same at 18 hours a year.

Dated: February 4, 2010.

**M.B. Lytle,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. 2010–2891 Filed 2–9–10; 8:45 am]

**BILLING CODE 9110–04–P**

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# DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## Agency Information Collection Activities: Customs and Trade Partnership Against Terrorism (C–TPAT)

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-day notice and request for comments; extension of an existing collection of information: 1651–0077.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs and Trade Partnership Against Terrorism (C–TPAT). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before April 12, 2010, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street,

NW., 7th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Customs and Trade Partnership Against Terrorism (C–TPAT).

*OMB Number:* 1651–0077.

*Form Number:* None.

*Abstract:* The Customs and Trade Partnership Against Terrorism (C–TPAT) Program is designed to provide expedited processing to participants in this Program at certain, high-risk locations by prescreening participants. The C–TPAT Program applies to air, land and sea. This Program was mandated by the SAFE Port Act. This information collection is an on-line application that must be completed by companies or individuals wishing to participate in the C–TPAT program. This application can be found on *http://www.cbp.gov.*

*Current Actions:* This submission is being made to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses and Individuals.

*Estimated Number of Respondents:* 6,500.

*Estimated Time per Respondent:* 5 hours.

*Estimated Total Annual Burden Hours:* 32,500.

Dated: February 4, 2010.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2010–2934 Filed 2–9–10; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Andean Trade Preferences

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-day notice and request for comments; Revision of an existing information collection: 1651–0091.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Andean Trade Preferences. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 65543) on December 10, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before March 12, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

*Title:* Andean Trade Preferences.

*OMB Number:* 1651–0091.

*Form Number:* 449.

*Abstract:* The information collected is to be used by CBP officers to document preferential tariff treatment under the provisions of the Andean Trade Preferences Act (ATPA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), as codified in 19 U.S.C. 3201 through 3206.

The ATPA Certificate of Origin format is found under the CBP regulations, 19 CFR part 10.201–10.207. The type of information collected includes the processing operations performed on articles, the material produced in a beneficiary country or in the U.S., and a description of those processing operations.

The ATPDEA regulations are found in 19 CFR 10.251–10.257. CBP Form 449, "Andean Trade Promotion and Drug Eradication Act (ATPDEA)" has been established to collect information under ATPDEA. CBP will use this new form to collect information pertaining to the origin of goods that are claimed for preferential duty treatment. This form can only be used when claiming ATPDEA preferential treatment on the goods listed on the back of the form.

*Current Actions:* This submission is being made to extend the expiration date and to revise this information collection by adding Form 449, "Andean Trade Promotion and Drug Eradication Act (ATPDEA)". CBP is also proposing to increase the burden hours as a result of increasing the estimated time per

response for ATPA from 6 minutes to 10 minutes.

*Type of Review:* Extension (with change)

*Affected Public:* Businesses.

*ATPA Certificate of Origin:*

*Estimated Number of Respondents:* 2,133.

*Estimated Number of Annual Responses per Respondent:* 2.

*Estimated Number of Total Annual Responses:* 4,266.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 711.

*ATPDEA Certificate of Origin:*

*Estimated Number of Respondents:* 233.

*Estimated Number of Annual Responses per Respondent:* 7.

*Estimated Number of Total Annual Responses:* 1,631.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 815.

Dated: February 4, 2010.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2010–2938 Filed 2–9–10; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2010–0054]**

### Merchant Marine Personnel Advisory Committee; Meetings

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meetings.

**SUMMARY:** The Merchant Marine Personnel Advisory Committee (MERPAC) will meet in Metairie, Louisiana (LA) to discuss various issues related to the training and fitness of merchant marine personnel. These meetings will be open to the public.

**DATES:** MERPAC will meet on Thursday, March 11, 2010, from 8 a.m. until 4 p.m., and Friday, March 12, 2010, from 8 a.m. until 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 1, 2010. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before March 1, 2010.

**ADDRESSES:** The Committee will meet at the New Orleans Marriott Metairie at Lakeway Hotel, 3838 N. Causeway Boulevard, Metairie, LA. Send written material and requests to make oral presentations to Mr. Mark Gould, Assistant to the Designated Federal Officer (DFO) of MERPAC, at Commandant (CG–5221), ATTN MERPAC, U.S. Coast Guard, 2100 Second St., SW., STOP 7126, Washington, DC 20593–7126. This notice may be viewed in our online docket, USCG–2010–0054, at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gould, Assistant to the DFO of MERPAC, telephone 202–372–1409.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). MERPAC is chartered under that Act. It provides advice and makes recommendations to the Assistant Commandant for Operations on issues concerning merchant marine personnel.

#### Agenda of Meeting

The agenda for the March 11, 2010, Committee meeting is as follows:

(1) The full committee will meet to discuss the objectives for the meeting.

(2) Working groups addressing the following task statements may meet to deliberate—

(a) Task Statement 30, concerning Utilizing Military Sea Service for STCW Certifications;

(b) Task Statement 58, concerning Stakeholder Communications During MLD Program Restructuring and Centralization;

(c) Task Statement 64, concerning Recommendations on Areas in the STCW Convention and the STCW Code Identified for Comprehensive Review;

(d) Task Statement 71, concerning Review USCG/IMO Operational Level Examination (3rd Mate/2nd Mate and 3rd/2nd Assistant Engineer) Topics and Questions and Alignment with the STCW Code;

(e) Task Statement 73, concerning Development of Training Guidance for Engineers Serving on Near-Coastal Vessels; and

(f) Task Statement 74, concerning Merchant Mariner Credential (MMC) Components.

(3) MERPAC may form new working groups to address any new issues that arise.

(4) At the end of the day, the working groups will make a report to the full committee on what was accomplished in their meetings. No action will be taken on these reports on this date.

The agenda for the March 12, 2010, Committee meeting is as follows:

(1) Introduction;

(2) Reports from the following working groups;

(a) Task Statement 30, concerning Utilizing Military Sea Service for STCW Certification;

(b) Task Statement 58, concerning Stakeholder Communications During MLD Program Restructuring and Centralization;

(c) Addendum to Task Statement 64, concerning Recommendations on Areas in the STCW Convention and the STCW Code Identified for Comprehensive Review;

(d) Task Statement 71, concerning Review USCG/IMO Operational Level Examination (3rd Mate/2nd Mate and 3rd/2nd Assistant Engineer) Topics and Questions and Alignment with the STCW Code;

(e) Task Statement 73, concerning Development of Training Guidance for Engineers Serving on Near-Coastal Vessels;

(f) Task Statement 74, concerning Merchant Mariner Credential (MMC) Components; and

(g) Any other task statements adopted by the full committee at this meeting.

(3) Other items which may be discussed:

(a) Standing Committee—Prevention Through People.

(b) Briefings concerning on-going projects of interest to MERPAC.

(c) Other items brought up for discussion by the Committee or the public.

(4) At the end of the day, the working groups will make a report and, if applicable, recommendations for the full committee to consider for presentation to the Coast Guard. Official action on these recommendations may be taken on this date.

#### Procedural

These meetings will be open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant to the DFO no later than March 1, 2010. Written material for distribution at a meeting should reach the Coast Guard no later than March 1, 2010. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the Assistant to the DFO no later than March 1, 2010.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities

or to request special assistance at the meetings, contact the Assistant to the DFO as soon as possible.

Dated: February 1, 2010.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2010–2892 Filed 2–9–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Docket ID FEMA–2010–0004]**

## National Disaster Recovery Framework

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA), in coordination with the interagency Long Term Disaster Recovery Working Group, is accepting comments on the draft National Disaster Recovery Framework (NDRF). The NDRF is intended to work in concert with the National Response Framework to provide organizing constructs and principles solely focused on disaster recovery. Recognizing the continuum between preparedness, response, recovery, and mitigation, the NDRF transitions with and continues beyond the scope of the National Response Framework.

**DATES:** Comments must be received by February 26, 2010.

**ADDRESSES:** Comments must be identified by docket ID FEMA–2010–0004 and may be submitted by one of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

*Mail:* Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

**FOR FURTHER INFORMATION CONTACT:** Gerilee Bennett, Planning Branch Chief, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–646–4173.

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

*Instructions:* All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *http://www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

*Docket:* The proposed policy is available in docket ID FEMA–2010–0004. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID.

### II. Background

The draft National Disaster Recovery Framework (NDRF) addresses the short, intermediate, and long-term challenges of managing disaster recovery. Like the National Response Framework (NRF), the NDRF is intended to address all hazards events, whether natural or man-made and provide constructs that are scalable, adaptable, and responsive to the changing needs of different disasters. In recognizing the continuum between preparedness, response, recovery, and mitigation, the draft NDRF is intended to overlap and continue beyond the scope of the NRF.

This opportunity for public comment on the draft NDRF is a continuation of an extensive engagement effort undertaken by the interagency Long Term Disaster Recovery Working Group established by the President in October 2009, and co-chaired by the Secretaries of the Departments of Homeland Security and Housing and Urban Development. During the fall of 2009, DHS/FEMA and HUD sponsored outreach sessions in each of FEMA's ten regions and stakeholder forums in five cities across the nation to provide stakeholders from a wide array of organizations and backgrounds the opportunity to provide up-front input to the Working Group on ways to strengthen disaster recovery. DHS/FEMA and HUD also organized discussion roundtables with professional associations and academic experts. The Long-term Disaster Recovery Working Group also created a Web portal, *http://www.disasterrecoveryworkinggroup.gov,* which enabled a large and diverse group of stakeholders to provide input. Over six hundred stakeholders representing local, state, tribal and federal government, as well as public and private sector organizations contributed more than six thousand responses from across the nation. FEMA, HUD, and the Federal interagency partners on the Working Group have reviewed this stakeholder feedback and used it to inform development of the draft NDRF. We now seek direct feedback on the draft NDRF itself through this public comment period. The Long Term Disaster Recovery Working Group is also preparing a Report to the President for delivery in early April that will document the Working Group's overall findings and recommendations.

The draft NDRF provides recovery concepts and principles important to all disaster recovery stakeholders. It provides guidance to stakeholders for engaging in pre-disaster recovery planning and other recovery preparedness and resiliency building efforts; clarifies roles for local, state, tribal and Federal governments, private-non-profit and private sector organizations; provides guidance for facilitating post-disaster recovery planning to expedite long-term disaster recovery; and provides assistance to stakeholders in identifying recovery needs beyond replacement or return to pre-disaster condition. The document also provides guidance that impacted communities may use to develop recovery priorities, and measure recovery progress and outcomes against their agreed-upon objectives. It also provides guidance for both government and non-governmental organizations providing recovery assistance to track progress, ensure accountability, and make adjustments to ongoing assistance.

The draft NDRF lays out a systematic approach to disaster recovery, applicable to all levels of government and sectors of communities with recovery responsibilities. The draft NDRF is a guidance document. It does not have the force or effect of law.

FEMA seeks comment on the draft NDRF, which is available online at *http://www.regulations.gov* in docket ID FEMA–2010–0004. Although FEMA seeks comments on all aspects of the document, we are particularly interested in receiving input on whether the document's outline of the relationship between the existing Emergency Support Functions and the proposed

Recovery Support Functions is clear. Based on the comments received, FEMA may make appropriate revisions to the NDRF. Although FEMA will consider any comments received in the drafting of the final document, FEMA will not provide a response to comments document. When or if FEMA issues a final NDRF, FEMA will publish a notice of availability in the **Federal Register** and make the final NDRF available at *http://www.regulations.gov.* The final policy will not have the force or effect of law.

The NRF, which was issued January 22, 2008 and went into effect on March 22, 2008, may also assist you in your review of the draft NDRF. The NRF was also posted for public comment before release. The NRF may be found on *http://www.regulations.gov* by searching for docket ID FEMA–2007–0007.

**Authority:** 42 U.S.C. 5121–5207, and 6 U.S.C. 771.

Dated: February 5, 2010.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–2970 Filed 2–9–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–04]**

### Notice of Proposed Information Collection: Comment Request; Final Endorsement of Credit Instrument

**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: April 12, 2010.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Leroy.MckinneyJr@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Joyce Allen, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (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:* Final Endorsement of Credit Instrument.

*OMB Control Number, if applicable:* 2502–0016.

*Description of the need for the information and proposed use:* The information collected on the "Final Endorsement of Credit Instrument" form is used to request final endorsement by HUD of the credit instrument. The mortgagee/lender submits information to indicate the schedule of advances made on the project and the final advances to be disbursed immediately upon final endorsement.

*Agency form numbers, if applicable:* HUD–92023.

*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 100. The number of respondents is 100, the number of responses is 100, the frequency of response is on occasion, and the burden hour per response is approximately one hour.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 4, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–2823 Filed 2–9–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–05]**

### Notice of Proposed Information Collection: Comment Request; Comprehensive Needs Assessment (CNA)

**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:* April 12, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Leroy.MckinneyJr@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Harry Messner, Project Manager, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (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:* Capital Needs Assessment (CNA).

*OMB Control Number, if applicable:* 2502–0505.

*Description of the need for the information and proposed use:* Collecting this information is required for compliance with the statute. In addition, this information allows the project owner and HUD to assess current project resources and determine future financial resources required to meet the needs of the project.

*Agency form numbers, if applicable:* Form HUD–96001 Unit Survey Comprehensive Needs Assessment; Form HUD–96002 Project Profile Comprehensive Needs Assessment; form HUD–96003 Project Summary Comprehensive Needs Assessment.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 1,016,885. The number of respondents is 623,893, the number of responses is 623,893, the frequency of response is on occasion, and the burden hours per response is 42.50.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 4, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–2827 Filed 2–9–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–07]**

## Notice of Proposed Information Collection: Comment Request; Technical Processing Requirements for Multifamily Project Mortgage Insurance

**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:* April 12, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Leroy.MckinneyJr@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Joyce Allen, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (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:* Technical Processing Requirements for Multifamily Project Mortgage Insurance.

*OMB Control Number, if applicable:* 2502–New.

*Description of the need for the information and proposed use:* The information collection is analyzed by HUD during the four technical discipline phases of an application for mortgage insurance—underwriting, valuation, architectural, and mortgage credit analysis. HUD performs each phase during the application process to ensure the financial, physical, and environmental soundness of the project, as well as the potential insurance risk. Sponsors, mortgagors and contractors are required to undergo a thorough examination to determine their solvency, reliability, past experience, and dependability to develop, build, and operate the type of multifamily housing project they propose.

*Agency form numbers, if applicable:* HUD–92466, HUD–2456, HUD–92450, HUD–92443, HUD–3305, HUD–3306, HUD–92403.1, FHA–2415, HUD–92283, FHA–2455, FHA–1710, HUD–92433, and FHA 2459.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 9,250. The number of respondents is 9,250. The estimated number of annual responses is 11,050. The frequency of each response is once for each application submitted for mortgage insurance.

*Status of the proposed information collection:* This is a new collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 4, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–2834 Filed 2–9–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–02]**

### Notice of Proposed Information Collection: Comment Request; Multifamily Housing Service Coordinator Grant

**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:* April 12, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339) .

**FOR FURTHER INFORMATION CONTACT:** Carissa L. Janis, Housing Program Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2487 (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:* Multifamily Housing Service Coordinator Program.

*OMB Control Number, if applicable:* 2502–0447.

*Description of the need for the information and proposed use:* Housing project owners/managers apply for grants under the Housing Service Coordinator Program. The requested information will assist HUD in evaluating grant applicants and to determine how well grant funds meet stated program goals and how well the public was served.

*Agency form numbers, if applicable:* HUD–92456, HUD–50080–SCMF, HUD–91186, SF–269–A, SF–424, SF–424–Supp, HUD–2880, SF–LLL, HUD–96010, HUD–91186–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 69,150. The number of respondents is 4,300, the number of responses is 20,800, the frequency of response is on occasion (from one to four times per year depending on the task), and the burden hour per response varies (it is from .25 (LOCCS vouchers) to 40 hours (grant applications) for various tasks).

*Status of the proposed information collection:* This is a revision of a previously approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 4, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–2825 Filed 2–9–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–06]**

### Notice of Proposed Information Collection: Comment Request; Funds Authorization

**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: April 12, 2010.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Leroy.MckinneyJr@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Program Contact, Harry Messner, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2626 (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:* Funds Authorization.

*OMB Control Number, if applicable:* 2502–0555.

*Description of the need for the information and proposed use:* the purpose of this information collection is to ensure that advances from the

Reserve for Replacement and/or Residual Receipts Funds are reviewed and authorized by HUD in accordance with regulatory and administrative guidelines.

*Agency form numbers, if applicable:* form HUD–9250.

*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 4,129. The number of respondents is 8,257, the number of responses is 8,257, the frequency of response is on occasion, and the burden hour per response is 30 minutes.

*Status of the proposed information collection:* This is an extension of a previously approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 4, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–2830 Filed 2–9–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–03]**

## Notice of Proposed Information Collection: Comment Request; Monthly Report of Excess Income and Annual Report of Uses of Excess Income

**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: April 12, 2010.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Harry Messner, Project Manager, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2626 (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:* Monthly Report of Excess Income and Annual Report of Uses of Excess Income.

*OMB Control Number, if applicable:* 2502–0086.

*Description of the need for the information and proposed use:* Project owners are permitted to retain Excess Income for projects under terms and conditions established by HUD. Owners must submit a written request to retain some or all of their Excess Income. The request must be submitted at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the owner plans to begin retaining excess income for that fiscal year. HUD uses the information to ensure that required excess rents are remitted to the Department and/or retained by the owner for project use.

*Agency form numbers, if applicable:* Web form e-93104 Monthly Report of Excess Income.

*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 5,493. The number of respondents is 2,506, the number of responses is 20,172, the frequency of response is on occasion, and the burden hour per response is three-quarters of an hour for the annual report of uses of excess income, and one-quarter hour for the monthly report of excess income.

*Status of the proposed information collection:* This is an extension of a previous clearance.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 4, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–2824 Filed 2–9–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5391–N–01]**

## Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2010

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of Revised Contract Rent Annual Adjustment Factors (AAF).

**SUMMARY:** The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustment to monthly rentals for units covered by the contract. This notice announces revised Contract Rent AAFs for adjustment of contract rents on assistance contract anniversaries. The factors are based on a formula using residential rent and utility cost changes from the most current annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. These factors are applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this notice. In a separate notice, HUD will publish "Renewal Funding AAFs" to be used exclusively for renewal funding of tenant-based rental assistance, reflecting the more recent CPI data.

**DATES:** *Effective Date:* February 10, 2010

**FOR FURTHER INFORMATION:** Contact David Vargas, Associate Deputy Assistant Secretary for Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, 202–708–2815, for questions relating to the Project-Based Certificate and Moderate Rehabilitation programs (non Single Room Occupancy); Ann Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202–708–

4300, for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, 202–708–3000, for questions relating to all other Section 8 programs; and Marie L. Lihn, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, 202–708–0590, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for the above persons: Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 800–877–8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll free.)

**SUPPLEMENTARY INFORMATION:** Tables showing Contract Rent AAFs will be available electronically from the HUD data information page at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_CR_tables.pdf.*

## I. Applying Contract Rent AAFs to Various Section 8 Programs

Contract Rent AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (i.e., pre-renewal) term of the HAP contract and for all units in the Project-Based Certificate program. There are three categories of Section 8 programs that use the Contract Rent AAFs:

Category 1—The Section 8 New Construction and Substantial Rehabilitation programs and the Section 8 Moderate Rehabilitation program.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-Based Certificate (PBC) program.

Each Section 8 program category uses the Contract Rent AAFs differently. The specific application of the Contract Rent AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

*Renewal Rents.* With the exception of the Project-Based Certificate program, Contract Rent AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.

*Budget-based Rents.* Contract Rent AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the Contract Rent AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

*Certificate Program.* In the past, Contract Rent AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated and all tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program, which does not use Contract Rent AAFs to adjust rents. All tenancies remaining in the project-based certificate program continue to use Contract Rent AAFs to adjust contract rent for outstanding HAP contracts.

*Voucher Program.* Contract Rent AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

*Moderate Rehabilitation Program.* Under the Section 8 Moderate Rehabilitation program, (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the Contract Rent AAF to the base rent component of the contract rent, not the full contract rent.

## II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002—10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97—57 (Moderate Rehabilitation and Project-Based Certificates).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

### *Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs*

In the Section 8 New Construction and Substantial Rehabilitation programs, the published Contract Rent AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published Contract Rent AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 Contract Rent AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 Contract Rent AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is reduced by comparability):

- The Table 1 Contract Rent AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 Contract Rent AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

### *Category 2: The Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)*

At this time Category 2 programs are not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).). Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable Contract Rent AAF is determined as follows:

- The Table 1 Contract Rent AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 Contract Rent AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

### *Category 3: Section 8 Project-Based Certificate Program*

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

• The Table 2 Contract Rent AAF is always used. The Table 1 Contract Rent AAF is not used.

• The Table 2 Contract Rent AAF is always applied before determining comparability (rent reasonableness).

• Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 Contract Rent AAF, the comparable rent level will be the new rent to owner.

• The new rent to owner will not be reduced below the contract rent on the effective date of the HAP contract.

## III. When to Use Reduced Contract Rent AAFs (From Contract Rent AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the Contract Rent AAF is reduced by 0.01:

• For all tenancies assisted in the Section 8 Project-Based Certificate program.

• In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

Legislative history for this statutory provision states that "the rationale [for lower AAFs for non-turnover units is] that operating costs are less if tenant turnover is less * * *". Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994). The Congressional Record also states the following:

> Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants section 8 projects and under the Certificate program, HUD should expect to benefit from this 'tenure discount.' Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

To implement the law, HUD publishes two separate Contract Rent AAF Tables, Tables 1 and 2. The difference between Table 1 and Table 2 is that each Contract Rent AAF in Table 2 is 0.01 less than the corresponding Contract Rent AAF in Table 1. Where a Contract Rent AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding Contract Rent AAF in Table 2 will also be set at 1.0, as required by statute.

## IV. How to Find the Contract Rent AAF

Tables 1 and 2 that show Contract Rent AAFs are posted on the HUD User Web site at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_CR_tables.pdf.* There are two columns in each table. The first column is used to adjust contract rent for rental units where the highest cost utility is included in the contract rent, i.e., where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, i.e., where the tenant pays for the highest cost utility.

The applicable Contract Rent AAF is selected as follows:

• Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the Contract Rent AAF for the geographic area where the contract unit is located.

• Determine whether the highest cost utility is or is not included in contract rent for the contract unit.

• If highest cost utility is included, select the Contract Rent AAF from the column for "highest cost included." If highest cost utility is not included, select the Contract Rent AAF from the column for "utility excluded."

## V. Methodology

Contract Rent AAFs are rent inflation factors. Two types of rent inflation factors are calculated for Contract Rent AAFs: Gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence, but does not include any change in the cost of utilities. The gross rent inflation factor is designated as "Highest Cost Utility Included" and the shelter rent inflation factor is designated as "Highest Cost Utility Excluded".

Contract Rent AAFs are calculated using CPI data on "rent of primary residence" and "fuels and utilities".[1] The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the "contract rent" which includes units with all utilities included in the rent, units with some utilities included in the rent and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying the percentage of renters who pay for heat (a proxy for the percentage renters who pay shelter rent) from the Consumer Expenditure Survey (CEX) and American Community Survey (ACS) data on the ratio of utilities to rents.[2]

### *Survey Data Used to Produce Contract Rent AAFs*

In this publication, the rent and fuel and utilities inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from 2007 to 2008. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2007 CEX survey data produced for HUD for the purpose of computing Contract Rent AAFs. The utility-to-rent ratio used to produce Contract Rent AAFs comes from 2007 ACS median rent and utility costs.

### *Geographic Areas*

Contract Rent AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the Contract Rent AAF that is based on that CPI survey is applied to the whole CBSA and to any

[1] CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

[2] The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at *http://www.HUDUSER.org*

HUD-defined metropolitan area, called "HUD Metro FMR Area" (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA is assigned the relevant regional CPI factor. Almost all non-metropolitan counties are assigned regional CPI factors.[3] For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables by state and each HMFA is listed alphabetically within its respective CBSA. Each Contract Rent AAF applies to a specified geographic area and to units of all bedroom sizes. Contract Rent AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey.

The Contract Rent AAFs shown at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_CR_tables.pdf* use the same OMB metropolitan area definitions, as revised by HUD, that are used in the FY 2010 FMRs.

*Area Definitions*

To make certain that they are using the correct Contract Rent AAFs, users should refer to the Area Definitions Table section at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_AreaDef.pdf.* For units located in metropolitan areas with a local CPI survey, Contract Rent AAF areas are listed separately. For units located in areas without a local CPI survey, the metropolitan or nonmetropolitan counties receive the regional CPI for that Census Region.

The Area Definitions Table at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_AreaDef.pdf* lists areas in alphabetical order by state. The associated CPI region is shown next to each state name. Areas whose Contract Rent AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate Contract Rent AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not specifically listed in the Area Definitions Table at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_AreaDef.pdf.*

Puerto Rico and the Virgin Islands use the South Region Contract Rent AAFs. All areas in Hawaii use the Contract Rent AAFs identified in the Table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region Contract Rent AAFs.

Accordingly, HUD publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments programs as set forth in the Contract Rent AAF Tables posted at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_CR_tables.pdf.*

Dated: February 4, 2010.

**Raphael W. Bostic,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. 2010–2991 Filed 2–9–10; 8:45 am]

**BILLING CODE 4210–67–P**

[3] There are four non-metropolitan counties that continue to use CPI city updates: Ashtabula County, OH, Henderson County, TX, Island County, WA, and Lenawee County, MI. BLS has not updated the geography underlying its survey for new OMB metropolitan area definitions and these counties, are no longer in metropolitan areas, but they are included as parts of CPI surveys because they meet the 75percent standard HUD imposes on survey coverage. These four counties are treated the same as metropolitan areas using CPI city data.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5391–N–02]**

## Section 8 Housing Assistance Payments Program—Renewal Funding Annual Adjustment Factors, Fiscal Year 2010

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of Renewal Funding Annual Adjustment Factors (AAFs).

**SUMMARY:** The Consolidated Appropriations Act, 2010 (Pub. L. 111–117), directs HUD's Office of Public and Indian Housing (PIH) to "provide renewal funding for each Public Housing Agency (PHA) based on Voucher Management System (VMS) leasing and cost data for the most recent Federal fiscal year and by applying the most recent Annual Adjustment Factors as established by the Secretary". This notice announces Renewal Funding AAFs in response to that directive. Consumer Price Index (CPI) data, similar to those used for "Contract Rent AAFs", are used, but semi-annual CPI data replaces annual CPI data. This makes the Renewal Funding AAFs six months more current than the CPI data used to derive Contract Rent AAFs. These CPI data are more current data and better reflect the economic circumstances most relevant to the Housing Choice Voucher (HCV) program in 2010 and the assumptions of the 2010 budget. Like the Contract Rent AAFs, these factors are based on a formula using residential rent and utility cost changes. Contract Rent AAFs were published in a separate notice which can be viewed at: *http://www.huduser.org/portal/datasets/aaf.html/FY2010_CF_table.pdf.*

**DATES:** *Effective Date:* February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Contact David Vargas, Associate Deputy Assistant Secretary for Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, 202–708–2815; and Marie L. Lihn, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, 202–708–0590, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for the above persons: Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 800–877–8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll free.)

**SUPPLEMENTARY INFORMATION:** The table showing Renewal Funding AAFs will be available electronically from the HUD data information page at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_RF_table.pdf.* Renewal Funding AAFs include utility costs and only one set of AAFs is published for this purpose.

### I. Methodology

Renewal Funding AAFs are derived from rent inflation factors to account for relative differences in rent inflation among different parts of the country. Two types of rent inflation factors are typically calculated for AAFs: Gross rent factors and shelter rent factors; however, only the gross rent inflation factor is used for Renewal Funding AAFs. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit.

Renewal Funding AAFs are calculated using CPI data on "rent of primary

residence" and "fuels and utilities".[1] The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the "contract rent" which includes units with all utilities included in the rent, units with some utilities included in the rent and units with no utilities included in the rent. In producing a gross rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) from the Consumer Expenditure Survey (CEX) and American Community Survey (ACS) data on the ratio of utilities to rents.[2] The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2007 CEX survey data produced for HUD for the purpose of computing Renewal Funding AAFs. The utility-to-rent ratio used in the formula comes from 2007 ACS median rent and utility costs.

In this publication, the rent and utility inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from the first half of 2008 to the first half of 2009, the most recent data available at the time of the development of final budget projections for fiscal year (FY) 2010. Typically, CPI indexes averaged over a 12-month period have been used to measure the change in gross rents from year to year. The semi-annual indexes used for Renewal Funding AAFs average data over six months as opposed to 12 months; the Renewal Funding AAFs use change over the course of two semi-annual index cycles to derive a 12-month adjustment.

## II. The Use of Renewal Funding AAFs

The Renewal Funding AAFs differ from past AAFs and the FY2010 Contract Rent AAFs in that they make use of more recent semi-annual CPI indexes in place of average annual CPI indexes. The Renewal Funding AAFs have been developed to account for relative differences in the recent inflation of rents among different areas and are used to allocate HCV funds among PHAs. HUD is reviewing and updating the methodologies for all program parameters, including Fair Market Rents (FMRs), AAFs and other inflation indices. The publication of these separate Renewal Funding AAFs for allocation of voucher funds is an interim step toward more complete reforms including using more recent data in HUD's estimations for various program parameters, including FMRs, as published in the **Federal Register** on September 30, 2009 (74 FR 50552).

## III. Geographic Areas

Renewal Funding AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the Renewal Funding AAF that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called "HUD Metro FMR Area" (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA is assigned the relevant regional CPI factor. Almost all non-metropolitan counties are assigned regional CPI factors. For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

The Renewal Funding AAF tables list the four Census Regions first, followed by an alphabetical listing of each metropolitan area, beginning with Akron, OH, MSA. Renewal Funding AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey, and
- For the four Census Regions for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey.

Renewal Funding AAFs use the same OMB metropolitan area definitions, as revised by HUD, that are used in the FY 2010 FMRs.

## IV. Area Definitions

To make certain that they are referencing the correct Renewal Funding AAFs, PHAs should refer to the Area Definitions Table at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_AreaDef.pdf.* For units located in metropolitan areas with a local CPI survey, Renewal Funding AAFs are listed separately. For units located in areas without a local CPI survey, the metropolitan or non-metropolitan counties receive the regional CPI for that Census Region.

The Area Definitions Table for Renewal Funding AAFs, shown at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_AreaDef.pdf,* lists areas in alphabetical order by state. The associated CPI region is shown next to each state name. Areas whose Renewal Funding AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate Renewal Funding AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not specifically listed on the Area Definitions Table.

Puerto Rico and the Virgin Islands use the South Region Renewal Funding AAFs. All areas in Hawaii use the Renewal Funding AAFs identified in the Table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region Renewal Funding AAFs.

Accordingly, HUD publishes these Renewal Funding Annual Adjustment Factors as set forth in the Renewal Funding AAF Table posted at *http://www.huduser.org/portal/datasets/aaf.html/FY2010_RF_table.pdf.*

Dated: February 4, 2010.

**Raphael W. Bostic,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. 2010–2990 Filed 2–9–10; 8:45 am]

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[1] CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

[2] The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at *http://www.HUDUSER.org.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5396–N–01]**

## Sustainable Communities Planning Grant Program Advance Notice and Request for Comment

**AGENCY:** Office of Sustainable Housing and Communities, Office of the Deputy Secretary, HUD.

**ACTION:** Advance notice and request for comments.

**SUMMARY:** This notice announces HUD's intention to offer funding through a competition made available as a Notice of Funding Availability (NOFA) under its Sustainable Communities Planning Grant Program (Program).

As part of the Administration's efforts to increase transparency in government operations and to expand opportunities for stakeholders to engage in decision-making, HUD is seeking comments on the Program through this Advance Notice. Feedback received through this process will permit HUD and its partners to better understand how this Program can support cooperative regional planning efforts that integrate housing, transportation, environmental impact, and economic development. HUD is seeking input from State and local governments, regional bodies, community development entities, and a broad range of other stakeholders on how the Program should be structured in order to have the most meaningful impact on regional planning for sustainable development.

The goal of the Program is to support multi-jurisdictional regional planning efforts that integrate housing, economic development, and transportation decision-making in a manner that empowers jurisdictions to consider the interdependent challenges of economic growth, social equity and environmental impact simultaneously. Three funding categories are being considered:

(1) Funding to support the preparation of Regional Plans for Sustainable Development that address housing, economic development, transportation, and environmental quality in an integrated fashion where such plans do not currently exist;

(2) Funding to support the preparation of more detailed execution plans and programs to implement existing regional sustainable development plans (that address housing, economic development, transportation, and environmental quality in an integrated fashion); and

(3) Implementation funding to support regions that have regional sustainable development plans and implementation strategies in place and need support for a catalytic project or program that demonstrates commitment to and implementation of the broader plan.

This Program is being initiated in close coordination with the U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency (EPA).

**DATES:** All comments, to be considered in response to this Advance Notice, must be received no later than midnight Eastern Standard Time on Friday, March 12, 2010. Comments will not be accepted after that date.

**ADDRESSES:** Electronic responses are preferred and should be addressed to: *sustainablecommunities@hud.gov* or may be submitted through the *http://www.hud.gov/sustainability* Web site. Written comments may also be submitted and post-marked by the deadline and addressed to Office of Sustainable Housing and Communities, Department of Housing and Urban Development, 451 7th Street, SW., Room 10180, Washington, DC 20410. HUD is expanding the opportunity for comment by establishing a Wiki to encourage public dialogue at the following link: *http://www.hud.gov/OSHCwiki.*

*Outreach Sessions:* HUD and its partner agencies will conduct a series of listening sessions and webcasts to ensure the broadest possible dissemination of information about the Program and to receive feedback from interested parties. Further information will be available at *http://www.hud.gov/sustainability* shortly after the publication of this Advance Notice, and through such interactive forums that will be described on *http://www.hud.gov/sustainability.*

*Availability of Funding and Timelines:* This notice invites comments on the proposed award of funding for the Sustainable Communities Planning Grant Program. This notice is not a solicitation of proposals for the Program.

The Program was authorized by the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) (the Appropriations Act, approved December 16, 2009). For the Program, $100,000,000 will be made available, through the NOFA that will follow this Advance Notice, to support the integration of housing, transportation and land use planning.

The following maximum funding levels are proposed:

- *Small metropolitan or rural areas.* The grant amount awarded under the Program to an eligible entity that represents a small metropolitan or rural area with a population of not more than 499,999 may not exceed $2,000,000.
- *Large metropolitan areas.* The grant amount awarded under the Program to an eligible entity that represents a large metropolitan area with a population of 500,000 or more may not exceed $5,000,000.

HUD will expect that at least 20 percent of the overall costs of the projects awarded under this grant will include leveraged funding from other public, philanthropic and private sources including in-kind contributions.

Pursuant to the Appropriations Act, not less than $25,000,000 shall be awarded in the Small Metropolitan Area category.

HUD will award funding by soliciting proposals through a final NOFA for the Program that will be developed after consideration of comments obtained through this Advance Notice and in outreach sessions. The final NOFA will be broadly announced through appropriate and familiar means and will provide further details on the finalized requirements and application process, pursuant to and in compliance with all applicable statutes and regulations, including, but not limited to, the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

HUD will set aside approximately $2,000,000 for technical assistance services to assist the awardees in implementing their proposals. A separate NOFA will be released describing the process for obtaining these technical assistance funds. The Appropriations Act also appropriates $40,000,000 for a Community Planning Challenge (CPC) Grants Program. HUD will publish a separate NOFA for the CPC program.

It is HUD's intent to meet the following schedule in developing the NOFA for the Program:

February 16–March 1, 2010—Regional Listening Sessions (locations and dates to be posted at *http://www.hud.gov/sustainability*);

Week of March 1, 2010—Web cast Briefings;

March 12, 2010—Comments on Draft Description due C.O.B. to HUD;

Week of April 12, 2010—NOFA published;

Approx. June 5, 2010—Applications due to HUD;

Approx. August 2, 2010—Announcement of Awardees.

## I. Background

A top priority of the Administration is to build economically competitive, healthy, opportunity-rich communities. In the Appropriations Act, Congress provided a total of $150,000,000 to HUD for a Sustainable Communities Initiative to improve regional planning efforts that integrate housing and transportation decisions, and increase State, regional and local capacity to incorporate livability, sustainability, and social equity principles into land use and zoning. Of that total, $100,000,000 is available for regional integrated planning initiatives, which is the subject of this Advance Notice.

The Sustainable Communities Initiative was conceived to advance development patterns that achieve improved economic prosperity, environmental sustainability, and social equity in metropolitan regions and rural communities. Recognizing the fundamental role that public investment plays in achieving these outcomes, the

Administration charged three agencies whose programs impact the physical form of communities—HUD, DOT, and EPA—to lead the way in reshaping the role of the Federal government in helping communities obtain the capacity to embrace a more sustainable future. As a result, HUD, DOT, and EPA have formed the Partnership for Sustainable Communities (the Partnership). HUD will take the lead in funding, evaluating and otherwise supporting integrative regional planning for sustainable development. DOT will focus on (a) building the capacity of transportation agencies to integrate their planning and investments into broader plans and action to promote sustainable development; and (b) investing in transportation infrastructure that directly supports sustainable development and livability principles, as discussed below. EPA will enhance its role as a provider of technical assistance and developer of environmental sustainability metrics and practices. The three agencies have made a commitment to coordinate activities, integrate funding requirements and adopt a common set of performance metrics for use by grantees. The Partnership is a commitment by these three Federal agencies to work together to coordinate policies and programs in support of six Livability Principles:

1. *Provide more transportation choices.* Develop safe, reliable and economical transportation choices to decrease household transportation costs, reduce our nation's dependence on foreign oil, improve air quality, reduce greenhouse gas emissions, and promote public health.

2. *Promote equitable, affordable housing.* Expand location- and energy-efficient housing choices for people of all ages, incomes, races and ethnicities to increase mobility, and lower the combined cost of housing and transportation.

3. *Enhance economic competitiveness.* Improve economic competitiveness through reliable and timely access to employment centers, educational opportunities, services, and other basic needs by workers as well as expanded business access to markets.

4. *Support existing communities.* Target Federal funding toward existing communities—through such strategies as transit-oriented, mixed-use development and land recycling—to increase community revitalization, improve the efficiency of public works investments, and safeguard rural landscapes.

5. *Coordinate policies and leverage investment.* Align Federal policies and funding to remove barriers to collaboration, leverage funding, and increase the accountability and effectiveness of all levels of government to plan for future growth, including making smart energy choices such as locally generated renewable energy.

6. *Value communities and neighborhoods.* Enhance the unique characteristics of all communities by investing in healthy, safe, and walkable neighborhoods—rural, urban, or suburban.

The Partnership for Sustainable Communities has observed that regions that have already adopted a more integrated approach to regional planning tend to exhibit a variety of desirable qualities including: More diversified and resilient economies; improved employer attraction and retention; more opportunities to lead healthier and more affordable lifestyles; lower per capita public infrastructure costs; lower vehicle miles traveled (VMT) per capita and, thus, reduced air pollution; and lower rates of concentrated poverty. These regions have built a shared vision for the future that allows greater and more broad-based support of community development and investment decisions. However, these effects are not guaranteed, and communities face a number of competing objectives in these areas. In addition, the best ways to measure progress are rightly debated as policy goals and methodologies evolve.

While the benefits of integrated regional planning are numerous, the incentives, institutions, and funding for such efforts are not widely available. Decisions made by local jurisdictions about the locations of housing, shopping, and employment are often disjointed both within and across jurisdictions and are, therefore, unable to incorporate either the impact on accessibility to different types of destinations or the broader impact on mobility and livability in a region. This fragmented approach results in a host of unintended consequences including: Spatial mismatch between affordable housing and opportunities for employment and education; long and expensive commutes; permanent loss of agricultural land; reduced water quality in streams, lakes, and other water bodies; higher emissions of greenhouse gasses and other damaging pollutants.

Despite the presence of Metropolitan Planning Organizations, Councils of Governments, and other regional planning entities, there is too often a misalignment of transportation, housing, and infrastructure systems due in part to the lack of coordination when plans by different agencies are prepared separately. While separate resources may be available for housing, economic development, water infrastructure, and transportation planning, few funding sources help communities address challenges and opportunities in an integrated fashion.

## II. Sustainable Communities Planning Grant Program

The Sustainable Communities Planning Grant Program (the Program) is intended to help build the capacity of communities to address the complex challenges of growth and revitalization in the 21st century in a comprehensive, multidisciplinary way. Funding from this Program will support the development and implementation of Sustainable Regional Development Plans. A priority will be placed on supporting regions that demonstrate a commitment to take well-developed plans and move them into implementation. The Appropriations Act directs the Secretary of HUD to establish a regional planning grant program that provides grants to assist regional entities and consortia of local governments with integrated housing, transportation, economic development, water infrastructure, and environmental planning. HUD's Office of Sustainable Housing and Communities is working in partnership with DOT and EPA to define all aspects of this Program. HUD will serve as the lead agency for all grants and will consult with its agency partners throughout the Program.

The final product of a Sustainable Communities Planning Grant will be a Regional Plan for Sustainable Development and/or implementation strategy that meet the requirements of existing HUD, DOT, and EPA programs, such as Consolidated Plans, Long Range Transportation Plans and Stormwater Master Plans. Building on these requirements, a Regional Plan for Sustainable Development would be a plan that:

(A) Identifies housing, transportation, economic development, land use, environmental, energy, green space and water infrastructure priorities and goals in a region;

(B) Establishes locally appropriate performance goals and measures the future outcomes of baseline and alternative growth and reinvestment scenarios against those goals, and includes standardized metrics developed by the Partnership;

(C) Provides strategies for meeting those priorities and goals;

(D) Prioritizes projects that facilitate the implementation of the regional plan; and identifies responsible implementing

entities (public or private) and funding sources; and

(E) Engages residents and stakeholders substantively in the development of the shared vision and its implementation plan early and throughout the process.

## III. Solicitation of Comments on Proposed Program Structure

As noted above, HUD and its partners are soliciting comments through this Advance Notice on how the Program should be structured, what funding categories and activities are most appropriate to support, which entities should be eligible grantees, and how best to evaluate regional needs, so that the Program has the most meaningful impact on regional planning for sustainable development. The discussion below outlines in general terms the key questions HUD is considering in preparing the final NOFA for the Program and identifies some specific issues for comment. HUD encourages meaningful input on the Program more generally as well. HUD has provided the avenues for input in the **ADDRESSES** section of this notice and highlights that it has established a Wiki site to allow additional comment and dialogue regarding addressing these issues.

### *A. Proposed Funding Categories and Eligible Activities*

HUD and its partner agencies recognize that regions are at different stages of readiness and capacity to engage in efforts to plan for a sustainable future. Some regions have formed multi-jurisdictional and multi-sector coalitions that are ready to embark on an effort to envision a future to help direct growth or stimulate investment sustainably. Other regions have already adopted a sustainable vision, but lack the resources to put in place the specific strategies that ensure follow-through and implementation of that vision. A few regions are on the cutting edge and have demonstrated the capacity to plan for the long-term, build broad-based coalitions in support of sustainable communities and use an array of tools to incent investment in development, land preservation, and infrastructure that implements their sustainable vision.

Given this broad spectrum, the Partnership is considering supporting activities to meet the needs of each of these three categories of regions. In this comment period, HUD specifically seeks feedback on the extent to which these categories are of benefit to potential applicants, the types of activities that should be allowed in each category, and the extent to which the Program should support project-level implementation investments. HUD is also soliciting feedback on appropriate common performance metrics for each funding category.

*Category 1: Regional Plans for Sustainable Development.* Funds would support stakeholder-driven visioning and scenario planning exercises that will address and harmonize plans for the location, scale and type of housing, education and job centers; identify appropriate transportation and water infrastructure; and proactively consider risks from disasters and climate change. Applicants would be expected to identify a set of locally-appropriate performance metrics that are consistent with the Partnership's Livability Principles, as well as the Partnership's own metrics, and then measure the outcomes of proposed growth/reinvestment scenarios against those metrics. Funding in this category would support data analysis, urban design and outreach efforts to achieve broad consensus among groups, citizens, and decisionmakers for a single vision/scenario and to have that plan adopted by all appropriate regional governmental bodies.

HUD seeks comments on the following questions:

—What specific types of eligible activities would support this effort and which parties should be part of the regional planning process?

—What elements should be part of the plan, such as a region-wide vision and statement of goals, long-term development and infrastructure investment map, implementation strategy and/or funding plan?

—How can citizens best participate, such as through a requirement for participation in a minimum number of public meetings to ensure broad regional consensus?

—Should Regional Plans for Sustainable Development be expected to harmonize and be consistent with HUD, DOT, and EPA-required plans and, if so, how? Should Regional Plans for Sustainable Development show a linkage to local formula-based programs supported by HUD, DOT, and EPA; and, if so, to what extent should such linkage be required?

*Category 2: Detailed Execution Plans and Programs.* Funds in this category would support the preparation and adoption of detailed plans and programs to implement an adopted integrated regional sustainable vision. Because implementation needs will vary significantly from region to region depending on the goals of a sustainable plan and the gaps that exist, the funds from this category would likely support a wide range of implementation activities but still be measured against the common and consistent metrics and outcome goals highlighted in the previous section. For example, inter-jurisdictional affordable and fair housing strategies, regional transportation investment programs, corridor transit-oriented development plans, sector or area plans, land banking and acquisition strategies, revenue sharing strategies, economic development strategies, plans to improve access to community amenities, and other specific activities that help ensure that the goals of the regional vision are implemented. Regional coalitions would be eligible to apply for this category on the basis of demonstrating the adoption of a regional vision that is substantially consistent with the Livability Principles, program goals and metrics identified in the published NOFA.

HUD seeks comments on the following questions:

—What specific types of activities should be eligible for funding in this category?

—What criteria should be used to evaluate whether a previously adopted regional vision is consistent with the Livability Principles discussed above?

—Should the amount of local and contributed resources to support, expand, and enhance the development of implementation strategies be rewarded in application scoring or are there other means to leverage other funds and resources?

*Category 3: Implementation Incentives.* Recognizing that those regions that have already fully embraced sustainable regional planning provide important models to the nation, the Partnership is considering ways in which the Program can reward and incent further action by cutting edge regions.

First, HUD is evaluating the extent to which applicants that have an adopted Regional Sustainable Development Plan and appropriate implementation programs in place could be pre-certified as having met HUD, DOT, and EPA's criteria for sustainability and livability factors in other discretionary federal funding programs.

Second, HUD is considering providing a limited number of grants to complete a financing package for projects that would accelerate the implementation of a Regional Sustainable Development Plan. As envisioned, this category would support

pre-development costs, capital costs for a regionally significant development or infrastructure investment, or land acquisition investments. We are considering how to make best use of new federal dollars in the context of existing programs and their requirements—and also in the context of innovative practices in the field. Applicants would need to demonstrate that they have in place an adopted regional vision that is substantially consistent with the Livability Principles, metrics identified in the published NOFA to measure performance, and have commitments from affected participating partners to initiate implementation efforts, but have funding gaps that could be closed within the grant limits for this program.

HUD seeks comments on the following questions:

—Would "pre-certification" be an added value and, if so, what programs should this approach apply to? What criteria should be considered for meeting the "pre-certification" status?

—Is the direct support of implementation activities appropriate within this Program given the limited amount of resources and the expected modest size of grants?

—What criteria should be used to judge that an applicant successfully demonstrates that it has an adopted regional vision and that the project for funding under this category is truly catalytic?

—Specifically, what criteria should be considered for a project to be catalytic?

—What types of activities might be included, the timeframe by what time the project should be completed, and how much leveraging should be considered appropriate for demonstrating that the proposed investment will serve as a region's commitment to a sustainable future?

*B. Entities Eligible for Funding*

In the Program, HUD is considering as an eligible entity a multi-jurisdictional and multi-sector partnership consisting of a consortium of units of general local government and all government, civic, philanthropic and business entities with a responsibility for implementing a Regional Plan for Sustainable Development.

HUD seeks input on the following questions:

—Should certain entities be required partners in multi-jurisdictional regions such as a metropolitan planning organization as defined in 23 CFR 450.104, or a rural planning organization or network of rural planning organizations in a rural area?

—What definitions should HUD use to define a rural multi-jurisdictional region eligible for funding?

—What units of government should be allowed to serve as a lead agency for funding purposes?

—What should demonstrate commitment on the part of each member organization, and whether there should be a minimum number of member organizations?

*C. Selection Criteria*

In evaluating an application for a grant, HUD, in partnership with DOT and EPA, will evaluate whether the application furthers the creation of livable communities by advancing regional planning that integrates housing, transportation, and environmental decisions and the extent to which the applicant represents a strong collaboration effort for the region in question.

HUD seeks input on how to judge the capacity of the regional entity to carry out the proposed Program, including the extent of technical and organizational capacity to conduct the project in the proposed timeframe, past experience in implementing a planning process, and/or an implementation project as proposed, and the extent to which the consortium has developed partnerships throughout an entire metropolitan or rural area, including, as appropriate, partnerships with the entities described above. Specifically, should a needs assessment be required as an application submission requirement, and, if so, what data elements should be mandatory in judging need and the scope of the needs assessment to ensure that it addresses the comprehensive needs of the region?

While HUD specifically seeks comment on the foregoing questions, HUD welcomes additional information that will help inform the Sustainable Communities Planning Grant Program.

Dated: February 4, 2010.

**Ron Sims,**

*Deputy Secretary.*

[FR Doc. 2010–2979 Filed 2–9–10; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0057

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR part 882, Reclamation on Private Land, has been forwarded to the Office of Management and Budget (OMB) for review and approval. This information collection request describes the nature of the information collection and its expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection requests but may respond after 30 days. Therefore, public comments should be submitted to OMB by March 12, 2010, in order to be assured of consideration.

**ADDRESSES:** Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Aye, NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0057 in your correspondence.

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request, contact John Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtrelease@osmre.gov.*

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted the request to OMB to renew its approval for the collection of information found at 30 CFR part 882. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0057, and may be found in OSM's regulations at 30 CFR 882.10. States and Tribes are required to respond to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting

comments on this collection was published on November 24, 2009 (74 FR 61363). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

*Title:* 30 CFR 882—Reclamation on Private Land.

*OMB Control Number:* 1029–0057.

*Summary:* Public Law 95–87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* State governments and Indian tribes.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 120.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed in **ADDRESSES.** Please refer to control number 1029–0057 in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 4, 2010.

**Steve M. Felch,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2010–2759 Filed 2–9–10; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[F–21905–51; LLAK964000–L14100000–KC0000–P]**

## Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Tanana, Alaska, and are located in:

**Fairbanks Meridian, Alaska**

T. 5 N., R. 24 W.,
Secs. 3, 4, 5, and 8;
Secs. 9, 33, 34, and 35.

Containing approximately 4,805 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 12, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Hillary Woods,**

*Land Law Examiner, Land Transfer Adjudication I Branch.*

[FR Doc. 2010–2847 Filed 2–9–10; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R1–R–2009–N0112; 1265–0000–10137–S3]**

## Lewis and Clark National Wildlife Refuge and Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability: draft comprehensive conservation plan and draft environmental impact statement; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plan and draft environmental impact statement (CCP/DEIS) for the Lewis and Clark National Wildlife Refuge and Julia Butler Hansen Refuge for the Columbian White-tailed Deer (refuge or, collectively, refuges) for public review and comment. The CCP/DEIS describes our proposal for managing the refuges for the next 15 years. Both refuges are managed as part of the Willapa National Wildlife Refuge Complex located in Ilwaco, WA.

**DATES:** To ensure consideration, please send your written comments by March 29, 2010.

**ADDRESSES:** More information on the refuges is available on the Internet at *http://www.fws.gov/willapa.* You may submit comments, request a copy of the CCP or EIS, or request more information by either of the following methods:

*E-mail: FW1PlanningComments@fws.gov.* Include "Lewis and Clark CCP" and/or "Julia Butler Hansen CCP" in the subject line of the message.

*U.S. Mail:* Charlie Stenvall, Project Leader, Willapa National Wildlife Refuge Complex, 3888 SR 101, Ilwaco, Washington 98624.

**FOR MORE INFORMATION CONTACT:** Charlie Stenvall, Project Leader, (360) 484–3482.

**SUPPLEMENTARY INFORMATION:**

### Background

*The CCP Process*

The CCP/DEIS was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) as amended (Refuge Administration Act); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA); and the Service's Wilderness Stewardship Policy (610 FW 3). The Refuge Administration Act requires us to

develop a CCP for each national wildlife refuge. The purpose of developing a CCP is to provide refuge managers a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife conservation, management, legal mandates, and our policies. In addition to outlining broad management direction for conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. As part of a single planning process, the CCP/DEIS covers both refuges. At the conclusion of the planning process, the final documentation will be separated into two individual CCPs, one for each refuge. We will review and update the CCPs at least every 15 years in accordance with the Refuge Administration Act.

*Public Outreach*

We started the public scoping phase of the CCP planning process by publishing a Notice of Intent in the **Federal Register** on September 21, 2006 (71 FR 55214), announcing our intention to complete a CCP/EIS for the refuges and inviting public comments. A list of public involvement efforts we have completed to date follows.

- In September 2006, we distributed Planning Update 1 to our project mailing list and public outlets located near one or both refuges. In it, we announced the initiation of the planning process, invited the public to a series of open house meetings, provided background information on the refuges, and requested public comments on refuge management activities.
- Between October 17 and 24, 2006, we held four public open house meetings in communities near the refuges to meet the public and obtain comments on refuge management issues. The meetings were announced though local media via press releases, Web sites, and in Planning Update 1.
- In February 2007, we distributed Planning Update 2, which included a summary of the public meetings and the public comments we obtained at the meetings and through other means, a planning schedule, and draft vision statements for the refuges.

*Overview of the Refuges*

The Julia Butler Hansen Refuge for the Columbian White-tailed Deer was established in 1971, specifically to protect and manage habitat for the endangered Columbian white-tailed deer. The refuge contains over 6,000 acres of pastures, forested tidal swamps, brushy woodlots, marshes, and sloughs along the Columbia River, in southwestern Washington and northwestern Oregon. The refuge's Mainland Unit, Hunting Islands, and Price Island are located in Washington. The refuge's Tenasillahe Island, Crims Island, Wallace Island, and Westport Unit are located in Oregon. The refuge habitat protected for the Columbian white-tailed deer also benefits a large variety of wintering birds; a small herd of Roosevelt elk; river otters; painted turtles, red-legged frogs, and other reptiles and amphibians; and several pairs of nesting bald eagles and ospreys. Staff members for both refuges are located on the Julia Butler Hansen Refuge for the Columbian White-tailed Deer in Wahkiakum County, near the town of Cathlamet, Washington.

The Lewis and Clark National Wildlife Refuge was established in 1972 to preserve the vital fish and wildlife habitat of the Columbia River estuary. Riverine islands contain habitats ranging from tidal sand flats and marshes to forested swamps and upland pastures. This combination supports large numbers of migratory birds, including waterfowl, waterbirds, shorebirds, and a variety of raptors and songbirds. The refuge's islands are accessible only by boat and include approximately 18 named islands and a number of unnamed islands and marshes stretching over 25 miles of the Columbia River.

**Draft Alternatives We Are Considering**

We drafted two alternatives for managing the Lewis and Clark Refuge, and three alternatives for managing the Julia Butler Hansen Refuge. Draft compatibility determinations for public uses are also available as an appendix to the CCP/DEIS. Brief descriptions of the alternatives follow.

*Lewis and Clark Refuge Alternative 1*

This alternative assumes no change from the current refuge management programs. Habitat management would consist of monitoring refuge islands and treating invasive plant infestations as funding allows. Refuge staff members would continue to protect and maintain wintering and foraging habitat for migratory waterfowl, and nesting and roosting habitat for bald eagles. Existing public uses, including hunting, fishing, and wildlife observation and photography, would continue at current levels.

*Lewis and Clark Refuge Alternative 2*

Under Alternative 2 (the preferred alternative), current wildlife and habitat management would be maintained. Key refuge enhancements would include establishing or expanding partnerships for managing invasive species, recruiting graduate students to conduct needed wildlife and habitat research, and meeting with the Oregon Department of State Lands to discuss options for managing State lands within the approved refuge acquisition boundary. The refuge would work to expand opportunities for public uses, particularly wildlife observation and photography. Refuge lands that meet the basic criteria for wilderness would be the subject of additional studies for a potential wilderness recommendation. Refuge staff would also work with partners to ensure dredge-spoil islands provide benefits for wildlife.

*Julia Butler Hansen Refuge Alternative 1*

Under Alternative 1, no changes to the current refuge management programs would occur. We would continue to maintain and protect habitats, establish early successional riparian forest habitat, maintain predator management January through April, and continue wildlife-dependent public use programs.

*Julia Butler Hansen Refuge Alternative 2*

Under Alternative 2 (the preferred alternative), the refuge would make certain changes, including closing a small section of Steamboat Slough to waterfowl hunting to improve public safety. Refuge lands that meet the basic criteria for wilderness would be the subject of additional studies for a potential wilderness recommendation. To achieve the recovery goals for the Columbia white-tailed deer, predator management would take place on an as-needed basis year-round under this alternative. We would expand the Columbia white-tailed deer population by establishing an experimental population upriver. The wildlife-dependent public use programs would include developing two trails, opening Crims and Price Islands to waterfowl hunting, and improving print and interpretive media.

*Julia Butler Hansen Refuge Alternative 3*

To achieve recovery goals for the Columbian white-tailed deer, we would conduct predator management January through August. In addition, refuge lands that meet the basic criteria for wilderness would be the subject of additional studies for a potential wilderness recommendation. The wildlife-dependent public use programs

would include developing a bicycle and hiking trail, opening Crims and Price Islands to waterfowl hunting, closing a small section of Steamboat Slough to waterfowl hunting to improve public safety, installing new interpretive exhibit panels, and developing curriculum for the refuge study sites.

### Public Availability of Documents

We encourage you to stay involved in the CCP planning process by reviewing and commenting on the proposals we have developed in the CCP/DEIS. Copies of the CCP/DEIS on CD–ROM are available by request from Charlie Stenvall, Project Leader, Willapa National Wildlife Refuge Complex, 3888 SR 101, Ilwaco, WA 98624; phone (360) 484–3482. The Draft CCP/EIS will also be available for viewing and downloading on the Internet at *http://www.fws.gov/lc* and *http://www.fws.gov/jbh.* Printed copies of the CCP/DEIS may be reviewed at the Julia Butler Hansen Refuge for the Columbian White-tailed Deer, 46 Steamboat Slough Road, Cathlamet, WA 98612; Willapa National Wildlife Refuge Complex (address above); and at the following libraries.

- Blanch Bradley Library, 100 Main Street, Cathlamet, WA 98612.
- Astoria Public Library, 450 10th Street, Astoria, OR 97103.
- Clatskanie Library District, 11 Lillich Street, Clatskanie, OR 97016.
- Ilwaco Timberline Regional Library, 158 1st Avenue, Ilwaco, WA 98624.
- Longview Public Library, 1600 Louisiana Street, Longview, WA 98632.

### Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP/EIS.

### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 15, 2010.

**David J. Wesley,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 2010–1292 Filed 2–9–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2009–N237; 80221–1113–0000–C2]**

## Draft Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability for review and comment.

**SUMMARY:** We, U.S. Fish and Wildlife Service (Service), announce the availability of a draft recovery plan for Tidal Marsh Ecosystems of Northern and Central California for public review and comment. This draft recovery plan is an expansion and revision of our 1984 *California Clapper Rail and Salt Marsh Harvest Mouse Recovery Plan*. The plan also addresses several federally endangered plant species: *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle), *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak), *Suaeda californica* (California sea-blite), and the Morro Bay portion of *Cordylanthus maritimus* ssp. *maritimus* (salt marsh bird's-beak).

**DATES:** To ensure consideration, please send your written comments by June 10, 2010.

**ADDRESSES:** Copies of the draft recovery plan are available by request from the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Rm. W–2605, Sacramento, CA 95825 (telephone: 916–414–6600). An electronic copy of the draft recovery plan is also available at *http://endangered.fws.gov/recovery/index.html#plans.*

**FOR FURTHER INFORMATION CONTACT:** Josh Hull, Recovery Branch Chief, at the above address or telephone number.

**SUPPLEMENTARY INFORMATION:**

### Background

Recovery of endangered or threatened animals and plants is a primary goal of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery. *The Draft Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California* features five endangered species. The biology of these species is at the core of the draft recovery plan, but the goal of this recovery planning effort is the comprehensive restoration and management of tidal marsh ecosystems.

This draft recovery plan is an expansion and revision of *The California Clapper Rail and Salt Marsh Harvest Mouse Recovery Plan* (Service 1984). Since that time a great deal of effort has been dedicated to recovery and conservation activities, and additional information has been obtained through research and observation that allows us to better focus our recovery strategy. The historic distribution of the California clapper rail encompasses major tidal salt marshes between Humboldt Bay and, arguably, Morro Bay. This distribution defines the approximate geographic scope of this draft recovery plan.

The plan also covers three federally endangered plant species and the northernmost population of an additional federally endangered plant species. Two of the species, *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak), are restricted to the northern reaches of the San Francisco Bay Estuary. The other endangered tidal marsh plant, *Suaeda californica* (California sea-blite), historically occurred in both San Francisco Bay and Morro Bay; however, except for three reintroductions to San Francisco Bay, it is now restricted to Morro Bay. Another federally listed plant, *Cordylanthus maritimus* ssp. *maritimus* (salt marsh bird's-beak), has its northern range limit in Morro Bay. Morro Bay was omitted from the *Salt Marsh Bird's Beak Recovery Plan* (Service 1985*a*) because the taxonomic interpretation at the time classified this population in another subspecies that is not federally listed. The current taxonomy includes the Morro Bay population as *Cordylanthus maritimus* ssp. *maritimus*. It is included in this draft recovery plan due to its colocation with *Suaeda californica* in Morro Bay. Recovery strategies and actions are provided for the Morro Bay population of *Cordylanthus maritimus* ssp. *maritimus*. However, because we do not consider the entire range of the species in this document, recovery criteria have not been included. This draft recovery plan also addresses 11 species of concern: The salt marsh wandering shrew (*Sorex vagrans halicoetes*), Suisun shrew (*Sorex ornatus sinuosus*), San Pablo vole (*Microtus californicus sanpabloensis*), California black rail (*Laterallus jamaicensis coturniculus*),

three song sparrow subspecies of the San Francisco Bay Estuary (*Melospiza melodia* spp.), saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*), old man tiger beetle (*Cicindela senilis senilis*), *Lathryrus jepsonii* ssp. *jepsonii* (delta tule pea), and *Spartina foliosa* (Pacific cordgrass).

Species included in this draft recovery plan occur in a variety of tidal marsh habitats, where they are limited by the requirements of moisture, salinity, topography, soil types, and climatic conditions. Adjacent uplands and ecotone areas are also crucial habitats for many of these species. Primary threats to all the listed species include:

(1) Historical and current habitat loss and fragmentation due to urban development, agriculture, and diking related to duck hunting;

(2) Altered hydrology and salinity;

(3) Nonnative invasive species;

(4) Inadequate regulatory mechanisms;

(5) Disturbance;

(6) Contamination;

(7) Sea-level rise due to climate change; and

(8) Risk of extinction due to vulnerability of small populations in the face of random naturally occurring events.

We expect that the following species recovery objectives will be met:

(1) Secure self-sustaining wild populations of each covered species throughout their full ecological, geographical, and genetic ranges;

(2) Ameliorate or eliminate the threats, to the extent possible, that caused the species to be listed or of concern and any future threats; and

(3) Restore and conserve a healthy ecosystem function supportive of tidal marsh species.

These objectives will be accomplished through implementation of a variety of recovery measures, including habitat acquisition, protection, management and restoration; species status surveys/monitoring; research; and stakeholder coordination, public participation, and outreach.

## Request for Public Comments

We request written comments on the draft recovery plan. All comments received by the date specified in **DATES** will be considered prior to approval of this plan. If you wish to comment, you may submit your comments and materials concerning this recovery plan by one of these methods:

1. You may submit written comments and information by mail or facsimile or in person to the Sacramento Fish and Wildlife Office at the above address (*see* **ADDRESSES**).

2. You may send comments by electronic mail (e-mail) to: *R8TM_RP_CA@fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

Comments and materials received, as well as supporting documentation used in preparation of the recovery plan, will be available for inspection, during normal business hours at the above Sacramento address (*see* **ADDRESSES**).

We specifically seek comments on the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species;

(2) Feedback on the durability of the science regarding climate change and its treatment presented in the draft recovery plan and comments on how best to ameliorate threats to the species in that regard;

(3) Additional information concerning the range, distribution, and population size of these species, including the location of any additional populations;

(4) Current or planned activities in the subject area and their possible impacts on these species; and

(5) The suitability and feasibility of the recovery criteria, strategies, or actions described in the Draft Plan.

## Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

**Alexandra Pitts,**

*Regional Director, Region 8, U.S. Fish and Wildlife Service.*

[FR Doc. 2010–2279 Filed 2–9–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R2–ES–2009–N273; 20124–1113–0000–C2]**

## Endangered and Threatened Wildlife and Plants; Draft Yuma Clapper Rail (Rallus longirostris yumanensis) Recovery Plan, First Revision

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability for public review: draft revised recovery plan.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Yuma Clapper Rail (*Rallus longirostris yumanensis*) Recovery Plan, First Revision under the Endangered Species Act of 1973, as amended (Act). The species currently inhabits the mainstem Colorado River in Arizona, California, and Nevada; the Virgin River in Arizona, Nevada, and Utah; the Gila River in Arizona; and the Salton Sea in California. The Service solicits review and comment from the public on this draft revised recovery plan. The Service will also accept any new information on the status of the Yuma clapper rail throughout its range to assist in finalizing the revised recovery plan.

**DATES:** To ensure consideration, we must receive any comments no later than April 12, 2010.

**ADDRESSES:** Persons wishing to review the draft revised recovery plan can obtain a paper or electronic copy from the Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951; by phone at (602) 242–0210 extension 236; by e-mail at *ycrrecovery@fws.gov;* or on our Web site at *www.fws.gov/southwest/es/arizona/*. Written comments and materials on the draft revised recovery plan may be mailed to "Field Supervisor" at the address above or e-mailed to *ycrrecovery@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lesley Fitzpatrick (*see* **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

## Background

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the

species, and estimating time and costs for implementing the measures needed for recovery. A recovery plan was originally completed for Yuma clapper rail in 1983, but the recommendations contained in that plan are outdated given the species' current status.

Section 4(f) of the Act requires that we provide public notice and an opportunity for public review and comment during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing recovery actions. In fulfillment of this requirement, we are making this draft first revision of the recovery plan for Yuma clapper rail available for a 60-day public comment period.

The document submitted for review is the first revision of the recovery plan for the Yuma clapper rail. It was listed as an endangered species in the United States on March 11, 1967 (32 FR 4001). It was not included on the list of foreign species established under the Endangered Species Conservation Act, so is not listed throughout its historical range in Mexico. Critical habitat has not been designated. The primary threats to the Yuma clapper rail are habitat loss and degradation due to changes in historical hydrographs, channelization, and diversion of river flows for agricultural and municipal purposes.

The draft revised recovery plan includes scientific information about the species and provides criteria and actions needed to downlist or delist the species. Downlisting of the species may be considered when annual surveys document a stable or increasing population trend over five consecutive years, habitat management plans are in place for all important Federal and state-owned habitat areas, and long-term contracts for water supplies at Sonny Bono Salton Sea National Wildlife Refuge and Imperial State Wildlife Area in California are in place. Delisting of the species may be considered when annual surveys document an additional five consecutive years of a stable or increasing population trend; the amount of habitat needed to support the desired minimum population size in the United States is established and protected, and management plans are in place for that habitat; an assessment of the risks of selenium to the species is completed and protective measures implemented if needed; and a secure water supply for the Cienega de Santa Clara in Mexico is established. Recovery actions designed to achieve these criteria are included in the draft revised recovery plan and include population and habitat monitoring and evaluation, directed research on habitat and threats, efforts to obtain secure water supplies for important habitats, and cooperation between interested parties in the United States and Mexico.

The draft Yuma Clapper Rail Recovery Plan, First Revision, is being submitted for review to all interested parties. After consideration of comments received during the public comment period, the revised recovery plan will be submitted for final approval.

**Request for Public Comments**

We are accepting written comments and information during this comment period on the revised draft recovery plan. All comments received by the date specified above will be considered prior to approval of the final recovery plan. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office in Phoenix (*see* **ADDRESSES**).

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 publically 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.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: November 20, 2009.

**Brian Millsap,**

*Acting Regional Director, Region 2.*

[FR Doc. 2010–2921 Filed 2–9–10; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD070000, L91310000.EI0000]**

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed West Chocolate Mountains Renewable Energy Evaluation Area, Imperial County, CA, and Possible Land Use Plan Amendment

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) El Centro Field Office, El Centro, California, intends to prepare an Environmental Impact Statement (EIS) to consider an amendment to the California Desert Conservation Area (CDCA) Plan to identify whether lands within the West Chocolate Mountains area should be made available for geothermal, solar, or wind energy development. By this notice the BLM is 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 and possible plan amendment. Comments on issues may be submitted in writing until March 12, 2010. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/cdd.html.* In order to be considered 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. We will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments on issues and planning criteria related to the West Chocolate Mountains Renewable Energy Evaluation by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/cdd.html.*
- *E-mail: cawestchocolate@ca.blm.gov.*
- *Fax:* (951) 697–5299.
- *Mail:* ATTN: John Dalton, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046.

Documents pertinent to this proposal may be examined at the California Desert District Office or the BLM's California State Office, 2800 Cottage Way, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to our mailing list, contact John Dalton, telephone (951) 697–5311; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553–9046; e-mail *cawestchocloate@ca.blm.gov.*

**SUPPLEMENTARY INFORMATION:** The focus of the EIS is to assess whether the 21,300 acres of BLM-managed lands within the West Chocolate Mountains Renewable Energy Evaluation Area should be made available for renewable energy development, including

geothermal leasing, solar energy rights-of-way (ROWs), and wind energy ROWs. Through the analysis contained within the EIS, the BLM will consider whether all, a portion of, or no lands within the area should be leased for geothermal exploration and development, solar energy development through ROWs, or wind energy development through ROWs.

The approximately 21,300 acres of Federal lands that are the subject of this analysis are located in an area bordered by the Imperial/Riverside County line on the north, the Chocolate Mountains Aerial Bombing and Gunnery Range on the east, the Imperial Sand Dunes Recreation Area on the south, and the Imperial Valley agricultural belt on the west. The area is also east of the community of Niland and northeast of El Centro, California.

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. The BLM has identified the following preliminary issues: Threatened and endangered species, special status species, vegetation communities, special area designations, visual resources, water quality and quantity, and areas of high potential for renewable energy development. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings of the EIS.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for 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, and Tribal concerns, including impacts on Indian trust assets, will be given due consideration. Federal, State, and local agencies, along with other stakeholders that may be interested 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.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1501.7 and 43 CFR 1610.2.

**Thomas Pogacnik,**

*Deputy State Director, California.*

[FR Doc. 2010–2841 Filed 2–9–10; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Boston Harbor Islands National Recreation Area Advisory Council; Notice of Public Meeting

**AGENCY:** Department of the Interior, National Park Service, Boston Harbor Islands National Recreation Area.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that a meeting of the Boston Harbor Islands National Recreation Area Advisory Council will be held on Wednesday, March 3, 2010, at 6 p.m. to 8 p.m. at the Boston Public Library, 700 Boylston Street, Boston, MA.

This will be the annual meeting of the Council. The agenda will include a presentation on citizen science activities on the islands, an update on the messaging project, elections of officers and other council business, a park update, and public comment. The meeting will be open to the public. Any person may file with the Superintendent a written statement concerning the matters to be discussed. Persons who wish to file a written statement at the meeting or who want further information concerning the meeting may contact Superintendent Bruce Jacobson at Boston Harbor Islands, 408 Atlantic Avenue, Suite 228, Boston, MA 02110 or (617) 223–8667. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**DATES:** March 3, 2010 at 6 p.m.

**ADDRESSES:** Boston Public Library, 700 Boylston Street, Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Bruce Jacobson, (617) 223–8667.

**SUPPLEMENTARY INFORMATION:** The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands NRA.

Dated: January 15, 2010.

**Bruce Jacobson,**

*Superintendent, Boston Harbor Islands NRA.*

[FR Doc. 2010–2879 Filed 2–9–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council Within the Alaska Region

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments. The meeting will be recorded and a summary will be available upon request from the Superintendent for public inspection approximately six weeks after each meeting. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

**DATES:** The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Thursday, February 25, 2010, from 9 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

*Location:* Best Western Lake Lucille Inn, Iditarod Room, 1300 West Lake Lucille Drive, Wasilla, Alaska 99654. Telephone: (907) 373–1776.

**FOR FURTHER INFORMATION CONTACT:** Miriam Valentine, Denali Planning. E-mail: *Miriam_Valentine@nps.gov.* Telephone: (907) 733–9102 at Denali

National Park, Talkeetna Ranger Station, PO Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine (907) 733–9102.

**SUPPLEMENTARY INFORMATION:** Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to order
2. Roll Call and Confirmation of Quorum
3. Chair's Welcome and Introductions
4. Review and Approve Agenda
5. Member Reports
6. Agency and Public Comments
7. Superintendent and NPS Staff Reports
8. Agency and Public Comments
9. Other New Business
10. Agency and Public Comments
11. Set time and place of next Advisory Council meeting
12. Adjournment

**Sue E. Masica,**

*Regional Director, Alaska Region.*

[FR Doc. 2010–2877 Filed 2–9–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### National Park Service Concessions Management Advisory Board Reestablishment

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of reestablishment of the National Park Service Concessions Management Advisory Board.

**SUMMARY:** The Secretary of the Interior intends to administratively reestablish the National Park Service Concessions Management Advisory Board. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

**FOR FURTHER INFORMATION CONTACT:** Jo Pendry, Chief, Commercial Services Program on 202–513–7156.

**SUPPLEMENTARY INFORMATION:** The National Park Service Concessions Management Advisory Board was established by Title IV, Section 409 of Public Law 105–391, the National Parks Omnibus Management Act of 1998, November 13, 1998, with a termination date of December 31, 2008. Pursuant to Title VII, Subtitle A, Section 7403 of Public Law 111–11, the Omnibus Public Land Management Act of 2009, March 30, 2009, the Board was extended and will terminate on December 31, 2009.

The advice and recommendations provided by the Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it is necessary to administratively reestablish the Board to ensure its work is not disrupted. The Board's seven members will be balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The reestablishment of the Board comports with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix), and follows consultation with the General Services Administration. The administrative reestablishment will be effective on the date the charter is filed pursuant to section 9(c) of the Act and 41 CFR 102–3.70.

*Certification:* I hereby certify that the administrative reestablishment of the National Park Service Concessions Management Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.,* and other statutes relating to the administration of the National Park System.

Dated: January 13, 2010.

**Ken Salazar,**

*Secretary of the Interior.*

[FR Doc. 2010–2878 Filed 2–9–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNM920000 L13100000 FI0000]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NMNM 110795, NMNM 110797, NMNM 110802

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reinstatement of terminated oil and gas leases.

**SUMMARY:** Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management received a petition for reinstatement of oil and gas leases NMNM 110795, NMNM 110797, and NMNM 110802 from the lessee, David Petroleum Corporation et al, for lands in Guadalupe County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Margie Dupre, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502 or at (505) 954–2142.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500 administrative fee for the reinstatement of the leases and the $166 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the leases as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate leases NMNM 110795, NMNM 110797, and NMNM 110802 effective back to the date of termination, September 1, 2009, under the original terms and conditions of the lease except for the increased rental and royalty rates cited above.

**Margie Dupre,**

*Land Law Examiner, Fluids Adjudication Team.*

[FR Doc. 2010–2852 Filed 2–9–10; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–963–1410–ET; AA–5964]**

### Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** On behalf of the United States Department of Agriculture (USDA), Forest Service, the Bureau of Land Management (BLM) proposes to extend the duration of Public Land Order (PLO) No. 6892 for an additional 20-year period. This order withdrew approximately 473 acres of National Forest System land from surface entry and mining, but not from mineral leasing, to protect the recreational values of the Sixmile Creek Recreation Area. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by May 11, 2010.

**ADDRESSES:** Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office,

222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7504.

**FOR FURTHER INFORMATION CONTACT:** Ramona Chinn, BLM Alaska State Office, 907–271–3806 or at the address listed above.

**SUPPLEMENTARY INFORMATION:** The withdrawal created by PLO No. 6892 (56 FR 52210 (1991)), will expire on October 17, 2011, unless extended. The USDA Forest Service has filed an application to extend the withdrawal for an additional 20-year period to protect the recreational values of the Sixmile Creek Recreation Area.

This withdrawal comprises approximately 473 acres of National Forest System land located in the Chugach National Forest, within Tps. 7 and 8 N., R. 1 E., and Tps. 8 and 9 N., R. 1 W., Seward Meridian, Alaska, as described in PLO No. 6892.

A complete description, along with all other records pertaining to the extension application, can be examined in the BLM Alaska State Office at the address listed above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the recreational values of the Sixmile Creek Recreation Area.

There are no suitable alternative sites available that could be substituted for the above described National Forest system land, since the Sixmile Creek Recreation Area is unique.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address listed above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Alaska State Director to the address listed above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120.

**Authority:** 43 CFR 2310.3–1(b).

**Ramona Chinn,**

*Deputy State Director, Division of Alaska Lands.*

[FR Doc. 2010–2842 Filed 2–9–10; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLUTC02000–L14300000.EU0000; UTU–78474]**

### Notice of Realty Action: Proposed Direct Sale of Public Land, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to offer one parcel of land encompassing 4.82 acres in Piute County by non-competitive direct sale to Audrey Roth, pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. The land has been determined suitable for disposal by sale in the BLM Richfield Field Office Resource Management Plan approved in October 2008.

**DATES:** Interested parties may submit comments regarding the proposed sale to the address noted below. Comments must be in writing and must be received no later than March 29, 2010. The land will not be offered for sale until at least April 12, 2010.

**ADDRESSES:** Written comments should be addressed to the Associate Field Manager, BLM Richfield Field Office, 150 East 900 North, Richfield, Utah 84701.

**FOR FURTHER INFORMATION CONTACT:** Nancy DeMille, BLM Richfield Field Office Realty Specialist, (435) 896–1515.

**SUPPLEMENTARY INFORMATION:** The 4.82-acre parcel proposed for sale is located approximately 2 miles southwest of Marysvale Town and is legally described as:

**Salt Lake Meridian**

T. 27 S., R. 4 W.,
Sec. 26, lot 4.

The area described contains 4.82 acres in Piute County.

In accordance with 43 CFR 2711.3–3(a)(5), direct sale procedures are appropriate when there is a need to resolve inadvertent unauthorized use or occupancy of the land. The land has been improved and used by the Roth family for residential purposes for many years. Improvements include a residential cabin and associated utilities and access.

The parcel is being offered to Audrey Roth of Piute County, Utah, for no less than the appraised fair market value of $55,000. Ms. Roth will be allowed 30 days from receipt of a written offer to submit either the full payment or at least 20 percent of the appraised value of the parcel and 180 days thereafter to submit the balance. Failure to meet conditions established for this sale will void the direct sale and any monies received will be forfeited.

The October 2008 BLM Richfield Field Office Resource Management Plan identifies this parcel of public land as suitable for disposal through sale, and it has been determined that no significant resource values will be affected by disposal of the parcel. The land is not required for any Federal purpose.

The following rights, reservations, and conditions will be included in the patent that may be issued for the above described parcel of land:

1. A reservation to the United States for a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States for all minerals in the land in accordance with Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

3. A reservation to the United States for the road right-of-way under 44 L.D. 513 (UTU–25688) and all appurtenances thereto, constructed by the United States through, over, or upon the land so patented, and the right of the United States, its agents or employees, to maintain, operate, repair or improve the same so long as needed or used for or by the United States.

4. The patent will include a notice and indemnification statement under the Comprehensive Environmental Response Compensation and Liability Act. The parcel is subject to the requirements of Section 120(h) (42 U.S.C. Section 9620) holding the United States harmless from any release of hazardous materials that may have occurred as a result of the unauthorized use of the property by other parties. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcel of land proposed for sale.

5. Subject to such rights as Marysvale Town or its successors in interest may have for culinary water system storage tank, pipeline and access road purposes pursuant to right-of-way UTU–83158, including the right to increase the term of the right-of-way to a perpetual term in accordance with 43 CFR 2807.15.

6. Subject to such rights as Bullion Creek Irrigation or its successors in interest may have for roadway, pipeline and ditch purposes pursuant to right-of-way UTU–80707.

7. All valid existing rights.

Detailed information concerning the sale, including the appraisal, planning and environmental documents, and mineral report is available for review at the BLM Richfield Field Office at the address noted above.

On February 10, 2010, the above described land will be segregated from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, except the sale provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713). The BLM is no longer accepting land use applications affecting the identified public land. The effect of segregation will terminate upon: (1) Issuance of a patent; (2) publication in the **Federal Register** of a termination of the segregation; or (3) on February 10, 2012, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. Audrey Roth will be allowed 30 days from receipt of a written offer to submit either full payment or at least 20 percent of the appraised value of the parcel and within 180 days, thereafter, submit the balance. If the balance of the purchase price is not received within the 180 days, the deposit will be forfeited to the United States and the parcel withdrawn from sale.

*Public Comments:* Comments must be received by the Associate Field Manager, BLM Richfield Field Office, at the address noted above, on or before March 29, 2010. Only written comments will be accepted. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Any adverse comments received will be reviewed by the BLM Utah State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, or adverse comments, this proposed realty action will become the final determination of the Department of the Interior.

**Authority:** 43 CFR 2711.

**Selma Sierra,**

*State Director.*

[FR Doc. 2010–2854 Filed 2–9–10; 8:45 am]

**BILLING CODE 4310–DQ–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMT924000–L14300000.FR0000; MTM 99415]**

### Notice of Correction to Notice of Realty Action; Application for Recordable Disclaimer of Interest; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of correction.

**SUMMARY:** The Bureau of Land Management published a Notice of Realty Action application for Recordable Disclaimer of Interest; Montana in the **Federal Register** on December 23, 2009 (74 FR 68280). The document contained an incorrect acreage figure and proposed action in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Sandra Ward, 406–896–5052.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 23, 2009, the acreage following the legal description is corrected to read "147.76 acres" and on page 74 FR 68281, in the second paragraph, the words "legislative withdrawal" are corrected to read "disclaimer".

**Cindy Staszak,**

*Chief, Branch of Land Resources.*

[FR Doc. 2010–2851 Filed 2–9–10; 8:45 am]

**BILLING CODE 4310–$$–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD09000.L14300000.ES0000; CACA–51457]**

### Notice of Realty Action: Recreation and Public Purposes Act Classification, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes Act (R&PP Act), as amended, approximately 133 acres of public land in San Bernardino County, California. The State of California, acting through the California Department of Transportation (Caltrans), proposes to construct a Joint Port of Entry (JPOE) inspection facility on Interstate 15 (I–15), near the California/Nevada state line. In conjunction with Caltrans, the California Department of Food and Agriculture, the California Department of General Services, and the California Highway Patrol would participate cooperatively in this multipurpose project.

**DATES:** For a period until March 29, 2010, interested parties may submit comments to the Field Manager, BLM Needles Field Office, at the address below.

**ADDRESSES:** Bureau of Land Management, Needles Field Office, 1303 South U.S. Highway 95, Needles, California 92363.

**FOR FURTHER INFORMATION CONTACT:** Jose M. Najar, Realty Specialist, BLM Needles Field Office, (760) 326–7006.

**SUPPLEMENTARY INFORMATION:** The following described public land in San Bernardino County, California, has been examined and found suitable for lease and subsequent conveyance under the provisions of the R&PP Act. The land is

located northwesterly of and parallel to I–15 between Nipton Road and Yates Well Road and is described as:

**San Bernardino Meridian**

T. 16 N., R. ¼ E.,
Sec. 1, portion of W½SE¼;
Sec. 12, portions of NW¼NE¼, E½NW¼, E½SW¼, and SW¼SW¼;
Sec. 13, portions of W½NW¼ and NW¼SW¼;
Sec. 14, portion of E½SE¼;
Sec. 23, portions of NE¼NE¼, S½;NE¼, W½SE¼, and SE¼SW¼;
Sec. 26, portions of E½NW¼, N½SW¼, and SW¼SW¼.

The area described contains 133 acres, more or less.

The above description will be replaced by lots designated upon the approval of an official supplemental plat of survey. The application filed by the Caltrans described the lands by metes and bounds.

The State of California, acting through the Caltrans, filed an R&PP application for the classification, lease, and subsequent conveyance of 133 acres of public land to be developed for a JPOE inspection facility. The proposed JPOE inspection facility would be comprised of a Commercial Vehicle Enforcement Facility and an Agricultural Inspection Facility between Nipton Road and Yates Well Road on the southbound I–15. Upon completion of the project, all traffic entering California on the southbound I–15 would be diverted through the JPOE.

Leasing and subsequent conveyance of the land to the State of California is consistent with current BLM planning for this area and would be in the public interest. The land is not needed for any Federal purpose. The lease would be issued for an initial term of 5 years to allow sufficient time to develop the planned facilities. The land would be conveyed after substantial development has occurred on the land. The lease and subsequent patent, if issued, would be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and would be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals under applicable laws and regulations established by the Secretary of the Interior.
3. All valid existing rights.
4. An appropriate indemnification clause protecting the United States from claims arising out of the lessee/patentee's use, occupancy, or operations on the land. Upon publication of this notice in the **Federal Register**, the public land described above is segregated from all forms of appropriation under the public land laws, including the general mining laws and leasing under the mineral leasing laws, except for lease/conveyance under the R&PP Act. Interested parties may submit comments regarding the proposed lease/conveyance or classification of the land until March 29, 2010.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a JPOE inspection facility. Comments on the classification are restricted to whether the land is physically suited for the proposal or any other issues that would be pertinent to the environmental assessment (prepared under the National Environmental Policy Act of 1969) for this action, whether the use would maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching its classification decision, or any other factor not directly related to the suitability of the land for R&PP use as a JPOE inspection facility.

All submissions from organizations or businesses will be made available for public inspection in their entirety. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification of the land described in this notice will become effective on April 12, 2010. The land will not be available for lease/conveyance until after the classification becomes effective.

**Authority:** 43 CFR 2741.5.

**Thomas Pogacnik,**
*Deputy State Director, Natural Resources.*

[FR Doc. 2010–2849 Filed 2–9–10; 8:45 am]
BILLING CODE 4310–40–P

## NATIONAL INDIAN GAMING COMMISSION

### Notice of Rights and Protections Available Under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

**AGENCY:** National Indian Gaming Commission.

**ACTION:** No FEAR Act Notice.

**SUMMARY:** The National Indian Gaming Commission (NIGC) is publishing its notice under Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Public Law 107–174 (Act), as required by the Act and 5 CFR part 724. This notice describes the obligation of the NIGC and other federal agencies to notify all employees, former employees, and applicants for federal employment of the rights and protections available to them under federal antidiscrimination and whistleblower protection laws.

**FOR FURTHER INFORMATION CONTACT:** Steffani A. Cochran, Commissioner/EEO Director, National Indian Gaming Commission, or the NIGC's Office of the General Counsel, 1441 L Street, NW., Suite 9100, Washington, DC 20005, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers). For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724.

**SUPPLEMENTARY INFORMATION:**

### No FEAR Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is now known as the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107–174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107–174, Title I, General Provisions, section 101(1).

The Act requires the NIGC to provide this notice to all of its employees, former employees, and applicants for federal employment to inform them of the rights and protections available to

them under federal antidiscrimination and whistleblower protection laws.

**Antidiscrimination Laws**

A federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1); 29 U.S.C. 206(d); 29 U.S.C. 631; 29 U.S.C. 633a; 29 U.S.C. 791; and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, or disability, you must contact an Equal Employment Opportunity ("EEO") counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.,* 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above, or give notice of intent to sue to the Equal Employment Opportunity Commission ("EEOC") within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (*See* contact information below).

**Whistleblower Protection Laws**

A federal employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law, and such information is specifically required by executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (using Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site (*http://www.osc.gov*).

**Retaliation for Engaging in Protected Activity**

A federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections.

**Disciplinary Actions**

Under the existing laws, each agency retains the right, where appropriate, to discipline a federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws, up to and including removal from the federal service. If the OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a federal employee or to violate the procedural rights of a federal employee who has been accused of discrimination.

**Existing Rights Unchanged**

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

**Additional Information**

Additional information regarding federal antidiscrimination, whistleblower protection, and retaliation laws can be found at the EEOC Web site (*http://www.eeoc.gov*) and the OSC Web site (*http://www.osc.gov*).

**George T. Skibine,**
*Acting Chairman.*
**Steffani A. Cochran,**
*Commissioner.*

[FR Doc. 2010–2901 Filed 2–9–10; 8:45 am]
BILLING CODE 7565–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–663]**

## In the Matter of Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof; Notice of the Commission's Determination To Grant a Joint Motion To Terminate the Investigation With Respect to Respondents Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC on the Basis of a Settlement Agreement; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to grant a joint motion to terminate the above-captioned investigation with respect to Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC based upon a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on December 18, 2008, based on a complaint filed by Eastman Kodak Company ("Kodak") of Rochester, New York. 73 FR 77061 (Dec. 18, 2008). The complainant named the following respondents: Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC (collectively "Samsung"), LG Electronics Inc., LG Electronics USA, Inc., and LG Electronics MobileComm USA, Inc. (collectively "LG"). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation, sale for importation, and sale within the United States after importation of certain mobile telephones and wireless communication devices featuring digital cameras and components thereof that infringe certain claims of U.S. Patent Nos. 5,493,335 ("the '335 patent") and 6,292,218 ("the '218 patent").

On December 16, 2009, Kodak and LG filed a joint motion before the administrative law judge ("ALJ") to terminate the investigation with respect to the LG respondents on the basis of a settlement agreement. The ALJ granted this motion on January 14, 2010. The Commission determined not to review the initial determination ("ID"). On December 17, 2009 the ALJ issued his final ID, finding that the Samsung respondents' accused products infringe the asserted claims of both the '335 patent and the '218 patent, that the asserted claims are not invalid, and that the '218 patent is not unenforceable due to inequitable conduct. The Commission has stayed the deadline for filing any petitions for review of the final ID.

On January 8, 2010, Kodak and Samsung ("the parties") filed their joint motion to terminate the investigation with respect to the Samsung respondents on the basis of a settlement agreement. On January 20, 2010, the IA filed a response supporting the parties' joint motion. Having examined the record of this investigation, the Commission has determined to grant Kodak and Samsung's joint motion and terminate this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21).

By order of the Commission.

Issued: February 2, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–2893 Filed 2–9–10; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–702]**

### In the Matter of: Certain Liquid Crystal Display Modules and Products Containing the Same, and Methods for Making the Same; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 8, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sharp Corporation of Japan. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display modules and products containing the same, and methods for making the same by reason of infringement of certain claims of U.S. Patent Nos. 7,379,140; 6,141,075; 7,283,192; 5,670,994; and 7,408,588. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on February 3, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of liquid crystal display modules or products containing the same, or methods for making the same that infringe one or more of claims 1–3 of U.S. Patent No. 7,379,140; claims 22, 23, 28–31, and 36–38 of U.S. Patent No. 6,141,075; claims 1 and 11 of U.S. Patent No. 7,283,192; claims 5, 6, 12, 13, and 15 of U.S. Patent No. 5,670,994; and claims 1, 3, 5, 29, and 32 of U.S. Patent No. 7,408,588, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Sharp Corporation, 22–22 Nagaike-cho, Abeno-ku, Osaka 545–8522, Japan.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., 416 maetan-dong, Youngtong-gu, Suwon, Kyunggi-Do, Korea 443–742.

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, NJ 07660.

Samsung Semiconductor, Inc., 3655 North First Street, San Jose, CA 95134.

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International

Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 3, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–2874 Filed 2–9–10; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–693]**

### In the Matter of Certain Foldable Stools; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 4) of the presiding administrative law judge ("ALJ") granting complainant's motion to amend the complaint and notice of investigation in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on December 9, 2009, based on a complaint filed by B & R Plastics, Inc. ("B & R") of Denver, Colorado. 74 FR 65155–6. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. **1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foldable stools by reason of infringement of U.S. Patent No. D460,566. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named several respondents including the following: abc Distributing Inc. ("abc Distributing") of Bannockburn, Illinois; Crate & Barrel, Inc. ("Crate & Barrel") of Northbrook, Illinois; and Home Depot Inc. ("Home Depot") of Atlanta, Georgia.

On January 5, 2010, B & R filed an unopposed motion to amend the complaint and notice of investigation to substitute proposed respondent Home Depot U.S.A. Inc. for named respondent Home Depot, and to correct the corporate names of respondents abc Distributing and Crate & Barrel with "LTD Commodities, LLC, d/b/a abc Distributing" and "Euromarket Designs, Inc., d/b/a Crate & Barrel," respectively.

On January 19, 2010, the ALJ issued the subject ID granting B & R's motion to amend the complaint and notice of investigation. No party petitioned for review of the ID pursuant to 19 CFR 210.43(a). The Commission has determined not to review this ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.14 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(h).

By order of the Commission.

Issued: February 4, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–2894 Filed 2–9–10; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0004]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Interstate Firearms Shipment Report of Theft/Loss.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 12, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ben Hayes, ATF National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 550 respondents will complete a 20-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 182 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 4, 2010.

**Lynn Bryant,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2010–2881 Filed 2–9–10; 8:45 am]

**BILLING CODE 4410–FY–P**

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## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0068]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Police Check Inquiry.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 12, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Niki Wiltshire, Personnel Security Branch, Suite 1E–300, 99 New York Ave., NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Police Check Inquiry.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 8620.42. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. ATF F 8620.42 has been designed as an internal use form to gather preliminary information from an individual requiring escorted access to ATF facilities. The information is necessary to permit ATF to complete and/or initiate a police check inquiry consisting of criminal record searches. In the event a contractor or other type of non-ATF personnel requires escorted access to facilities, ATF will perform a policy check inquiry.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,000 respondents will complete a 5 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 83 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 4, 2010.

**Lynn Bryant,**

*Department Clearance Officer, PRA, Department of Justice.*

[FR Doc. 2010–2883 Filed 2–9–10; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0065]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Requisition for forms or publications and requisition for firearms/explosives forms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 12, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Diane Woods, Material Management Branch, Room 3S–247, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Overview of this information collection:*

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Requisition for Forms or Publications and Requisition for Firearms/Explosives Forms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 1370.3 and ATF F 1370.2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Individual or households. The forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms also notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 30,000 respondents will complete each 3 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,725 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: February 4, 2010.

**Lynn Bryant,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2010–2882 Filed 2–9–10; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0088]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 12, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact, James Scott, Learning Systems Management Division, 99 New York Ave., NE.,Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, Local, or Tribal Government. *Other:* None. The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to their jobs. The Kirkpatrick 4–Level Model is used to evaluate ATF training programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 354 respondents will complete a 12 minute survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 71 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 4, 2010.

**Lynn Bryant,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2010–2880 Filed 2–9–10; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States, et al. v. Ticketmaster Entertainment Inc. and Live Nation Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America, et al.* v. *Ticketmaster Entertainment, Inc.* and *Live Nation, Inc.,* Civil Action No. 1:10-cv-00139. On January 25, 2010, the United States, along with 17 state attorneys general, filed a Complaint alleging that the proposed merger of Ticketmaster Entertainment, Inc. and Live Nation, Inc. would substantially lessen competition in primary ticketing in the United States and violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires the merged firm to license a copy of the Ticketmaster host platform software to Anschutz Entertainment Group, Inc., to divest Paciolan, Inc. to Comcast-Spectacor, L.P. or another acceptable buyer, and to abide by certain behavioral restrictions.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John Read, Chief, Litigation III, Antitrust Division, Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, (telephone: 202–514–7308).

**J. Robert Kramer II,**

*Director of Operations.*

### United States District Court for the District of Columbia

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*State of Wisconsin, Wisconsin Department of Justice, 17 West Main Street, Madison, WI 53707, Plaintiffs,* v.
*Ticketmaster Entertainment, Inc., 8800 West Sunset Boulevard, West Hollywood, CA 90069, and Live Nation, Inc., 9348 Civic Center Drive, Beverly Hills, CA 90210, Defendants.*

*Case:* 1:10-cv-00139.
*Date Filed:* January 25, 2010.

### Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the States of Arizona, Arkansas, California, Florida, Illinois, Iowa, Louisiana, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin, and the Commonwealths of Massachusetts and Pennsylvania, acting under the direction of their respective Attorneys General or other authorized officials ("Plaintiff States") (collectively, "Plaintiffs"), bring this civil action pursuant to the antitrust laws of the United States to enjoin the proposed merger of Ticketmaster Entertainment, Inc. ("Ticketmaster") and Live Nation, Inc. ("Live Nation") and to obtain such other equitable relief as the Court deems appropriate. The United States and the Plaintiff States allege as follows:

### I. Introduction

1. This lawsuit challenges a proposed merger between Ticketmaster and Live Nation. If not enjoined, the merger will eliminate competition between the companies in the line of commerce of the provision of primary ticketing services ("primary ticketing") to major concert venues in the United States, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

2. For over two decades, Ticketmaster has been the dominant primary ticketing service provider in the United States to, among others, major concert venues. Primary ticketing, the initial distribution of tickets, has been highly profitable for Ticketmaster. Ticketmaster charges a variety of service

fees, which are added to the face value of the ticket. Ticketmaster typically shares a percentage of the money from some of these fees with venues. In 2008, Ticketmaster's share among major concert venues exceeded eighty percent and its revenues from primary ticketing were much greater than that of its nearest competitor. Ticketmaster's contract renewal rate with venues typically exceeds eighty-five percent.

3. Live Nation is the country's largest concert promoter. It also controls over seventy-five concert venues in the United States, including many major amphitheaters. Live Nation had been Ticketmaster's largest primary ticketing client for a number of years. In 2007, however, Live Nation announced that it would not renew its contract with Ticketmaster. Instead, Live Nation would become Ticketmaster's direct competitor in primary ticketing when its Ticketmaster contract expired on December 31, 2008. After spending nearly two years evaluating, licensing, and developing a ticketing platform, in late December 2008, Live Nation launched its ticketing service for its own venues and potential third-party major concert venue clients.

4. Live Nation presented a new and different source of competition in primary ticketing. As a concert promoter, Live Nation could offer venues access to concert tours as an inducement to use Live Nation's ticketing service. Ticketmaster had no concert promotion business. In contrast, as both a venue owner and a concert promoter, Live Nation had economic incentives to reduce service fees on tickets in order to fill more seats and earn the associated ancillary revenue from doing so.

5. Entrants face substantial hurdles in the form of Ticketmaster's economies of scale, long-term contracts, and brand recognition as well as the technological hurdles necessary to compete in primary ticketing. Live Nation had overcome many of these by virtue of its position in promotion and venue operation and the two years it had devoted to building a ticketing platform.

6. On February 10, 2009, Ticketmaster and Live Nation announced their plans to merge. The merger would eliminate head-to-head competition between Ticketmaster and Live Nation in the provision of primary ticketing services. Unless remedied, the merger between Ticketmaster and Live Nation would substantially lessen competition for the provision of primary ticketing services in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

7. Thus, the United States and the Plaintiff States ask this Court to enjoin this proposed merger.

## II. Jurisdiction and Venue

8. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Ticketmaster and Live Nation from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

9. The Plaintiff States, by and through their respective Attorneys General and other authorized officials, bring this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain Ticketmaster and Live Nation from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The Plaintiff States bring this action in their sovereign capacities and as *parens patriae* on behalf of the citizens, general welfare, and economy of each of their States.

10. Ticketmaster and Live Nation provide and sell primary ticketing services to major concert venues in the flow of interstate commerce. Ticketmaster's and Live Nation's activities in providing and selling primary ticketing services to major concert venues substantially affect interstate commerce as well as commerce in each of the Plaintiff States. This Court has subject matter jurisdiction over this action and these defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b)(1), (c). Defendants Ticketmaster and Live Nation transact business and are found within this District.

## III. Parties and the Proposed Merger

12. Ticketmaster is a Delaware corporation headquartered in West Hollywood, California. It is the largest provider of primary ticketing to major concert venues and others in the United States and the world. In 2008, Ticketmaster sold more than 141 million tickets valued at over $8.9 billion on behalf of more than 10,000 clients worldwide and earned approximately $1.4 billion in gross revenues. Ticketmaster also owns a majority interest in Front Line Management Group, Inc., the largest artist management group in the country.

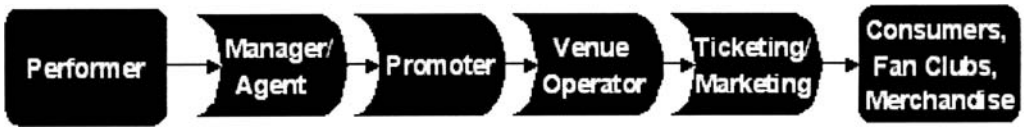
13. Live Nation is a Delaware corporation headquartered in Beverly Hills, California. It is the world's largest promoter of live concerts, with 2008 worldwide gross revenues of over $4 billion. Live Nation's North American Music business principally involves the promotion of live music events at Live Nation owned and/or operated venues and in rented third-party venues primarily in the United States and Canada. Live Nation also owns or operates over seventy-five live entertainment venues of various sizes in the United States. This includes eleven House of Blues ("HOB") venues around the country.

14. On February 10, 2009, Live Nation and Ticketmaster entered into a definitive merger agreement providing for an all-stock "merger of equals" transaction with a combined estimated enterprise value of $2.5 billion.

## IV. Background

### *A. The Live Music Entertainment Industry*

15. The components of the live music entertainment industry pertinent to this case are:




16. An artist manager serves as the "CEO" of a performer's business activities, advising in some or all phases of the performer's professional life (tours, appearances, recording deals, movies, advertising, etc.). Managers often are compensated based on a share of the performer's revenues or profits.

17. The artist manager often hires booking agents to assist in arranging a concert event or tour. The manager or booking agent contracts with promoters, such as Live Nation. Under such contracts, the promoter typically receives the proceeds from gross ticket receipts and then pays the performer, venue, and other expenses associated with the event. For example, the

promoter generally contracts with the venue (or uses its own venues), arranges for local production services, and advertises and markets the concert. The promoter bears the downside risk of an event if tickets sell poorly and reaps the upside benefit if tickets sell well.

18. Venue operators provide the facilities where the events will be held and often many of the associated services, such as concessions, parking, and security. Venues traditionally receive a fixed fee for hosting an event as well as proceeds from concessions, parking, and a share of merchandise sales (which may be controlled by the performer or promoter).

19. Ticketing companies such as Ticketmaster arrange with venues—and at times promoters—to provide primary ticketing services. They are responsible for distributing primary ticket inventory through channels such as the Internet, call centers, and retail outlets and for enabling the venue to sell tickets at its box office. The ticketing company provides the technology infrastructure for distribution. Primary ticketing firms also may provide technology and hardware that allow venues to manage fan entry at the event, including everything from handheld scanners that ushers use to check fans' tickets to the bar codes on the tickets themselves. In some cases, primary ticketing services are provided by the venue itself.

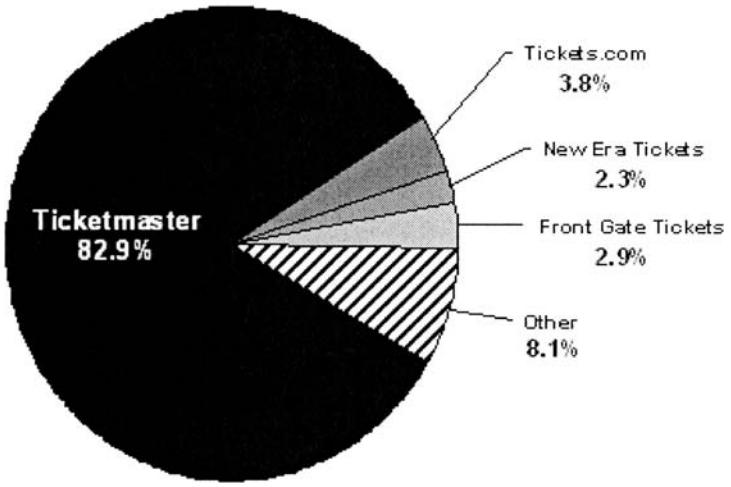
20. The overall price a consumer pays for a ticket generally includes the face value of the ticket and a variety of service fees above the face value of the ticket. Such fees are most often charged by the provider of primary ticketing services. Venues generally receive a split of the money from ticket service fees. Often described as "convenience," "processing," and "delivery" fees, these service fees can constitute a substantial portion of the overall cost of the ticket to the consumer.

*B. Ticketmaster Dominates Primary Ticketing*

21. Ticketmaster has dominated primary ticketing, including primary ticketing for major concert venues, for over two decades. It derives substantial revenues from ticketing for venues that host major concerts. Other companies seek to compete against Ticketmaster for primary ticketing to major concert venues, but none has been particularly successful. In fact, no other competitor (other than Live Nation) has more than a four percent share, while in 2008 Ticketmaster's share exceeded eighty percent among major concert venues. Plaintiffs have focused on the top 500 revenue generating venues in the United States as reported by Pollstar (referred to in this Complaint as "major concert venues"). Pollstar is a widely used third-party service that collects information on ticket sales. The pie chart below shows primary ticketers' shares of major concert venues, based on seating capacity:

**Pre-Live Nation Entry**

**Share of Venue Capacity**




22. High shares are not the only indicators of Ticketmaster's dominance. Ticketmaster's revenues are much greater than those of the next several largest primary ticketing service competitors (other than Live Nation). Moreover, while other primary ticketing competitors do compete against Ticketmaster for primary ticketing rights at venues, Ticketmaster has had very high renewal rates.

23. Ticketmaster's costs for distributing a ticket have been decreasing as consumers increasingly purchase tickets through the Internet. The cost-per-ticket to Ticketmaster for tickets sold through its Web site is significantly lower than the cost-per-ticket to Ticketmaster for tickets sold over the telephone or at a retail outlet. However, ticketing fees retained by Ticketmaster have not fallen as its distribution costs have declined.

*C. Live Nation Decides To Enter Primary Ticketing*

24. Prior to entering into primary ticketing, Live Nation had been using Ticketmaster as its primary ticketing provider for its venues and was Ticketmaster's largest customer. In late 2006, Live Nation concluded that it was unlikely to renew the Ticketmaster contract. Live Nation began considering other options for its primary ticketing needs, including operating its own

primary ticketing business to ticket its own venues and to expand the service to third-party venues.

25. On Dec. 20, 2007, Live Nation announced an agreement with CTS Eventim ("CTS"), the leading German primary ticketing provider. Under the agreement, Live Nation would use CTS technology to provide primary ticketing services to Live Nation's venues as well as third-party venues in the United States.

*D. Live Nation Was a Competitive Threat to Ticketmaster*

26. As a promoter, Live Nation's relationships with many third-party venues gave it the ability to offer third-party venues access to content. Live Nation believed that its prominence in promotions would give it immediate credibility in primary ticketing.

27. Live Nation was in a position to challenge Ticketmaster's dominance in primary ticketing due to its control of venues. Live Nation selects the primary ticketing provider for over seventy-five live entertainment venues in the United States and had been Ticketmaster's largest customer.

28. Live Nation also expected to compete on price with Ticketmaster. According to Live Nation, its concert promotion business operated on small margins, while Ticketmaster's margins from ticketing were substantially higher. Thus, entry into primary ticketing created an opportunity for Live Nation to increase its overall profit margin and disrupt Ticketmaster's business model by lowering service fees.

*E. Live Nation Enters Primary Ticketing*

29. Live Nation's strategy was to launch Live Nation ticketing for its own venues in 2008, and then in late 2009 and early 2010 seek to compete for third-party ticketing contracts.

30. Even before launching its ticketing platform, however, Live Nation began competing with Ticketmaster to win primary ticketing contracts for third-party venues. In September 2008, Live Nation signed a multi-year ticketing agreement with SMG, the world's largest venue management company, whereby it would have certain rights to ticket SMG-managed venues as each venue's Ticketmaster contract ended.

31. Using its promotion business as a stepping stone, Live Nation also began competing with Ticketmaster for the primary ticketing contracts for other venues. This was met with some early successes. For example, in October 2008, Live Nation won the ticketing contract at the Roseland Ballroom in New York City.

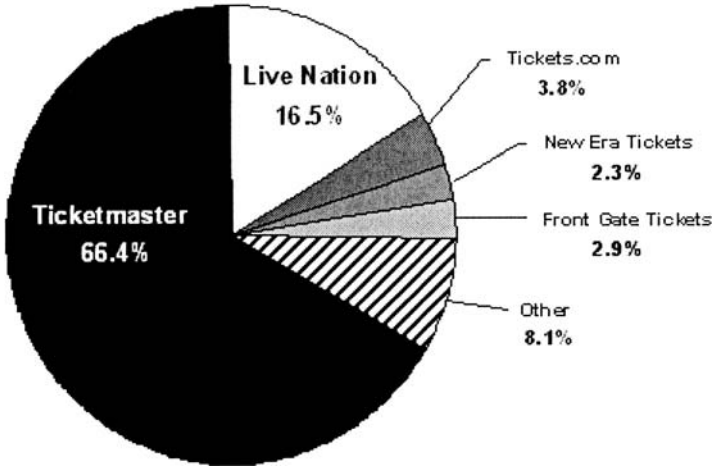
32. Live Nation began selling tickets for its own and third-party venues on December 22, 2008. Almost overnight, Live Nation became the second-largest provider of primary ticketing in the United States.

33. On February 10, 2009, Live Nation and Ticketmaster entered into a definitive merger agreement.

34. Live Nation has sold millions of tickets using the CTS system. The pie chart below shows primary ticketers' shares of major concert venues, based on seating capacity, following Live Nation's entry into primary ticketing.

**Post-Live Nation Entry**

**Share of Venue Capacity**




**V. Relevant Market**

35. Primary ticketing services are sold pursuant to terms individually negotiated with customers. The customers most directly and adversely affected by the merger are major concert venues, which generate substantial income from live music events. Major concert venues that generate substantial income from live music events can be readily identified, and market power can be selectively exercised against them, because there is no reasonable substitute service to which the customers could turn. Nor can these customers engage in arbitrage. The provision of primary ticketing services to major concert venues is a relevant price discrimination market and "line of commerce" within the meaning of Section 7 of the Clayton Act. *See* U.S. Dep't of Justice, Horizontal Merger Guidelines § 1.12 (1997).

36. The United States is the relevant geographic scope of the market. Major concert venues purchasing primary ticketing services are located throughout the United States.

**VI. Anticompetitive Effects**

37. A combination of Ticketmaster and Live Nation would lead to a high share among providers of primary ticketing for major concert venues. The set of customers most likely to be affected by the merger of Ticketmaster and Live Nation are major concert venues. Ticketmaster has the vast share

of this primary ticketing business. As described in the pie chart in ¶ 21, before Live Nation entered primary ticketing, Ticketmaster had an eighty-two percent share. The next largest share was Tickets.com at less than four percent. As depicted in the pie chart in ¶ 34, with Live Nation ticketing its own venues and some third-party venues, Ticketmaster's share in this same group is reduced to sixty-six percent and Live Nation becomes the second largest ticketer with a sixteen percent share more than four times larger than Tickets.com.

38. The market for primary ticketing for major concert venues is highly concentrated. The proposed merger will further increase the degree of concentration to levels raising serious antitrust concerns as described in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *Id.* § 1.51.

39. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Appendix A, the post-acquisition HHIs increase by over 2,190 points, resulting in a post-acquisition HHI of over 6,900.

40. The merger of Ticketmaster and Live Nation would eliminate Live Nation's competitive presence in the market for the provision of primary ticketing services for major concert venues, resulting in less aggressive competition, less pressure on the fees earned by Ticketmaster, and less innovation for venues and fans than would exist absent the merger. The proposed merger came at a time when Live Nation was just starting to make a competitive impact. Live Nation's ability to begin to attract third-party venues and stated intentions to compete on price likely would have resulted in increasingly competitive pricing and better services to major concert venues and consumers in the future. The proposed merger is likely to lessen competition for primary ticketing services for major concert venues.

41. The proposed merger will also reduce the merged firm's incentive to innovate and improve their respective primary ticketing services. Ticketing innovations are less likely to occur in a post-merger world in which Ticketmaster's dominance will continue and Live Nation's ticketing service has been shuttered. Notably, the benefits of quality enhancements and product variety that flow from experimentation would be far less likely to take place.

## VII. Absence of Countervailing Factors

42. Supply responses from competitors or potential competitors will not prevent likely anticompetitive effects of the proposed merger. The merged firm would possess significant advantages that any new or existing competitor would have to overcome to successfully compete with the merged firm.

43. Ticketmaster has historically possessed competitive advantages. As a result, small ticketing firms have been limited in their ability to compete. With the merger, additional entry barriers are emerging. The merged firm's promotion and artist management businesses provide an additional challenge that small ticketing companies will now have to overcome. The ability to use its content as an inducement was the point that Live Nation touted as the basis on which Live Nation could challenge Ticketmaster in ticketing.

44. No existing ticketing company or likely entrant possesses the combination of attributes to prevent the selective exercise of market power over the major concert venues by the merged firm. New entry into the provision and sale of primary ticketing services is costly and time-consuming. Major concert venues require primary ticketing services to be provided in the United States by service personnel located in the United States. It would take a new entrant a substantial investment of money and over two years to develop the combination of comparable characteristics necessary to compete with the merged firm in primary ticketing. New entry is not likely to occur in a timely or sufficient basis to prevent the anticompetitive effects that would otherwise result from the merger of Ticketmaster and Live Nation.

## VIII. Violation Alleged

*(Violation of Section 7 of the Clayton Act)*

45. The United States and the Plaintiff States incorporate the allegations of paragraphs 1 through 44 above.

46. The proposed merger of Ticketmaster and Live Nation would likely substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act in the provision and sale of primary ticketing services for major concert venues. 15 U.S.C. 18.

47. The proposed merger threatens to reduce competition in a number of ways, including, among others:

a. Eliminating the head-to-head competition between the merging parties;

b. reducing the incentives of the merging parties to innovate and improve their primary ticketing services, including the loss of the increased opportunity for innovation from a firm engaged in experimentation in primary ticketing;

c. impairing the ability of venue customers to benefit from competition between these firms, including competition based on price, terms, quality, service, and innovation; and

d. impairing the ability of consumers to benefit from competition between these firms, including competition based on price, terms, quality, service, and innovation.

48. The proposed merger of Ticketmaster and Live Nation likely will have the following effects:

a. actual and potential competition between Ticketmaster and Live Nation in the provision and sale of primary ticketing services for major concert venues will be eliminated; and

b. competition generally in the market for primary ticketing for major concert venues would be substantially lessened.

## Requested Relief

49. The United States and the Plaintiff States request that:

a. The proposed merger of Ticketmaster and Live Nation be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Ticketmaster and Live Nation be enjoined from carrying out the proposed merger or carrying out any other agreement, understanding, or plan by which Ticketmaster and Live Nation would acquire, be acquired by, or merge with each other;

c. the United States and Plaintiff States be awarded their costs of this action;

d. the Plaintiff States be awarded their reasonable attorneys' fees; and

e. the United States and Plaintiff States receive such other and further relief as the case requires and the Court deems just and proper.

Dated: January 25, 2010.

Respectfully submitted,

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## Appendix A

*Definition of HHI*

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

## Certificate of Service

I, Aaron Hoag, hereby certify that on January 25, 2010, I caused a copy of the Complaint and attached Exhibits to be served on defendants Ticketmaster Entertainment, Inc., and Live Nation, Inc., by mailing the documents via E-mail to the duly authorized legal representatives of the defendants, as follows:

For Ticketmaster Entertainment, Inc. M., Sean Royall, Esq., Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, Tel: (202) 955–8546, Fax: (202) 467–0539, E-mail: *SRoyall@gibsondunn.com.*

For Live Nation, Inc., Michael Egge, Esq., Latham & Watkins LLP 555 Eleventh Street, NW., Washington, DC 20004, Tel: (202) 637–2200, Fax: (202) 637–2201 E–Mail: *michael.egge@LW.com.*

Aaron D. Hoag, Esq., *Attorney,* U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, Telephone: (202) 514–5038, Fax: (202) 514–7308, E-Mail: *aaron.hoag@usdoj.gov.*

## United States District Court for the District of Columbia

United States of America, *et al., Plaintiffs,* v. Ticketmaster Entertainment, Inc. and Live Nation, Inc., *Defendants.*

Case: 1–10–cv–00139.

Date Filed: January 25, 2010.

## [Proposed] Final Judgment

*Whereas,* plaintiffs, United States of America, and the States of Arizona, Arkansas, California, Florida, Illinois, Iowa, Louisiana, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin, and the Commonwealths of Massachusetts and Pennsylvania ("Plaintiff States") filed their Complaint on January 25, 2010, the United States, Plaintiff States, and defendants, Ticketmaster Entertainment, Inc. and Live Nation, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And whereas,* defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And whereas,* the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants and the imposition of certain conduct restrictions on defendants, to assure that competition is not substantially lessened;

*And whereas,* the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And whereas,* defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now therefore,* before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged* and *decreed:*

## I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

## II. Definitions

As used in this Final Judgment:

A. "AEG" means Anschutz Entertainment Group, Inc., a company with its headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest the Divestiture Assets.

C. "Client Ticketing Data" means financial data relating to a ticketing client's events including on-sale dates for a client's events, the number of tickets sold for the specific event, the proceeds from those sales for a specific event, ticket inventory that is made available on the Ticketmaster system, the number and location of tickets that are sold, the amount for which the tickets are sold, pricing, marketing and promotions run for the event, the sales as a result of the marketing or promotions, and the status of the ticket inventory. "Client ticketing data" does not include data that Defendants collect through other means (*e.g.,* Web site tracking, user group surveys, public sources). Client Ticketing Data does not include data that is made public by a client or third party.

D. "Comcast-Spectacor" means Comcast-Spectacor, L.P., a company with its headquarters in Philadelphia, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Condition" means to explicitly or practically require buyers to take one product or set of services if they want to obtain a second product or set of services. In the absence of explicit conditioning, providing the buyer with an opportunity to buy the two products or sets of services separately is only conditioning if no reasonable buyer would be expected to accept the terms of the separate offers.

F. "Covered Employee" means any employee of Defendants whose principal job responsibility involves the operation or day-to-day management of Defendants' venues, concert promotions, or artist management services.

G. "Defendants" means either defendant acting individually or both defendants acting collectively, as appropriate. Where the Final Judgment imposes an obligation to engage in or refrain from engaging in certain conduct, that obligation shall apply as broadly as reasonable to each defendant

individually, both defendants acting together, and the merged firm.

H. "Divestiture Assets" means the Ticketmaster Host Platform (via the binding agreement to license and to provide private label ticketing services to the Ticketmaster Host Platform Acquirer as required in Section IV.A) and Paciolan.

I. "Exempted Employee" means any employee of Defendants who is not a Covered Employee, including: (a) Any senior corporate officer, director or manager with responsibilities that include oversight of Defendants' provision of Primary Ticketing Services; and (b) any employee whose primary responsibilities solely include accounting, human resources, legal, information systems, and/or finance.

J. "Live Entertainment Event" means a live music concert for which tickets are sold to the public.

K. "Live Nation" means defendant Live Nation, Inc., a Delaware corporation with its headquarters in Beverly Hills, California, its successors and assigns, and its subsidiaries (whether partially or wholly owned), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

L. "Merger" means the merger of Ticketmaster and Live Nation.

M. "Paciolan" means Paciolan, Inc., a Delaware corporation which is engaged in the provision of ticketing services to venues or other organizations under the Paciolan or Ticketmaster Irvine names, and which includes:

1. All tangible assets that comprise the Paciolan line of business, including servers and other computer hardware; research and development activities; all fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with Paciolan; all licenses, permits and authorizations issued by any governmental organization relating to Paciolan; all contracts, teaming arrangements, agreements, leases (including the lease to the Paciolan headquarters in Irvine, California), commitments, certifications, and understandings, relating to Paciolan, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to Paciolan;

2. All intangible assets used in the development, distribution, production, servicing and sale of Paciolan, including, but not limited to, all patents, contractual rights (including contractual rights to provide ticketing services and employment contracts), licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to Paciolan, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to Paciolan, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments. Preexisting commitments to transfer contractual rights from Paciolan to another entity that are specifically identified in the Paciolan sales agreement are excluded from this definition.

N. "Paciolan Acquirer" means the entity to whom defendants divest Paciolan.

O. "Primary Ticketing Services" means a collection of services provided to venues or other customers to enable the initial sale of tickets for live entertainment events directly to customers and enable the validation of tickets at the venue to control access to the event.

P. "Provide Live Entertainment Events" and "Provision of Live Entertainment Events" mean services reasonably necessary to plan, promote, market and settle a Live Entertainment Event, including but not limited to concert promotion services provided by firms such as Live Nation and the provision of artists managed by firms such as Front Line. The Promotion of Live Entertainment Events specifically does not include the provision of primary ticketing services, venue management services and/or tour design and construction services.

Q. "Retaliate" means refusing to Provide Live Entertainment Events to a Venue Owner, or Providing Live Entertainment Events to a Venue Owner on less favorable terms, for the purpose of punishing or disciplining a Venue Owner because the Venue Owner has contracted or is contemplating contracting with a company other than Defendants for Primary Ticketing Services. The term "Retaliate" does not mean pursuing a more advantageous deal with a competing Venue Owner.

R. "Ticket Buyer Data" means non-public identifying information for ticket buyers for a specific event (including, if provided, the buyer's name, phone number, e-mail address, and mailing address) that Defendants collect in the course of providing a ticketing client's Primary Ticketing Services. Ticket Buyer Data does not include data that Defendants collect solely through other means (*e.g.,* Web site tracking, user group surveys, public sources).

S. "Ticketmaster" means defendant Ticketmaster Entertainment, Inc., a Delaware corporation with its headquarters in West Hollywood, California, its successors and assigns, and its subsidiaries (whether partially or wholly owned), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

T. "Ticketmaster Host Platform" means the primary Ticketmaster software used by Ticketmaster to sell primary tickets in the United States. The Ticketmaster Host Platform includes the following software: Ticketmaster Classic Ticketing System (also called Ticketmaster Host); Ticketmaster.com full Web site package; Access Management; payment processing and settlements; and PCI point of sale system (for phone and outlets).

U. "Ticketmaster Host Platform Acquirer" means AEG, the entity with whom defendants will enter into a binding agreement to license the Ticketmaster Host Platform.

V. "Venue Owner" means a person or company that owns, operates, or manages one or more venues that host Live Entertainment Events.

## III. Applicability

A. This Final Judgment applies to Ticketmaster and Live Nation, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers of the assets divested pursuant to this Final Judgment.

## IV. Divestiture

A. Defendants are ordered and directed not to consummate the Merger

until they have entered into a binding agreement to license the Ticketmaster Host Platform to the Ticketmaster Host Platform Acquirer and to provide private label ticketing services to the Ticketmaster Host Platform Acquirer in a manner consistent with this Final Judgment and with the following terms and conditions:

1. The agreement shall include the option, exercisable at the discretion of the Ticketmaster Host Platform Acquirer, to acquire a non-exclusive, perpetual, fully paid-up license to the Ticketmaster Host Platform. The license shall include a copy of the source code of the Ticketmaster Host Platform and shall permit the Ticketmaster Host Platform Acquirer to modify the software in any manner without limitation and without any requirement to license back any improvements to Defendants. If the option is exercised, Defendants shall promptly begin the installation of a fully functional ticketing system and Web site in the facilities of the Ticketmaster Host Platform Acquirer and shall complete the installation within a reasonable time pursuant to a schedule subject to approval by the United States, after consultation with Plaintiff States. Defendants shall warrant that the system is current as of the time of installation and operational for use in providing Primary Ticketing Services. Defendants shall provide reasonable training and support to enable the Ticketmaster Host Platform Acquirer to operate the software and to understand the source code so that it can make independent changes to the code. The license shall permit the Ticketmaster Host Platform Acquirer to transfer the license following the complete installation of the Ticketmaster Host Platform. The scope of use of the license shall be at least the United States.

2. The agreement shall include a private label ticketing agreement pursuant to which Ticketmaster shall provide private label ticketing services to the Ticketmaster Host Platform Acquirer for a period of no more than five years from the date of execution of the license. The private label ticketing agreement shall be on such reasonable terms and conditions that will enable the Ticketmaster Host Platform Acquirer to compete effectively against Ticketmaster to secure contracts for the provision of Primary Ticketing Services. The private label ticketing agreement shall give the Ticketmaster Host Platform Acquirer all control over the ticketing fees charged individual consumers or clients of the Ticketmaster Host Platform Acquirer for tickets sold pursuant to the agreement and Defendants shall have no right or ability to set these ticketing fees. Ticketmaster shall, at the request of the Ticketmaster Host Platform Acquirer, post on the main Ticketmaster public Web site links to events sold under the private label ticketing agreement, subject to reasonable, non-discriminatory, and customary terms and conditions. Ticketmaster shall customize a separate Web site for the Ticketmaster Host Platform Acquirer with branding, look, and feel to be determined by the Ticketmaster Host Platform Acquirer. The private label ticketing services as described in this Section shall be operational within six months from the date that the binding agreement to license Ticketmaster Host Platform becomes effective.

B. Defendants shall implement the Ticketmaster Host Platform binding agreement required by Section IV.A and any resulting Ticketmaster Host Platform license in a manner consistent with the terms of Section IV.A. Defendants shall comply with the terms of the Ticketmaster Host Platform binding agreement required by Section IV.A and any resulting Ticketmaster Host Platform license, provided that nothing in the Ticketmaster Host Platform binding agreement or resulting Ticketmaster Host Platform license can relieve Defendants of any obligations imposed by this Final Judgment.

C. Defendants shall, as soon as possible, but within one business day after completion of the relevant event, notify the United States and Plaintiff States of: (1) The effective date of the Merger and (2) the effective date of the binding agreement to license to the Ticketmaster Host Platform Acquirer.

D. If the Ticketmaster Host Platform Acquirer exercises its option to license the Ticketmaster Host Platform, Defendants shall waive any non-compete agreements that would prevent any employee of Defendants whose primary responsibility is the development or operation of the Ticketmaster Host Platform from joining the Ticketmaster Host Platform Acquirer.

E. Defendants are ordered and directed, concurrently with the closing of the Merger, to enter into a Letter of Intent to divest Paciolan to Comcast-Spectacor in a manner consistent with this Final Judgment. Within sixty (60) calendar days of closing the Merger, Defendants shall complete the divestiture of Paciolan in a manner consistent with this Final Judgment to Comcast-Spectacor or an alternative Acquirer acceptable to the United States, in its sole discretion, after consultation with Plaintiff States. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

F. Defendants shall provide the United States and the Paciolan Acquirer information relating to the personnel involved in the production, operation, development and sale of Paciolan at any time since Ticketmaster acquired Paciolan to enable the Paciolan Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Paciolan Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development, and sale of Paciolan, and shall waive any non-compete agreements that would prevent any such employee from joining the Paciolan Acquirer. Nothing in this Section shall prohibit defendants from making offers of continued employment to, continuing to employ, or continuing to use the services of any of their employees, including personnel involved in the production, operation, development and marketing of Paciolan and its ticketing system, subject to the overarching limitation that the agreement to sell Paciolan to the Paciolan Acquirer must ensure that the Paciolan Acquirer will be able to adequately staff Paciolan in a manner that enables the Paciolan Acquirer to successfully compete as a provider of Primary Ticketing Services, as determined by United States in its sole discretion. In addition, nothing in this Section shall prohibit defendants from maintaining any reasonable restrictions on the disclosure by an employee who accepts an offer of employment with the Paciolan Acquirer of the defendants' proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to the defendants' businesses and clients, and (3) not related to the production, operation, development, and marketing of Paciolan and its ticketing system.

G. Defendants shall permit the Paciolan Acquirer to have reasonable access to personnel and to make inspections of the physical facilities of Paciolan; access to any and all environmental, zoning, and other permit documents and information; access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

H. Defendants shall warrant to the Paciolan Acquirer that each asset it acquires will be operational on the date of sale.

I. Defendants shall warrant to the Paciolan Acquirer that there are no material defects in the environmental,

zoning, or other permits pertaining to the operation of Paciolan, and that following the sale of Paciolan, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Paciolan.

J. Defendants shall not take any action that will impede in any way the permitting, operation, use, or divestiture of the Divestiture Assets.

K. Unless the United States otherwise consents in writing, after consultation with Plaintiff States, the divestitures pursuant to Section IV of this Final Judgment shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with Plaintiff States, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business, engaged in providing Primary Ticketing Services. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States, after consultation with Plaintiff States, that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1. shall be made to an Acquirer(s) that, in the United States's sole judgment, after consultation with Plaintiff States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of providing Primary Ticketing Services; and

2. shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with Plaintiff States, that none of the terms of any agreement between an Acquirer(s) and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

## V. Appointment of Trustee To Effect Divestiture

A. If Defendants have not divested Paciolan as specified in Section IV.E, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to divest Paciolan in a manner consistent with this Final Judgment. Defendants consent to appointment of a trustee prior to entry of this Final Judgment if Paciolan has not been divested within the time periods provided in Section IV.E.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Paciolan. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, after consultation with Plaintiff States, at such cash price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section V.E of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

D. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Paciolan and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, including any information provided to the United States during its investigation of the merger related to the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports with the United States, Plaintiff States, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Paciolan, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Paciolan.

H. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

## VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants shall notify the United States and Plaintiff States of any proposed divestiture required by Section IV of this Final Judgment. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and Plaintiff

States of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Paciolan, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States and Plaintiff States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States and Plaintiff States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States, after consultation with Plaintiff States, provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.D, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

**VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Anti-Retaliation Provision and Other Provisions Designed To Promote Competition**

A. Defendants shall not:

1. Retaliate against a Venue Owner because it is known to Defendants that the Venue Owner is or is contemplating contracting with a company other than Defendants for Primary Ticketing Services;

2. Condition or threaten to Condition the Provision of Live Entertainment Events to a Venue Owner based on that Venue Owner refraining from contracting with a company other than Defendants for Primary Ticketing Services; or

3. Condition or threaten to Condition the provision of Primary Ticketing Services to a Venue Owner based on that Venue Owner refraining from contracting with a company other than Defendants for the Provision of Live Entertainment Events.

Nothing in this Section prevents Defendants from bundling their services and products in any combination or from exercising their own business judgment in whether and how to pursue, develop, expand, or compete for any ticketing, venue, promotions, artist management, or any other business, so long as Defendants do so in a manner that is not inconsistent with the provisions of this Section.

Evidence that Defendants do or do not (a) bid for, contract with, win, or retain a venue, artist, or promoter as a client, and/or (b) promote a show or shows in particular buildings or group of buildings (even where similar shows historically have been promoted in those buildings) is not alone sufficient to establish, or create a presumption of, a violation of this Section.

B. Defendants shall not disclose to any Covered Employee any Client Ticketing Data. Defendants however: (1) May disclose Client Ticketing Data concerning a specific event to any Covered Employee involved in the promotion of that event or the management of the artist who performed at that event, if it does so on the same terms it generally provides such information to other promoters or artist managers not affiliated with Defendants; (2) may disclose Client Ticketing Data to an Exempted Employee who requires the information in order to perform his or her job function(s); provided however, that such Exempted Employee may not use Client Ticketing Data to perform any job function(s) that primarily involve(s) the day-to-day operation or management of Defendants' venues, concert promotions, or artist management services; and (3) may disclose Client Ticketing Data to any Defendant employee where so required by law, government regulation, legal process, or court order, so long as such disclosure is limited to fulfillment of that purpose.

C. If any client of Defendants' primary ticketing services chooses not to renew a contract for Primary Ticketing Services with Defendants for some or all of its venues, upon the expiration of that contract and the written request of the client, Defendants shall within forty-five (45) days provide the client with a complete copy of all Client Ticketing Data and all Ticket Buyer Data historically maintained by Defendants for such venue(s) in the ordinary course of business, in a form that is reasonably usable by the client. Nothing in this provision shall be read to: (1) Alter any rights Defendants would otherwise have to Client Ticketing Data or Ticket Buyer Data pursuant to the Primary Ticketing Services contract with the client, and/or its historical custom, practice, and course of dealing with the client; or (2) limit any rights the client would otherwise have to its Client Ticketing Data or Ticket Buyer Data pursuant to the Primary Ticketing Services contract with Defendants and/or its historical custom, practice, and course of dealing with Defendants. Defendants shall maintain Client Ticketing Data and Ticket Buyer Data on behalf of its clients for no less than three (3) years. This provision only applies to contracts for Primary Ticketing Services in effect prior to the entry of this Final Judgment.

**X. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or Section V, defendants shall deliver to the United States and Plaintiff States an affidavit as to the fact and manner of its compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide

required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with Plaintiff States, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Every two (2) months prior to the private label ticketing agreement described in Section IV.A.2 becoming operational, and every six (6) months thereafter, defendants shall deliver to the United States and Plaintiff States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IV.A and the terms of Ticketmaster Host Platform binding agreement.

C. Defendants shall, in addition, deliver to the United States and Plaintiff States an affidavit describing any revised or amended agreements with the Ticketmaster Host Platform Acquirer relating to the agreement required by Section IV.A. Such notice shall be delivered to the United States and Plaintiff States at least fifteen (15) calendar days prior to the effective date of the revised or amended agreement and Defendants shall not implement any amended agreement if the United States, after consultation with Plaintiff States, objects during the fifteen (15) day notice period.

D. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States and Plaintiff States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States and Plaintiff States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change if implemented.

E. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

**XI. Compliance Inspection**

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States, require Defendants to conduct, at Defendants' cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, or the Attorney General's Office of any other plaintiff, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XII. Notification**

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants, without providing advance notification to the United States and Plaintiff States, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the United States in providing Primary Ticketing Services during the term of this Final Judgment.

Such notification shall be provided to the United States and Plaintiff States in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the United States make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

**XIII. No Reacquisition**

A. Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

B. Following the expiration of the private label ticketing agreement with the Ticketmaster Host Platform Acquirer required by Section IV.A.2: (1)

Defendants shall not provide Primary Ticketing Services to any venues in North America for which, by virtue of an ownership interest, the Ticketmaster Host Platform Acquirer controls the rights to select the Primary Ticketing Services provider; and (2) for all other venues in North America, Defendants shall not provide Primary Ticketing Services on behalf of or pursuant to a ticketing contract with the Ticketmaster Host Platform Acquirer. Nothing in this Section shall prevent Defendants from: (1) Competing to provide Primary Ticketing Services to venues (including such venues managed by the Ticketmaster Host Platform Acquirer) other than those for which, by virtue of an ownership interest, the Ticketmaster Host Platform Acquirer controls the rights to select the Primary Ticketing Services provider; and (2) providing Primary Ticketing Services to artist fan clubs in venues owned, operated, or managed by the Ticketmaster Host Platform Acquirer.

**XIV. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XV. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

**XVI. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16:
United States District Judge

**United States District Court for the District of Columbia**

United States of America, et al., Plaintiffs, v. Ticketmaster Entertainment, Inc. and Live Nation, Inc., Defendants.

Case: 1:10–cv–00139

Assigned to: Collyer, Rosemary M.

Assign. Date: 1/25/2010

Description: Antitrust

**Competitive Impact Statement**

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

Defendant Ticketmaster Entertainment, Inc. ("Ticketmaster") and Defendant Live Nation, Inc. ("Live Nation") entered into an agreement, dated February 10, 2009, pursuant to which they would merge into a new entity to be known as Live Nation Entertainment. The United States, and the States of Arizona, Arkansas, California, Florida, Illinois, Iowa, Louisiana, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin, and the Commonwealths of Massachusetts and Pennsylvania filed a civil antitrust Complaint on January 25, 2010, seeking to enjoin the proposed transaction because its likely effect would be to lessen competition substantially for primary ticketing services to major concert venues located in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in higher prices for and less innovation in primary ticketing services. At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to grant a perpetual license to their Host platform and to divest their entire Paciolan business in order to establish two independent ticketing companies capable of competing effectively with the merged entity. The Final Judgment also prohibits Defendants from engaging in certain conduct that would prevent equally efficient firms from competing effectively. Under the terms of the Hold Separate, Ticketmaster will take certain steps to ensure that the Paciolan business is operated as a competitively independent, economically viable and ongoing business concern that will remain independent and uninfluenced by the consummation of the transaction and to ensure that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish and remedy violations thereof.

**II. Description of the Events Giving Rise to the Alleged Violation**

*A. The Concert Industry*

Staging concerts traditionally has required the participation of several parties. *Artists* provide the entertainment that makes the concert possible. *Managers* and/or *agents* represent artists in negotiations to establish the commercial terms on which artists will perform. *Promoters* contract with artists to perform at particular concerts, assume the financial risk of staging the concerts, make the arrangements for the concerts to occur at certain times and places, and market the concerts. *Venues* are the physical locations where concerts occur, and venues' owners, operators, or managers usually arrange for the sale of tickets to concerts at their venues. *Primary ticketing companies* provide services such as Web sites, call centers, and retail networks from which tickets may be purchased that facilitate the initial sale of tickets to concertgoers.[1] Contracts between venues and primary ticketing companies are individually negotiated. In a typical contract, a venue agrees to use one primary ticketing company as its exclusive service provider for several years. In exchange, the primary ticketing company often agrees to pay to the venue a portion of the fees that the primary ticketing company charges to concertgoers who purchase tickets to events at the venue. The primary ticketing company also may agree to pay an up-front bonus or advance upon execution of the contract. Primary ticketing contracts typically prohibit venues from reselling the primary ticketing services they receive.

*B. The Defendants and the Proposed Transaction*

Ticketmaster is the largest primary ticketing company in the United States. In 2008, Ticketmaster earned gross

revenues of about $800 million from its U.S. primary ticketing business. Ticketmaster offers two principal primary ticketing products to venues: (1) Host, a Ticketmaster-managed platform for selling tickets through Ticketmaster's Web site and other sales channels; and (2) Paciolan, a venue-managed platform for selling tickets through the venue's own Web site and other sales channels. In 2008, Ticketmaster provided primary ticketing services to venues representing more than 80% of major concert venues.[2] In addition to its primary ticketing operations, Ticketmaster expanded into the artist management business in 2008 by acquiring a controlling interest in Front Line Management Group Inc. ("Front Line"), an important artist management firm with clients such as the Eagles, Neil Diamond, Jimmy Buffett, Christina Aguilera and John Mayer.

Live Nation is the largest concert promoter in the United States, earning more than $1.3 billion in revenue from its U.S. promotions business in 2008 and promoting shows representing 33% of the concert revenues at major concert venues in 2008. Live Nation has entered long-term partnerships with several popular artists including Madonna and Jay-Z to exclusively promote their concerts, sell recordings of their music, and market artist-branded merchandise such as T-shirts. Live Nation also owns or operates about 70 major concert venues throughout the United States. And as explained further below, Live Nation entered the market for primary ticketing services in late December 2008.

On February 10, 2009, less than two months after its entry into primary ticketing, Live Nation agreed to merge with Ticketmaster. That proposed transaction would substantially lessen competition and is the subject of the Complaint and proposed Final Judgment filed by the United States in this matter.

*C. The Market for Primary Ticketing Services to Major Concert Venues in the United States*

Antitrust law, including Section 7 of the Clayton Act, protects consumers from anticompetitive conduct, such as firms' acquisition of the ability to raise prices above levels that would prevail in a competitive market. Market definition assists antitrust analysis by focusing attention on the relevant portions of the economy where competitive effects are likely to be felt. Well-defined markets encompass the economic actors including both sellers and buyers whose conduct most strongly influences the nature and magnitude of competitive effects. To ensure that antitrust analysis takes account of a broad enough set of products to evaluate whether a transaction is likely to lead to a substantial lessening of competition, defining relevant markets in horizontal merger cases frequently begins by identifying a collection of products or set of services over which a hypothetical monopolist profitably could impose a small but significant and non-transitory increase in price. Here, the United States investigation revealed that major concert venues would have no alternatives to primary ticketing services if prices were to rise significantly above the levels that would have prevailed but for the proposed transaction, so the hypothetical-monopolist test would exclude all other products or services from the relevant market. But that is not the end of the market-definition exercise.

When sellers are unable to set different terms of sale for different buyers, all buyers will face similar competitive effects, and a relevant product market properly (if implicitly) encompasses not only all sellers of the relevant product, but all buyers as well. But when different buyers may experience different competitive effects, a well-defined product market encompassing fewer than all buyers can focus antitrust analysis appropriately on those buyers most vulnerable to suffering probable and significant competitive harm. It also avoids conflating in that analysis those buyers whose prices are likely to be significantly affected with others who are unlikely to be harmed substantially.

One situation in which different buyers experience different effects involves price discrimination, such as when sellers are able to charge different prices to different buyers for equivalent products. Sellers can price discriminate when they are able to identify and target vulnerable buyers for price increases and when buyers facing low prices cannot resell to those facing higher prices. Both conditions are present here. Venues and primary ticketing companies individually negotiate their contracts, and the terms of those contracts typically make it impossible for venues to resell (arbitrage) primary ticketing services.

Because primary ticketing companies can price discriminate among different venues, the proposed transaction could affect different classes of venues differently, and antitrust analysis requires attention to those venues with few alternative primary ticketing providers to Ticketmaster and Live Nation because, if the proposed transaction were consummated, their real-world choices would be reduced differently than would be other venues' options. Major concert venues require more sophisticated primary ticketing services than other venues, so each tends to select a primary ticketing company with an established reputation for providing good service to similar venues. Ticketmaster has shown that its primary ticketing platform is able to withstand the heavy transaction volume associated with the first hours when tickets to popular concerts become available to concertgoers ("high-volume on-sales"), offers integrated marketing capabilities, and otherwise provides proven, high-quality service to venues. When the proposed transaction was announced, Live Nation was building experience selling tickets to concerts at its own venues as a way to demonstrate to other venues that its primary ticketing platform also performed well. No primary ticketing company other than Ticketmaster and Live Nation has amassed or likely could have amassed in the near term sufficient scale to develop a reputation for successfully delivering similarly sophisticated primary ticketing services. Additionally, Live Nation planned to compete for primary ticketing contracts with major concert venues, but had less interest in serving non-concert venues outside its historically core concert expertise. Because they would have no equally attractive alternative primary ticketing provider to the merged firm, and because they would have benefited more from competition between Ticketmaster and Live Nation, major concert venues are more vulnerable than smaller venues to anticompetitive harms caused by the proposed transaction, and a well-defined relevant market should not encompass customers other than major concert venues. For example, a high school that hires a student to sell tickets to one of its musical productions could be said to be buying "primary ticketing services," but the relevant market can exclude such other venues because there is no significant risk that sales to them would affect Defendants' ability to exercise market power over major concert venues.

Antitrust analysis also must consider the geographic dimensions of competition. Section 7 protects against harm to competition "in any section of the country." 15 U.S.C. 18. Here, domestic anticompetitive harms would be experienced by major concert venues located throughout the United States. Because the merged firm could price discriminate, any effects of the proposed transaction on foreign venues would be

distinct from any effects on domestic venues. Thus, including only major concert venues located in the United States within the relevant market poses no risk of omitting buyers whose inclusion would significantly alter the antitrust analysis.[3]

In short, the sale of primary ticketing services to major concert venues in the United States is a well-defined relevant market for the purpose of analyzing the effects of the proposed transaction.

*D. The Competitive Effects of the Proposed Transaction*

Until 2009, Ticketmaster dominated the market for primary ticketing services to major concert venues in the United States with greater than 80% market share. The only other primary ticketing companies with greater than a 1% share in 2008 were Tickets.com (4%), Front Gate Tickets (3%), New Era Tickets (2%), Live Nation (2%),[4] and Tessitura (1%). Ticketmaster's largest customer for primary ticketing services was Live Nation, the owner or operator of venues representing about 15% of capacity at all major concert venues in the United States in 2008. Ticketmaster renews its primary ticketing contracts at a very high rate. Even though Ticketmaster's distribution costs have declined dramatically as concertgoers have shifted their purchases toward the Internet and away from traditional sales channels, the ticketing fees retained by Ticketmaster have not fallen, and Ticketmaster has continued to enjoy large profit margins on its primary ticketing business for many years.

These margins have persisted because they are protected by high barriers to other companies successfully, substantially, and profitably entering or attempting to expand in the market for primary ticketing services to major concert venues. First, the platforms required to provide primary ticketing services to major concert venues are technologically complicated and expensive to develop and deploy. Second, major concert venues are reluctant to enter long-term exclusive contracts with new primary ticketing companies because they lack Ticketmaster's established reputation for capably handling high-volume on-sales and providing high-quality service to venues. Third, the costs of installing and training employees to use new equipment make it expensive for venues to switch between primary ticketing companies. Fourth, because there are high fixed costs to develop and maintain a primary ticketing platform, entrants struggle to obtain sufficient scale to compete successfully with Ticketmaster on price. Fifth, Ticketmaster's scale provides another important incumbent advantage over other firms extensive data about individual concertgoers collected over many years. Ticketmaster can use that data as a powerful marketing tool to secure venue contracts for primary ticketing services. Sixth, Ticketmaster's practice of signing long-term exclusive contracts with venues limits how quickly other firms can amass sufficient scale to compete effectively with Ticketmaster on any of these dimensions.

By 2008, Ticketmaster's longstanding dominance faced a major threat. Live Nation was better positioned to overcome the entry barriers discussed above than any other existing or potential competitor because it could achieve sufficient scale to compete effectively with Ticketmaster simply by ticketing its own venues. Live Nation also possessed a unique competitive advantage in that it could bundle access to important concerts with its ticketing service. Recognizing Live Nation's potential to disrupt its dominant position in the market for primary ticketing services, Ticketmaster attempted to renew Live Nation's primary ticketing contract before its December 31, 2008 expiration. But Live Nation instead chose to license technology from CTS Eventim AG ("CTS") that would enable it to sell concert tickets to its own venues beginning in 2009 and to compete with Ticketmaster for other venues' primary ticketing contracts in the future.

This competition began even before Live Nation's contract with Ticketmaster expired. On September 11, 2008, Live Nation announced that SMG the largest venue management company in the United States, with the ability to control or influence the selection of primary ticketing companies at more than 40 major concert venues had agreed to use Live Nation's primary ticketing services, if Live Nation could provide a primary ticketing platform comparable to other leading primary ticketing companies. SMG was Ticketmaster's third largest customer (behind only Live Nation and Anschutz Entertainment Group, Inc.), but it switched to Live Nation because SMG expected that, if it used Live Nation's primary ticketing services, Live Nation would use its strength in promotions to bring more concerts to SMG-managed venues. On October 14, 2008, Live Nation announced that it would provide primary ticketing services to New York City's Roseland Ballroom, another former Ticketmaster client. By 2009, Live Nation provided primary ticketing services to more than 15% of the capacity at major concert venues in the United States.

Ticketmaster responded to competition from Live Nation in several ways. First, it offered more attractive renewal terms to customers with expiring contracts than it had customarily offered in order to lock customers into long-term deals before Live Nation could sign them. Second, Ticketmaster acquired a controlling interest in Front Line on October 23, 2008. Front Line's strength in artist management enabled Ticketmaster for the first time to offer venues a package of primary ticketing services and concert content that could rival Live Nation's ticketing-and-content package. Finally, Ticketmaster moved to eliminate Live Nation entirely as a competitor by agreeing to the proposed transaction less than two months after Live Nation began ticketing with the CTS platform.

The proposed transaction would extinguish competition between Ticketmaster and Live Nation and thereby eliminate the financial benefits that venues enjoyed during the brief period when Live Nation was poised to challenge Ticketmaster's dominance. The proposed transaction would also diminish innovation in primary ticketing services because the merged firm would have reduced incentives to develop new features. Further, the proposed transaction would result in even higher barriers to entry and expansion in the market for primary ticketing services. In addition to the long-standing entry barriers discussed above, the merged firm's ability to bundle primary ticketing services (implicitly or explicitly) with access to artists managed by Front Line and/or promoted by Live Nation would require competitors to offer venues both primary ticketing services and access to content in order to compete most effectively.

Defendants have asserted that the proposed transaction will generate efficiencies sufficient to counteract any anticompetitive effects. More specifically, they have contended that the vertical integration of Ticketmaster and Live Nation's complementary businesses will reduce the number of industry participants who currently must be compensated for a concert to be produced and, thus, will allow the merged entity to reduce the prices paid by venues for primary ticketing services and by concertgoers for tickets. While appreciating that vertical integration may benefit consumers in some situations, the United States does not fully credit Defendants' efficiency claims because they each could realize

many of the asserted efficiencies without consummating the proposed transaction. Ticketmaster and Live Nation each already had expanded vertically before they agreed to the proposed transaction, and but for the proposed transaction, venues and concertgoers would have continued to enjoy the benefits of competition between two vertically integrated competitors. A vertically integrated monopoly is less likely to spur innovation and efficiency than competition between vertically integrated firms, and a vertically integrated monopoly is unlikely to pass the benefits of innovation and efficiency onto consumers.

Defendants also contended that Live Nation's impact on ticketing would be minimal because of shortcomings in Live Nation's ticketing platform, including the absence of a season ticketing component, which is important for a number of venues. Though the CTS platform was originally designed for use in Europe, Live Nation and CTS have invested heavily to adapt it for use in the United States. In the first six months of 2009, Live Nation used the CTS platform to sell more than 6 million tickets to concerts at its U.S. venues. Before entering the proposed transaction, Live Nation had planned to continue improving the CTS platform, including developing a season ticketing component, to make it more attractive to potential third-party venue clients in the United States.

## III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will eliminate the anticompetitive effects of the proposed transaction in the market for primary ticketing services to major concert venues in four principal ways.

*First,* the Final Judgment will enable Anschutz Entertainment Group, Inc. ("AEG") to become a new, independent, economically viable, and vertically integrated competitor in the market for primary ticketing services to major concert venues. AEG is the second largest promoter in the United States (behind Live Nation), promoting shows representing about 14% of concert revenues at major concert venues in 2008. No company other than AEG or Live Nation promotes concerts representing more than 4% of the concert revenues from major concert venues. AEG also owns, operates, or manages more than 30 major concert venues, representing about 8% of the capacity at major U.S. concert venues, and it can select (or influence the selection of) the primary ticketing company for those venues. In addition, AEG owns one-half of an important artist management firm with several popular clients, including Justin Timberlake and the Jonas Brothers. Due to its significant presence in promotions, venues, and artist management, AEG is the company best positioned to achieve the necessary scale, overcome the other entry barriers discussed above, and compete successfully with the merged firm in the market for primary ticketing services to major concert venues.

The Final Judgment facilitates AEG's entry through a two-stage process that gives it access to Ticketmaster's core primary ticketing platform, which AEG can then use to service its own venues and to sell primary ticketing services to third-party venues. In the first stage, which must begin within six months of the proposed transaction's consummation and may continue for up to five years, the Final Judgment requires Defendants to provide AEG with its own branded Web site based on Ticketmaster's Host platform, including any upgrades and enhancements (the "AEG Site"). AEG has the right to use the AEG Site to sell tickets to events at specified venues it currently owns, operates, and manages as well as to events at any other venues from which AEG secures the right to provide primary ticketing services. Though AEG must pay Defendants royalties for each ticket sold through the AEG Site, those royalties are below the average rate Ticketmaster currently charges, and Defendants have no control over AEG's final prices. These provisions immediately provide AEG incentives to compete with Defendants and diminish the risk that AEG would be unable to compete successfully had it attempted to deploy a less established primary ticketing platform.

The Final Judgment also requires Defendants to provide AEG with an option to acquire a perpetual, fully paid-up license to the then-current version of Ticketmaster's Host platform, including a copy of the source code, which Defendants must install and then support during the first six months after its installation. AEG is permitted to exercise this option within four years of the proposed transaction's consummation, which will allow AEG to assume full responsibility for operating its own primary ticketing business, independently of Defendants.

The Final Judgment gives AEG incentives to exercise its option to acquire a copy of Host (or to develop or acquire a competing primary ticketing platform) by prohibiting Defendants from providing primary ticketing services to AEG's venues after AEG's right to use the AEG Site expires. That provision is critical to preserving competition in the primary ticketing services market because it guarantees that, within five years, AEG will have to either supply its own primary ticketing services or obtain them from some company other than the merged firm. Because AEG cannot rely indefinitely on the AEG Site, it will have incentives to plan for the future. Even if AEG's plans do not involve exercising its option to acquire a copy of Host, the Final Judgment will preserve competition because AEG will have to contract for primary ticketing services with one of Defendants' rivals. AEG's ticket volume would give that primary ticketing company sufficient scale and credibility to compete effectively with the merged firm.

*Second,* the Final Judgment's requirement that Defendants divest Ticketmaster's entire Paciolan business will establish another independent and economically viable competitor in the market for primary ticketing services to major concert venues. Ticketmaster currently licenses its Paciolan platform both directly to venues representing 3% of major U.S. concert venue capacity and to other primary ticketing companies that sublicense the Paciolan platform to venues representing an additional 4% of the relevant market. Before consummating the proposed transaction, Defendants must enter a letter of intent to divest to Comcast-Spectacor, L.P. ("Comcast-Spectacor") the entire Paciolan business, including all intellectual property in the Paciolan platform and all contracts with venue and primary ticketing company licensees of that platform. Through its New Era Tickets ("New Era") subsidiary, which currently licenses the Paciolan platform from Ticketmaster, Comcast-Spectacor already provides primary ticketing services to venues representing 2% of major concert venue capacity. In addition to its interest in New Era, Comcast-Spectacor owns 2 major U.S. concert venues and manages 15 others. When combined with New Era's ticketing business and Comcast-Spectacor's venue presence, the Paciolan business that the Final Judgment requires Defendants to divest would provide Comcast-Spectacor sufficient scale to compete effectively and independently with the merged firm in the market for primary ticketing services to major concert venues. Comcast-Spectacor and others have contended that the movement in primary ticketing services will be towards "self-enablement" models, such

as Paciolan, which allow a venue to manage its own ticketing platform.

Within 60 days of signing the letter of intent, the Paciolan business must be divested in such a way as to satisfy the United States in its sole discretion, and in consultation with the Plaintiff states, that the operations can and will be operated by Comcast-Spectacor or an alternative purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with any prospective purchaser. In the event that Defendants do not accomplish the Paciolan divestiture in a timely fashion, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

*Third,* the Final Judgment prohibits Defendants from engaging in certain conduct that would impede effective competition from equally efficient rivals that may or may not be not vertically integrated. Thus, the Final Judgment proscribes retaliation against venue owners who contract or consider contracting for primary ticketing services with Defendants' competitors. The Final Judgment also prohibits Defendants from explicitly or practically requiring venues to take their primary ticketing services if the venues only want to obtain concerts the Defendants promote or concerts by artists the Defendants manage, and it likewise prohibits Defendants from explicitly or practically requiring venues to take concerts they promote or concerts by artists they manage if those venues only want to obtain the Defendants' primary ticketing services. These provisions preserve the ability of primary ticketing companies that do not also have access to content (and promoters and artist managers that do not also provide primary ticketing services) to continue competing with Defendants. Elsewhere, the Final Judgment prevents Defendants from abusing their position in the primary ticketing market to impede competition among promoters and artist managers by requiring that Defendants either refrain from using certain ticketing data in their non-ticketing businesses or provide that data to other promoters and artist managers. Finally, the Final Judgment mandates that Defendants provide any current primary ticketing client with that client's ticketing data promptly upon request, if the client chooses not to renew its primary ticketing contract. That provision reduces venues' switching costs and lowers barriers to other companies competing for Defendants' primary ticketing clients because it ensures that those venue clients will not be forced to relinquish valuable data if they decide to switch primary ticketing service providers.

*Fourth,* the Final Judgment requires Defendants to notify the United States at least thirty days before acquiring any assets of or any interest in any firm engaged in providing primary ticketing services in the United States, regardless of whether the acquisition would otherwise be subject to reporting pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a. If the United States requests additional information within thirty days of the Defendants notifying it of an acquisition, the Final Judgment prohibits Defendants from consummating the acquisition until twenty days after providing the requested information. These provisions facilitate the vigilant and effective oversight that will be necessary to guard against the potential for Defendants to frustrate the purposes of the Final Judgment.

In short, the Final Judgment will eliminate the anticompetitive effects of the proposed transaction in the provision of primary ticketing services to major concert venues in the United States while preserving the possibility of efficiency-enhancing vertical integration in the concert industry and also preserving competition from Defendants' non-vertically integrated rivals.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a settlement that would have required Defendants to divest the current set of divestiture assets to Comcast-Spectacor. The United States

rejected that settlement because it would not have been as effective as the remedy embodied in the proposed Final Judgment at replicating the competitive dynamics that would have prevailed in the market for primary ticketing services had the proposed transaction not occurred.

As another alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Defendants' merger. The United States is satisfied, however, that the divestiture of assets and prohibitions of anticompetitive practices described in the proposed Final Judgment will preserve competition for the provision of primary ticketing services to major concert venues in the United States. Thus, the proposed Final Judgment would protect competition as effectively as would any remedy available through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. 16(e)(1)(A) & (B).

In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[5]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[6] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the

public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[7]

**VIII. Determinative Documents**

In formulating the proposed Final Judgment, the United States considered the AEG/TM Technology Agreement, dated January 11, 2010 and attached hereto as Exhibit A,[8] to be a determinative document within the meaning of the APPA.

*Dated:* January 25, 2010.

Respectfully submitted,

Aaron D. Hoag, *Attorney,* U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, Telephone: (202) 514–5038, Fax: (202) 514–7308, E-mail: *aaron.hoag@usdoj.gov.*

**Certificate of Service**

I, Aaron Hoag, hereby certify that on January 25, 2010, I caused a copy of the Competitive Impact Statement and attached Exhibit to be served on defendants Ticketmaster Entertainment, Inc., and Live Nation, Inc., and the plaintiff States of Arizona, Arkansas, California, Connecticut, Florida, Illinois, Iowa, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin, and Commonwealths of Massachusetts, and Pennsylvania by mailing the documents via E-MAIL to the duly authorized legal representatives of the parties, as follows:

For Ticketmaster Entertainment, Inc., M. Sean Royall, Esq., Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, Tel: (202) 955–8546, Fax: (202) 467–0539, E-mail: *SRoyall@gibsondunn.com,*

For Live Nation, Inc., Michael Egge, Esq., Latham & Watkins LLP, 555 Eleventh Street, NW., Washington, DC 20004, Tel: (202) 637–2200, Fax: (202) 637–2201, E–mail: *michael.egge@LW.com.*

For Plaintiff State of Arizona, Nancy M. Bonnell, Antitrust Unit Chief, Consumer Protection & Advocacy Section, 1275 West Washington, Phoenix, AZ 85007, Tel: (602) 542–7728, Fax: (602) 542–9088, E–mail: *Nancy.Bonnell@azag.gov.*

For Plaintiff State of Arkansas, David A. Curran, Assistant Attorney General, 323 Center St., Suite 200, Little Rock, AR 72201, Tel: (501) 682–3561, Fax: (501) 682–8118, E–mail: *david.curran@arkansasag.gov.*

For Plaintiff State of California, Paula Lauren Gibson, Deputy Attorney General, California Office of the Attorney General, 300 So. Spring Street, Suite 1702, Los Angeles, CA 90013, Tel: (213) 897–0014, Fax: (213) 897–2801, E–mail: *Paula.Gibson@doj.ca.gov.*

For Plaintiff State of Florida, Patricia A. Conners, Antitrust Division, PL–01; The Capitol, Tallahassee, FL 32399–1050, Tel: (850) 414–3300, Fax: (850) 488–9134, E–mail: *Lisa.McGlynn@myfloridalegal.com.*

For Plaintiff State of Illinois, Robert W. Pratt, Chief, Antitrust Bureau, Office of the Attorney General, State of Illinois, 100 West Randolph Street, Chicago, Illinois 60601, Tel: (312) 814–3722, Fax: (312) 814–4209, E-mail: *RPratt@atg.state.il.us.*

For Plaintiff State of Iowa, Layne M. Lindebak, Assistant Attorney General, Special Litigation Division, Iowa Department of Justice, Hoover Office Building—Second Floor, 1305 East Walnut Street, Des Moines, Iowa 50319, Tel: (515) 281–7054, Fax: (515) 281–4902, E-mail: *Layne.Lindebak@iowa.gov.*

For Plaintiff State of Louisiana, Stacie L. de Blieux, Assistant Attorney General, Public Protection Division, 1885 North Third St., Baton Rouge, LA 70802, Tel: (225) 326–6400, Fax: (225) 326–6499, E-mail*: deblieuxs@ag.state.la.us.*

For Plaintiff Commonwealth of Massachusetts, William T. Matlack, Chief, Antitrust Division, Assistant Attorney General, Office of Attorney General Martha Coakley, One Ashburton Place, Boston, MA 02108, Tel: (617) 727–2200, Fax: (617) 727–5765, E-mail: *William.Matlack@state.ma.us.*

For Plaintiff State of Nebraska, Leslie Campbell-Levy, Assistant Attorney General, Chief, Consumer Protection & Antitrust, Nebraska Department of Justice, 2115 State Capitol, Lincoln, NE 68509, Tel: (402) 471–2811, Fax: (402) 471–2957, E-mail: *leslie.levy@nebraska.gov.*

For Plaintiff State of Nevada, Brian Armstrong, Senior Deputy Attorney General, State of Nevada, Office of the Attorney General, Bureau of Consumer Protection, 555 E. Washington Ave., Suite 3900, Las Vegas, Nevada 89101, Tel: (702) 486–3420, Fax: (702) 486–3283, E-mail: *BArmstrong@ag.nv.gov.*

For Plaintiff State of Ohio, Jennifer L. Pratt, Chief, Antitrust Department, 150 E. Gay St., 23rd Floor, Columbus, OH 43215, Tel: (614) 466–4328, Fax: (614) 995–0266, *jennifer.pratt@ohioattorneygeneral.gov.*

For Plaintiff State of Oregon, Caren Rovics, Senior Assistant Attorney General, Financial Fraud/Consumer Protection Section, Civil Enforcement Division, 1162 Court Street NE., Salem, OR 97301–4096, Tel: (503) 934–4400, Fax: (503) 378–5017, E-mail: *caren.rovics@doj.state.or.us.*

For Plaintiff Commonwealth of Pennsylvania, James A. Donahue III, Chief Deputy Attorney General, Office of Attorney General, Antitrust Section, 14th Floor Strawberry Square, Harrisburg, PA 17120, Tel: (717) 787–4530, Fax: (717) 705–7110, E-mail: *jdonahue@attorneygeneral.gov.*

For Plaintiff State of Rhode Island, Patrick Lynch, Attorney General, State of Rhode Island, 150 South Main Street, Providence, Rhode Island 02903, Tel: (401) 274–4400, Fax: (401) 222–2295, E-mail: *plynch@riag.ri.gov.*

For Plaintiff State of Tennessee, Robert E. Cooper, Jr., Attorney General and Reporter, State of Tennessee, 425 Fifth Avenue North, Nashville, TN 37243, Tel: (615) 532–5732, Fax: (615) 532–2910, E-mail: *Bob.Cooper@Ag.Tn.Gov.*

For Plaintiff State of Texas, David M. Ashton, Assistant Attorney General, Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701, Tel: (512) 936–1781, Fax: (512) 320–0975, E-mail: *david.ashton@oag.state.tx.us.*

For Plaintiff State of Wisconsin, Gwendolyn J. Cooley, Assistant Attorney General, Wisconsin Department of Justice, 17 West Main Street, Madison, WI 53703, Tel: (608) 261–5810, Fax: (608) 267–2778, E-mail: *cooleygj@doj.state.wi.us.*

Aaron D. Hoag, Esq., *Attorney,* U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, Telephone: (202) 514–5038, Fax: (202) 514–7308, E-mail: *aaron.hoag@usdoj.gov.*

**Footnotes**

1. After their initial sale, concert tickets may be resold on the secondary ticketing market. *Ticket brokers* purchase tickets with the intention of reselling them to concertgoers. *Secondary ticketing companies* provide services that facilitate the resale of tickets to concertgoers by ticket brokers and others.

2. While the conclusions reached in the antitrust analysis described below are not sensitive to the precise number of venues included within this class, for purposes of this Competitive Impact Statement, "major concert venues" are the 500 U.S. venues generating the greatest concert revenues in 2008, as reported in Pollstar, a leading source of concert industry information. Concert ticket revenues from events at these venues represent more than 90% of the concert ticket revenues at all venues reported in Pollstar. Major concert venues are a diverse group, which includes large stadiums and arenas with relatively few concerts (*e.g.,* the Verizon Center in Washington, DC), mid-sized amphitheaters that host concerts regularly during certain seasons (*e.g.,* Nissan Pavilion in Bristow, VA), and smaller clubs and theaters with frequent concerts throughout the year (*e.g.,* Warner Theatre in Washington, DC and Live Nation's House of Blues clubs). To account for this diversity, venues are weighted by their capacity in calculating shares of the market for primary ticketing services to major concert venues. Only public sources of information were used to calculate the market shares described in this Competitive Impact Statement.

3. In this case, there are not significant transportation costs associated with the relevant services, so sellers' locations do little to inform the market-definition inquiry, though they are not irrelevant to antitrust analysis. To the contrary, only sellers capable of serving major concert venues located in the United States can compete with Defendants in the relevant market. Many of those sellers are located within the United States, but some are foreign firms, as suggested by Live Nation's adaptation of a European primary ticketing platform for use in the United States, which is discussed below. Foreign sellers historically have not competed effectively in the United States because of the significant investments required to enter the domestic market. Still, Live Nation's example suggests that, with a significant investment of time and money, foreign primary ticketing companies might be capable of adapting their products for U.S. customers.

4. Before 2009, by virtue as its position as a promoter, Live Nation received roughly 10% of the tickets to concerts it promoted, and it sold those tickets to concertgoers through its MusicToday subsidiary and a platform licensed from eTix. Live Nation also used the MusicToday platform to provide primary ticketing services to a few small venues.

5. The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

6. *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

7. *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

8. The United States redacted competitively sensitive information and information unrelated to U.S. markets from the version of the AEG/TM Technology Agreement attached as Exhibit A.

[FR Doc. 2010–2754 Filed 2–9–10; 8:45 am]

**BILLING CODE 4410–11–P**

## MERIT SYSTEMS PROTECTION BOARD

### The Merit Systems Protection Board (MSPB) is Providing Notice of the Opportunity to File Amicus Briefs in the Matters of Conyers v. Department of Defense, Docket No. CH–0752–09–0925–I–1, and Northover v. Department of Defense, Docket No. AT–0752–10–0184–I–1

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice.

**SUMMARY:** On January 25, 2010, the MSPB published in the **Federal Register** (*see* 75 FR 3939) a Notice of the opportunity to file amicus briefs in the matter of *Crumpler* v. *Department of Defense,* MSPB Docket Number DC–0752–09–0033–R–1, 2009 MSPB 233. Although the *Crumpler* case is now settled, the legal issue raised in that matter and noted in the January 25 **Federal Register** notice remains unresolved. The cases of *Conyers* v. *Department of Defense,* Docket No. CH–0752–09–0925–I–1, and *Northover* v. *Department of Defense,* Docket No. AT–0752–10–0184–I–1, involve the same legal issue.

*Conyers* and *Northover* raise the question of whether, pursuant to 5 CFR Part 732, National Security Position, the rule in *Department of the Navy* v. *Egan,* 484 U.S. 518, 530–31 (1988), limiting the scope of MSPB review of an adverse action based on the revocation of a security clearance also applies to an adverse action involving an employee in a "non-critical sensitive" position due to the employee having been denied continued eligibility for employment in a sensitive position.

Interested parties may submit amicus briefs or other comments on this issue no later than March 1, 2010. Amicus briefs must be filed with the Clerk of the Board. Briefs shall not exceed 15 pages in length. The text shall be double-spaced, except for quotations and footnotes, and the briefs shall be on 8½; by 11 inch paper with one inch margins on all four sides.

**DATES:** All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before March 1, 2010.

**ADDRESSES:** All briefs shall be entitled "Amicus Brief, *Conyers* and *Northover*." Only one copy of the brief need be submitted. Briefs must be filed with the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

**FOR FURTHER INFORMATION CONTACT:** Matthew Shannon, Deputy Clerk of the Board, (202) 653–7200.

Dated: February 4, 2010.

**William D. Spencer,**

*Clerk of the Board.*

[FR Doc. 2010–2890 Filed 2–9–10; 8:45 am]

BILLING CODE 7400–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Senior Executive Service (SES) Performance Review Board; Members

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice; SES Performance Review Board.

**SUMMARY:** Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

**DATES:** *Effective Date:* This appointment is effective on February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Pamela S. Pope, Human Resources Services Division (NAH), National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132, (314) 801–0882.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Adrienne C. Thomas, Deputy Archivist of the United States, Michael J. Kurtz, Assistant Archivist for Records Services—Washington, DC, and Martha A. Morphy, Assistant Archivist for Information Services. These appointments supersede all previous appointments.

Dated: February 4, 2010.

**David S. Ferriero,**

*Archivist of the United States.*

[FR Doc. 2010–2935 Filed 2–9–10; 8:45 am]

BILLING CODE 7515–01–P

## THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of National Council on the Humanities

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on February 25–26, 2010.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 25–26, 2010, will not be open to the public pursuant to subsections (c)(4),(c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on February 25, 2010 will be as follows:

**Committee Meetings**

*(Open to the Public)*

Policy Discussion

9–10:30 a.m.
- Digital Humanities—Room M–07
- Education Programs and Federal/State Partnership—Room 510A
- Preservation and Access—Room 415
- Public Programs—Room 421
- Research Programs—Room 315

*(Closed to the Public)*

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until Adjourned
- Digital Humanities—Room M–07
- Education Programs and Federal/State Partnership—Room 510A
- Preservation and Access—Room 415
- Public Programs—Room 421
- Research Programs—Room 315

The morning session of the meeting on February 26, 2010 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports
1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Budget Report
5. Presentation on NEH-supported Project about the Trans-Atlantic Slave Trade Database
6. Reports on Policy and General Matters

a. Digital Humanities
b. Education Programs
c. Federal/State Partnership
d. Preservation and Access
e. Public Programs
f. Research Programs

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

**Michael P. McDonald,**

*Advisory Committee, Management Officer.*

[FR Doc. 2010–2836 Filed 2–9–10; 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:* March 2, 2010.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Sustaining Cultural Heritage Collections I in Sustaining Cultural Heritage Collections, submitted to the Division of Preservation and Access at the December 8, 2009 deadline.

2. *Date:* March 4, 2010.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Sustaining Cultural Heritage Collections II in Sustaining Cultural Heritage Collections, submitted to the Division of Preservation and Access at the December 8, 2009 deadline.

3. *Date:* March 5, 2010.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Sustaining Cultural Heritage Collections III in Sustaining Heritage Collections, submitted to the Division of Preservation and Access at the December 8, 2009 deadline.

4. *Date:* March 9, 2010.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Sustaining Cultural Heritage Collections IV in Sustaining Cultural Heritage Collections, submitted to the Division of Preservation and Access at the December 8, 2009 deadline.

5. *Date:* March 10, 2010.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Sustaining Cultural Heritage Collections V in Sustaining Cultural Heritage Collections, submitted to the Division of Preservation and Access at the December 8, 2009 deadline.

6. *Date:* March 11, 2010.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Sustaining Cultural Heritage Collections VI in Sustaining Cultural Heritage Collections, submitted to the Division of Research Programs at the December 8, 2009 deadline.

7. *Date:* March 15–16, 2010.
*Time:* 9 a.m. to 5 p.m.
*Place:* Deutsche Forschungsgemeinschaft, Berlin Office, WissenschaftsForum (Gendarmenmarkt), Markgrafenstr. 37, D–10117 Berlin, Germany.
*Program:* This meeting will review applications for DFG/NEH Bilateral Digital Humanities Programs in DFG/NEH Bilateral Digital Humanities Programs: Bilateral Symposia & Workshops and Enriching Digital Collections, submitted to the Office of Digital Humanities at the October 8, 2009 and October 29, 2009 deadlines.

8. *Date:* March 18, 2010.
*Time:* 10:00 a.m. to 3 p.m.
*Room:* 415.
*Program:* This meeting will review applications for National Digital Newspaper Program in National Digital Newspaper Program, submitted to the Division of Preservation and Access at the November 3, 2009 deadline.

9. *Date:* March 22, 2010.
*Time:* 9:00 a.m. to 5 p.m.
*Room:* 421.
*Program:* This meeting will review applications for United States History in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

10. *Date:* March 23, 2010.
*Time:* 9 a.m. to 5 p.m.
*Room:* 421.
*Program:* This meeting will review applications for United States History in Interpreting America's Historic Places Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

11. *Date:* March 25, 2010.
*Time:* 9:00 a.m. to 5 p.m.
*Room:* 421.
*Program:* This meeting will review applications for American Studies in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

12. *Date:* March 26, 2010.
*Time:* 9 a.m. to 5 p.m.
*Room:* 421.
*Program:* This meeting will review applications for United States History in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

**Michael P. McDonald,**
*Advisory Committee Management Officer.*

[FR Doc. 2010–2977 Filed 2–9–10; 8:45 am]
BILLING CODE 7536–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0454]**

## Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on November 5, 2009.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 664, General Licensee Registration;

3. *Current OMB approval number:* 3150–0198.

4. *The form number if applicable:* NRC Form 664.

5. *How often the collection is required:* Annually.

6. *Who will be required or asked to report:* General Licensees of the NRC who possess certain generally licensed devices subject to annual registration authorized pursuant to 10 CFR 31.5.

7. *An estimate of the number of annual responses:* 840.

8. *The estimated number of annual respondents:* 840.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* The number of hours needed annually to complete the requirement or request: 280 hours annually (840 respondents × 20 minutes per form).

10. *Abstract:* NRC Form 664 is used by NRC general licensees to make reports regarding certain generally licensed devices subject to annual registration. The registration program allows NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged. Also, the registration program ensures that general licensees are aware of and understand the requirements for the possession, use and disposal of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the regulatory requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 12, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0198), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 1st day of February, 2010.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2010–2962 Filed 2–9–10; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–261; NRC–2010–0027]**

## Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23 issued to Carolina Power & Light Company (the licensee) for operation of the H. B. Robinson Steam Electric Plant, Unit 2, located in Darlington County, South Carolina.

The December 16, 2009, application (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093631212) contains proprietary information, which the Commission classifies as sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would modify Technical Specification (TS) 5.5.9 to revise the steam generator (SG) alternate repair criteria and TS 5.6.8 to revise the SG tube inspection reporting requirements. Specifically, the proposed change would revise requirements in TS 5.5.9, called alternate repair criteria, which would allow inspection of the tube to start within the tubesheet region (a minimum of 17.28 inches below the top of the tubesheet) and add requirements to report indications in this region and primary to secondary leakage that could be attributed to the uninspected portion of the tube within the tubesheet. The change is being proposed as a temporary requirement until the next scheduled inspection.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. 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. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not involve physical changes to any plant structure, system, or component. The inspection of the portion of the steam generator tubes within the tubesheet region is being changed to identify the appropriate scope of inspection and the criteria for plugging tubes that are found with degradation. The proposed requirements will continue to ensure that the probability of a steam generator tube rupture accident is not increased. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fission product barriers during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The proposed inspection and repair requirements will ensure that the plant continues to meet applicable design and safety analyses acceptance criteria. The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are impacted and there are no adverse effects on the factors that contribute to offsite or onsite dose as a result of an accident. The proposed change does not affect setpoints that initiate protective or mitigative actions. The proposed change ensures that plant structures, systems, and components are maintained consistent with

the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed accident.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve any physical alteration of plant systems, structures, or components. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no change to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. The proposed inspection and repair criteria will establish appropriate requirements to ensure that the steam generator tubes are properly maintained. As a result, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change defines the safety significant portion of the tube that must be inspected and repaired. WCAP–17091–P identifies the specific inspection depth below which any type of tube degradation is shown to have no impact on the performance criteria in NEI 97–06 Rev. 2, "Steam Generator Program Guidelines" and TS 5.5.9, "Steam Generator (SG) Program."

The proposed change that alters the SG inspection and reporting criteria maintains the required structural margins of the SG tubes for normal, transient, and accident conditions. Nuclear Energy Institute 97–06, "Steam Generator Program Guidelines," and NRC Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a SGTR. The probability and consequences of a SGTR are reduced by establishing the limiting safe conditions for tube wall degradation. RG 1.121 uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse report WCAP–17091–P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during applicable plant conditions. The steam line break accident leak rate factor for HBRSEP, Unit No. 2, is 1.82 (Table 9–7 in WCAP–17091–P). Multiplying this factor by the room temperature TS operational leak rate limit of 75 gpd through any one SG indicates that an assumed primary to secondary accident induced leak rate of 136.5 gpd or greater through any one SG is required to ensure that the limiting design basis accident assumption is not exceeded (at room temperature). This condition is satisfied by the current UFSAR assumed primary to secondary accident induced leak rate of 150 gpd through any one SG for SLB.

Therefore, the proposed change does not involve a significant reduction in any 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.

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, Rulemaking and Directives Branch (RDB), 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 RDB 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 O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible

effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the 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 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 petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North,

11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment dated December 16, 2009 (ADAMS Accession No. ML093631212), which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

*Attorney for licensee:* David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

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

[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.

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 February 2010.

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. |
| 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. |

[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.

| Day | Event/activity |
|---|---|
| A + 60 ..... | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 ..... | Decision on contention admission. |

[FR Doc. 2010–2976 Filed 2–9–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–334 and 50–412; NRC–2010–0049]**

## FirstEnergy Nuclear Operating Company, FirstEnergy Nuclear Generation Corp., Ohio Edison Company, the Toledo Edison Company, Beaver Valley Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for a certain new requirement of 10 CFR Part 73, "Physical protection of plants and materials," for Renewed Facility Operating License Nos. DPR–66 and NPF–73, issued to FirstEnergy Nuclear Operating Company (licensee), for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), located in Shippingport, Pennsylvania. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

### Environmental Assessment

*Identification of the Proposed Action*

The proposed action would exempt BVPS–1 and 2 from the required implementation date of March 31, 2010, for a certain new requirement of 10 CFR part 73. Specifically, BVPS–1 and 2 would be granted an exemption from being in full compliance with a certain new requirement contained in 10 CFR 73.55 by the March 31, 2010, implementation deadline. The licensee has proposed an alternate full compliance implementation date of December 17, 2010, approximately 9 months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the BVPS–1 and 2 site.

The proposed action is in accordance with the licensee's application dated November 30, 2009 (Agencywide Document and Management System (ADAMS) Accession No. ML093370152), as supplemented by letter dated December 23, 2009 (ADAMS Accession No. ML093650293).

*The Need for the Proposed Action*

The proposed action is needed to provide the licensee with additional time to design the necessary modifications, procure equipment and material, and implement upgrades to comply with a specific aspect of 10 CFR 73.55.

*Environmental Impacts of the Proposed Action*

The NRC has completed its environmental assessment of the proposed exemption. The NRC staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)].

The licensee currently maintains security plans acceptable to the NRC. The new 10 CFR part 73 security measures that would be implemented by March 31, 2010, would continue to provide acceptable onsite physical protection of BVPS–1 and 2. Therefore, the extension of the implementation date of a certain new requirement of 10 CFR part 73, to September 27, 2010, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed actions, the NRC staff considered denial of the proposed actions (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for BVPS–1, dated July 1973, and for BVPS–2, NUREG–1094, dated September 1985, as supplemented through the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Beaver Valley Power Station, Units 1 and 2, Supplement 36, Final Report" (NUREG–1437).

*Agencies and Persons Consulted*

In accordance with its stated policy, on January 20, 2010, the NRC staff consulted with Larry Ryan of the Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 30, 2009, as supplemented by letter dated December 23, 2009. Portions of the submittals contain proprietary and security information and, accordingly, are not available to the public, pursuant to 10 CFR 2.390. The public 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 O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. 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.*

Dated at Rockville, Maryland, this 4th day of February 2010.

For The Nuclear Regulatory Commission.

**Nadiyah S. Morgan,**

*Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–2975 Filed 2–9–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–331; NRC–2010–0048]**

### FPL Energy Duane Arnold, LLC; Notice of Availability of the Draft Supplement 42 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meeting for the License Renewal of Duane Arnold Energy Center

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or Commission) has published a draft plant-specific supplement 42 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," regarding the renewal of Operating License No. DPR–49 for an additional 20 years of operation for Duane Arnold Energy Center (DAEC). DAEC is located near Cedar Rapids, Iowa. Potential alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement 42 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The ADAMS Accession Number for the draft Supplement 42 to the GEIS is ML100310027. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.* In addition, the Hiawatha Public Library, located at 150 West Willman Street, Hiawatha, Iowa, has agreed to make the draft supplement available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by April 19, 2010; the NRC staff is able to ensure consideration only for comments received on or before this date. Comments received after the due date will be considered only if it is practical to do so. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Electronic comments may be submitted to the NRC by e-mail at *DuaneArnoldEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on March 31, 2010 at the Hiawatha City Hall at 101 Emmons Street, Hiawatha, Iowa 52233. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Charles Eccleston, the Environmental Project Manager at 1–800–368–5642, extension 8537, or by e-mail at *Charles.Eccleston@nrc.gov,* no later than March 24, 2010. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Eccleston's attention no later than March 24, 2010, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

*For Further Information Contact:* Mr. Charles Eccleston, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Eccleston may also be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of February, 2010.

For the Nuclear Regulatory Commission.

**Brian E. Holian,**

*Director, Division of License Renewal, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–2974 Filed 2–9–10; 8:45 am]

**BILLING CODE 7590–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 12029 and # 12030]**

### North Carolina Disaster # NC–00023

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–1871–DR), dated 02/02/2010.

*Incident:* Severe Winter Storms and Flooding.

*Incident Period:* 12/18/2009 through 12/25/2009.

**DATES:** *Effective Date:* 02/02/2010.

*Physical Loan Application Deadline Date:* 04/05/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/02/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 02/02/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Jackson, Madison, Mcdowell, Mitchell, Watauga, Yancey.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage* | |
| Non-Profit Organizations With Credit Available Elsewhere ... | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| *For Economic Injury* | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 12029B and for economic injury is 12030B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–2832 Filed 2–9–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61499; File No. SR–NYSEAmex–2010–04]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 991 Options Communications

February 4, 2010.

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 January 13, 2010, 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 substantially 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 option trading rules pertaining to its advertising, branch officer examination requirement, and assuming customer loss policies to harmonize these policies with those of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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

Pursuant to Rule 17d–2 under the Act, the American Stock Exchange, LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, the New York Stock Exchange, LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, the "Options Self Regulatory Council"), entered into an agreement dated June 5, 2008 (the "17d–2 Agreement") to allocate regulatory responsibility for common rules. The Exchange is currently in the process of recertifying this 17d–2 Agreement.

In order to continue this successful regulatory agreement, the Exchange proposes to harmonize the following option trading rules with comparable FINRA rules: NYSE Amex Rule 991, Communications to Customers and NYSE Amex Rule 1106, Prior Approval of Certain Communications to Customers.

*Options Communications*

In furtherance of the 17d–2 Agreement, and in order to maintain substantial similarity with FINRA rules, the Exchange proposes to amend NYSE Amex Rule 991, Communications to Customers, to correspond to FINRA Rule 2220, Options Communications. Many elements of current NYSE Amex Rule 991 are identical to FINRA Rule 2220. However, FINRA 2220 contains a more comprehensive definition section and approval process for advertisements, correspondence, and institutional sales material. The Exchange believes it is in the best interest of its Members to adopt FINRA's more comprehensive requirements. To the extent that other FINRA rules are incorporated into FINRA 2220 by reference, the Exchange proposes to add such language directly into the corresponding sections of proposed Rule 991.

For instance, FINRA Rule 2357 makes the provisions of FINRA 2220 applicable to index warrants, currency index warrants and currency warrants. As stated above, the Exchange proposes to amend NYSE Amex Rule 991 to correspond to FINRA Rule 2220. Thus, to harmonize its rules with FINRA's, the Exchange proposes to amend NYSE Amex Rule 1106 to correspond to FINRA Rule 2357, so that proposed NYSE Amex Rule 1106 will make the

provisions of proposed NYSE Amex Rule 991 applicable to index warrants, currency index warrants and currency warrants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] 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, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the proposed rule changes would provide NYSE Amex Members with a clearer, more consistent, and more comprehensive regulatory scheme, by harmonizing NYSE Amex rules with FINRA rules. The Exchange further notes that the proposed changes are neither novel nor controversial and are modeled on existing FINRA rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. 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 notes that the proposed rule change is consistent with existing FINRA rules, and does not raise any new substantive issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will promote greater harmonization between NYSE Amex Option Communication rules and the related FINRA rules. Therefore, the Commission designates the proposed rule change effective and operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEAmex–2010–04 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2943 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, 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 the pre-filing requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61482; File No. SR–NYSEArca–2010–06]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding 75 Options Classes to the Penny Pilot Program

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2010, 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 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 designate 75 options classes to be added to the Penny Pilot Program for Options ("Penny Pilot" or "Pilot") on February 1, 2010. There are no changes to the rule text. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room 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 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

NYSE Arca proposes to identify the next 75 options classes to be added to the Penny Pilot effective February 1, 2010. The Exchange recently received approval to extend and expand the Pilot through December 31, 2010.[3] In that filing, the Exchange had proposed expanding the Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.[4]

NYSE Arca proposes adding the following 75 options classes to the Penny Pilot on February 1, 2010, based on national average daily volume from July 1, 2009 through December 31, 2009:

| Nat'l ranking | Symbol | Company name | Nat'l ranking | Symbol | Company name |
|---|---|---|---|---|---|
| 131 | ABT | Abbott Laboratories. | 192 | LEAP | Leap Wireless International Inc. |
| 169 | AEM | Agnico-Eagle Mines Ltd. | 205 | LLY | Eli Lilly & Co. |
| 151 | AET | Aetna Inc. | 162 | LO | Lorillard Inc. |
| 156 | AFL | Aflac Inc. | 152 | LOW | Lowe's Cos Inc. |
| 181 | AKAM | Akamai Technologies Inc. | 176 | M | Macy's Inc. |
| 178 | AMAT | Applied Materials Inc. | 155 | MCO | Moody's Corp. |
| 117 | AMR | AMR Corp. | 217 | MET | MetLife Inc. |
| 166 | ANF | Abercrombie & Fitch Co. | 187 | MMM | 3M Co. |
| 172 | APC | Anadarko Petroleum Corp. | 140 | MU | Micron Technology Inc. |
| 209 | ATVI | Activision Blizzard Inc. | 177 | NUE | Nucor Corp. |
| 145 | BBD | Banco Bradesco SA. | 157 | OXY | Occidental Petroleum Corp. |
| 190 | BCRX | BioCryst Pharmaceuticals Inc. | 158 | PARD | Poniard Pharmaceuticals Inc. |
| 218 | BK | Bank of New York Mellon Corp/The. | 150 | PEP | PepsiCo Inc/NC. |
| 194 | BRCM | Broadcom Corp. | 141 | PM | Philip Morris International Inc. |
| 184 | BTU | Peabody Energy Corp. | 185 | PNC | PNC Financial Services Group Inc. |
| 144 | BX | Blackstone Group LP. | 216 | QID | ProShares UltraShort QQQ. |
| 200 | CAL | Continental Airlines Inc. | 149 | SHLD | Sears Holdings Corp. |
| 211 | CF | CF Industries Holdings Inc. | 175 | SLM | SLM Corp. |
| 142 | CMCSA | Comcast Corp. | 212 | SLW | Silver Wheaton Corp. |
| 203 | CSX | CSX Corp. | 215 | SQNM | Sequenom Inc. |
| 143 | CVS | CVS Caremark Corp. | 153 | STEC | STEC Inc. |
| 174 | CX | Cemex SAB de CV. | 219 | STX | Seagate Technology. |
| 183 | DD | EI du Pont de Nemours & Co. | 202 | SU | Suncor Energy Inc. |
| 146 | ERTS | Electronic Arts Inc. | 207 | TCK | Teck Resources Ltd. |
| 121 | EWJ | iShares MSCI Japan Index Fund. | 196 | TEVA | Teva Pharmaceutical Industries Ltd. |
| 186 | FDX | FedEx Corp. | 135 | TLT | iShares Barclays 20+ Year Treasury Bond Fund. |
| 118 | FNM | Federal National Mortgage Association. | 214 | TZA | Direxion Daily Small Cap Bear 3X Shares. |
| 182 | FRE | Federal Home Loan Mortgage Corp. | 168 | UAUA | UAL Corp. |
| 179 | GILD | Gilead Sciences Inc. | 154 | URE | ProShares Ultra Real Estate. |
| 198 | GLW | Corning Inc. | 180 | UTX | United Technologies Corp. |
| 170 | HBC | HSBC Holdings PLC. | 204 | WFR | MEMC Electronic Materials Inc. |
| 197 | HES | Hess Corp. | 115 | WFT | Weatherford International Ltd. |

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (order approving SR–NYSEArca–2009–44).

[4] Index products would be included in the expansion if the underlying index level was under 200.

| Nat'l ranking | Symbol | Company name | Nat'l ranking | Symbol | Company name |
|---|---|---|---|---|---|
| 161 | HL | Hecla Mining Co. | 165 | WLP | WellPoint Inc. |
| 193 | HOG | Harley-Davidson Inc. | 191 | XLB | Materials Select Sector SPDR Fund. |
| 206 | HON | Honeywell International Inc. | 173 | XRX | Xerox Corp. |
| 210 | JOYG | Joy Global Inc. | 148 | XTO | XTO Energy Inc. |
| 213 | JWN | Nordstrom Inc. | 130 | YRCW | YRC Worldwide Inc. |
| 137 | KFT | Kraft Foods Inc. | | | |

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes to be added to the Pilot in a manner consistent with prior approvals and filings.

*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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Exchange Act [5] and Rule 19b–4(f)(1) thereunder,[6] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–06 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–2010–06. 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 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 NYSE Arca's principal office and on its Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2010–06 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2944 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61489; File No. SR–CBOE–2010–008]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Co-Location Service Fees

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2010, Chicago Board Options Exchange, Inc. ("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 the Substance of the Proposed Rule Change**

Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") proposes to amend its Fees Schedule relating to co-location service 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 principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

For a monthly fee, the Exchange provides members with cabinet space in CBOE's building for placement of network and server hardware. The fee is $10 per month per "U" of shelf space (which is equal to 1.75 inches).[3] A member also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange's servers, at no additional charge. This "co-location service" provides members with close physical proximity to the Exchange's electronic trading system, which helps meet their need for high performance processing and low latency.

The co-location service is available to any member that requests the service and pays the monthly fee.[4] The Exchange believes that for the foreseeable future it has sufficient space to accommodate all members who may request the co-location service. Other than the co-location service, the Exchange does not provide any co-locating member with any advantage over any other co-locating member or any non-co-locating member with respect to access to the Exchange's trading system. The Exchange's systems are designed to minimize, to the extent possible, any advantage for one member over another. The foregoing statements apply equally to both inbound and outbound data.

The Exchange proposes to clarify its Fees Schedule relating to co-location fees in a couple of respects. First, the Exchange proposes to move the co-location fees from Section 17 of the Fees Schedule (Hybrid Fees) to Section 8 (Facility Fees) because these fees are more accurately described as facility fees. Second, the Exchange proposes to clarify that the co-location fees are charged in increments of 4 "U" (which is equal to 7 inches) because the cabinet space is available in 4 U increments.

2. Statutory Basis

By clarifying the Exchange's fees for its co-location service and providing a fuller description of the service, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[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 its members and other persons using its facilities. In addition, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(5)[7] of the Act in that it is designed to 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, and, in general, to protect investors and the public interest.

*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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–008 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–2010–008. 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

[3] *See* Securities Exchange Act Release No. 57191 (January 24, 2008), 73 FR 5611 (January 30, 2008). The fee for a Sponsored User is $20 per month per "U". *See* Securities Exchange Act Release No. 58189 (July 18, 2008), 73 FR 43274 (July 24, 2008).

[4] A member using the co-location service may also pay certain CBOEdirect Connectivity Charges that are set forth in Section 16 of the Fees Schedule. These fees are charged for member connectivity to CBOEdirect regardless of whether or not a member is using the co-location service. These fees include a $40 per month "CMi Application Server" fee for server hardware used to connect to the CBOE CMi API, a $40 per month "Network Access Port" fee for use of the CMi API and a $40 per month "FIX Port" fee for use of the FIX API. *See* Securities Exchange Act Release No. 57191, supra footnote 1. Each of the foregoing fees are $80 per month for a Sponsored User. *See* Securities Exchange Act Release No. 58189, *supra* footnote 1.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

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–2010–008 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2946 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61491; File No. SR–ISE–2010–11]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I 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, and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the amounts that Direct Edge ECN ("DECN"), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

[8] 17 CFR 200.30–3(a)(12).

[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 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 III 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

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On January 29, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members[3] to simplify its fee schedule by (i) re-introducing a rebate;[4] (ii) adding a fee for stocks priced less than $1 that remove liquidity on EDGA;[5] (iii) eliminating certain tables on the fee schedule;[6] and (iv) making typographical and clarifying changes to the fee schedule.[7] The changes made

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] In SR–ISE–2009–68, the Exchange amended the criteria for meeting the Ultra Tier by allowing ISE Members to receive a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID posts 1% of the total consolidated volume ("TCV") in average daily volume ("ADV"). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities. *See* Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009) (SR– ISE–2009–68). In SR–ISE–2010–10, the Exchange re-introduced an Ultra Tier rebate of $0.0031 per share for competitive reasons.

The Ultra Tier rebate ($0.0031 per share), which is a higher rebate than the next best rebate ($0.0029 per share) for adding liquidity on EDGX, is also more difficult to reach, as a higher volume threshold is required based on recent TCV figures. For example, 1% of the average TCV for January 2010 (8.9 billion) was approximately 89 million shares. This threshold far exceeds the criteria (no minimum share volume requirement) to meet the next best rebate of $0.0029 per share. In addition, the higher rebate also results in part from lower administrative costs associated with higher volume.

[5] In SR–ISE–2010–10, the Exchange added a fee to its schedule to provide that stocks priced less than $1 will be charged 0.20% of the dollar value if they do not meet the minimum average daily share volume of 50,000 shares on EDGA to qualify for the removal rate. A conforming footnote 1 was added in the first table on the fee schedule (next to the word "Free") for removing liquidity in stocks less than $1.00 on EDGA.

[6] In SR–ISE–2010–10, in order to further simplify its fee schedule for Members, the Exchange deleted the table on the fee schedule entitled "Fees per Share for Special Order Types" as the Exchange believed that the information on this schedule was repetitive of the information in the "liquidity flags and associated fees" table below it. As a result of this deletion, the Exchange relocated footnote numbers 4 and 5. Footnote 4 was relocated to "Flag E" and also added to "Flag 5" to clarify it. Footnote 5 was relocated to "Flag O." These are the corresponding areas where these references belong.

[7] Effective January 1, 2010, DECN adjusted its pricing model to be more consistent with other exchanges (even though DECN is not an exchange), by de-linking the pricing structures of DECN to eliminate pricing offers that are contingent on activity across both platforms. *See* Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010) (SR–ISE–2009–108). Secondly, the Exchange simplified its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission). On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the **Federal Register** for notice and comment. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009). The Exchange believes that these same goals were also advanced for the most part in SR–ISE–2010–10, which made technical and clarifying changes to DECN's fee schedule.

In SR–ISE–2009–108, to effectuate the foregoing, the Exchange deleted certain charges in footnote 1 of the fee schedule, including one whereby ISE Members were charged $0.0002 per share to add liquidity on EDGA unless the attributed MPID added a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Prior to January 1, 2010, any attributed MPID meeting the aforementioned minimum was not charged to add liquidity on EDGA. Since this charge was deleted from footnote 1, in SR–ISE–2010–10, the Exchange deleted the corresponding footnote 1 from flags B, V, Y, 3, and 4 from the EDGA column as this footnote no longer applies.

In addition, in SR–ISE–2010–10, the Exchange re-worded the first sentence in footnote 1 to clarify that adding can include placing hidden orders.

In SR–ISE–2009–108, for securities priced less than $1, the Exchange changed the fee for adding liquidity on EDGX from free to a rebate of 0.15% of the dollar value of the transaction. In SR– ISE–2010–10, the Exchange corrected a typographical error on its current schedule by adding parenthesis around the "0.15% of dollar value" to clarify that this was a rebate, and *not* a charge, for adding liquidity on EDGX in securities priced less than $1.

In SR–ISE–2010–10, for Flag P, the Exchange corrected a typographical error on the schedule by inverting the columns that were displayed. For EDGX, flag P was corrected to read "N/A" and for EDGA it was corrected to read a rebate of $0.0025 per share (i.e., (0.0025)).

In SR–ISE–2010–10, the Exchange also clarified Footnote 3. The second sentence of this footnote states that the "rebate for adding liquidity on the NYSE of $0.0010 per share." This information was already conveyed in Flag F and was deleted in order to simplify and clarify the fee schedule. The first sentence of footnote 3 was also deleted as it

Continued

pursuant to SR–ISE–2010–10 became operative on February 1, 2010.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR–ISE–2010–10, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well an effective date of February 1, 2010. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive and be charged equivalent amounts and that the imposition of such amounts will begin on the same February 1, 2010 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

*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. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–11 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–ISE–2010–11. 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,[10] 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 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 Number SR–ISE–2010–11 and should be submitted on or before March 3, 2010.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)[12] of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members pursuant to SR–ISE–2010–10 (the "Member Fee Filing"). The fee changes made pursuant to the Member Fee Filing became operative on February 1, 2010. DECN receives rebates and is charged fees for transactions it executes on EGDX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers. The current proposal, which will apply retroactively to February 1, 2010, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts as an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.[13]

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register.** As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in

is repetitive of the amended third sentence in footnote 3 ("stocks prices below $1.00 on the NYSE are charged $0.0018 per share when removing liquidity.") As a result, on Flag J, footnote 3 was deleted as the reference no longer applies. However, footnote 3 was relocated to Flag D in order to further clarify it.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(4).

[13] *Id.*

equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to February 1, 2010, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2010–11) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2948 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61499; File No. SR–NYSEAmex–2010–04]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 991 Options Communications

February 4, 2010.

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 January 13, 2010, 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 substantially 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 option trading rules pertaining to its advertising, branch officer examination requirement, and assuming customer loss policies to harmonize these policies with those of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Pursuant to Rule 17d–2 under the Act, the American Stock Exchange, LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, the New York Stock Exchange, LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, the "Options Self Regulatory Council"), entered into an agreement dated June 5, 2008 (the "17d–2 Agreement") to allocate regulatory responsibility for common rules. The Exchange is currently in the process of recertifying this 17d–2 Agreement.

In order to continue this successful regulatory agreement, the Exchange proposes to harmonize the following option trading rules with comparable FINRA rules: NYSE Amex Rule 991, Communications to Customers and NYSE Amex Rule 1106, Prior Approval of Certain Communications to Customers.

Options Communications

In furtherance of the 17d–2 Agreement, and in order to maintain substantial similarity with FINRA rules, the Exchange proposes to amend NYSE Amex Rule 991, Communications to Customers, to correspond to FINRA Rule 2220, Options Communications. Many elements of current NYSE Amex Rule 991 are identical to FINRA Rule 2220. However, FINRA 2220 contains a more comprehensive definition section and approval process for advertisements, correspondence, and institutional sales material. The Exchange believes it is in the best interest of its Members to adopt FINRA's more comprehensive requirements. To the extent that other FINRA rules are incorporated into FINRA 2220 by reference, the Exchange proposes to add such language directly into the corresponding sections of proposed Rule 991.

For instance, FINRA Rule 2357 makes the provisions of FINRA 2220 applicable to index warrants, currency index warrants and currency warrants. As stated above, the Exchange proposes to amend NYSE Amex Rule 991 to correspond to FINRA Rule 2220. Thus, to harmonize its rules with FINRA's, the Exchange proposes to amend NYSE Amex Rule 1106 to correspond to FINRA Rule 2357, so that proposed NYSE Amex Rule 1106 will make the provisions of proposed NYSE Amex Rule 991 applicable to index warrants, currency index warrants and currency warrants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] 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, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the proposed rule changes would provide NYSE Amex Members with a clearer, more consistent, and more comprehensive regulatory scheme, by harmonizing NYSE Amex rules with FINRA rules. The Exchange further notes that the proposed changes are neither novel nor controversial and are modeled on existing FINRA rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

*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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. 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 notes that the proposed rule change is consistent with existing FINRA rules, and does not raise any new substantive issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will promote greater harmonization between NYSE Amex Option Communication rules and the related FINRA rules. Therefore, the Commission designates the proposed rule change effective and operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEAmex–2010–04 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2952 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, 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 the pre-filing requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61487; File No. SR–BX–2010–012]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Codify Prices for Co-Location Services

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been 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 the Substance of the Proposed Rule Change**

NASDAQ OMX BX is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to codify pricing for co-location services. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange's principal office, and at the Commission's Public Reference Room. BX will implement the proposed rule change on the first day of the month

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

immediately following Commission approval (or on the date of approval, if on the first business day of a month).

## 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

The Exchange is proposing to codify fees for its existing co-location services. Co-location services are a suite of hardware, power, telecommunication, and other ancillary products and services that allow market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange. BX provides co-location services and imposes fees through Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are housed.[3] Users of co-location services include private extranet providers, data vendors, as well as the Exchange members and non-members. The use of co-location services is entirely voluntary.

As detailed in the proposed co-location fee schedule, the Exchange imposes a uniform, non-discriminatory set of fees for various co-location services, including: Fees for cabinet space usage, or options for future space usage;[4] installation and related power provision for hosted equipment; connectivity among multiple cabinets being used by the same customer as well as customer connectivity to the Exchange and telecommunications providers;[5] and related maintenance and consulting services. Fees related to cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment, or the re-selling of cabinet space.

Co-location customers are not provided any separate or superior means of direct access to the Exchange quoting and trading facilities. Nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among co-location customers themselves within in [sic] the datacenter. Likewise, BX does not make available to co-located customers any market data or data feed product or service for data going into, or out of, the Exchange systems that is not likewise available to all the Exchange members.[6] Finally, all orders sent to the Exchange market enter the marketplace through [sic] same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, the Exchange has created no special market technology or programming that is available only to co-located customers and the Exchange has organized its systems to minimize, to the greatest extent possible, any advantage for one customer versus another.

Co-location services are generally available to all qualified market participants who desire them. With the exception of customers participating in the Cabinet Proximity Option program, the Exchange allocates cabinets and power on a first-come/first-serve basis. Should available cabinet inventory shrink to 40 cabinets or less, the Exchange will limit new cabinet orders to a maximum of 4 cabinets each, and all new cabinets will be limited to a maximum power level of 5kW. Should available cabinet inventory shrink to zero, the Exchange will place firms seeking services on a waiting list based on that date the Exchange receives signed orders for the services from the firm. In order to be placed on the waiting list, a firm must have utilized all existing cabinets they already have in the datacenter. Once on the list, the firms, on a rolling basis, will allocated a single 5kW cabinet each time one becomes available. After receiving a cabinet, the firm will move to the bottom of the waiting list.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing codifies and makes transparent the uniform fees imposed by the Exchange's technology subsidiary for co-location services.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

[3] Currently, NASDAQ OMX BX provides its current co-location services through data centers located in the New York City and Mid-Atlantic areas.

[4] NASDAQ OMX BX is implementing a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available currently unused cabinet floor space in proximity to their existing equipment. Under the program, customers can reserve up to maximum of 20 cabinets which the Exchange will endeavor to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: Proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.

[5] These fees are for telecommunications connectivity only. Market Data fees are charged independently by NASDAQ OMX BX and other exchanges.

[6] Currently, the Exchange makes available to co-located customers a 10Gb fiber connection. The Exchange will likewise make available a 10Gb fiber connection to other customers in the first quarter of 2010. The Exchange has not received any requests for 10Gb fiber connections from firms that are not co-located.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–BX–2010–012 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–012. 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 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–2010–012 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2864 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61488; File No. SR–NASDAQ–2010–019]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Codify Prices for Co-Location Services

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASDAQ. 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 the Substance of the Proposed Rule Change**

NASDAQ is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to codify pricing for co-location services. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange's principal office, and at the Commission's Public Reference Room. NASDAQ will implement the proposed rule change on the first day of the month immediately following Commission approval (or on the date of approval, if on the first business day of a month).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ is proposing to codify fees for its existing co-location services. Co-location services are a suite of hardware, power, telecommunication, and other ancillary products and services that allow market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange and other NASDAQ OMX Group, Inc. markets. The Exchange provides co-location services and imposes fees through its wholly-owned subsidiary Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are housed.[3] Users of co-location services include private extranet providers, data vendors, as well as NASDAQ Exchange members and non-members. The use of co-location services is entirely voluntary.

As detailed in the proposed co-location fee schedule, NASDAQ imposes a uniform, non-discriminatory set of fees for various co-location services, including: Fees for cabinet space usage, or options for future space usage;[4] installation and related power

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[9] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ has provided co-location services at various data centers since approximately 2004. Currently, the Exchange provides its current co-location services through data centers located in the New York City and Mid-Atlantic areas.

[4] NASDAQ is implementing a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available currently unused cabinet floor space in

provision for hosted equipment; connectivity among multiple cabinets being used by the same customer as well as customer connectivity to the Exchange and telecommunications providers;[5] and related maintenance and consulting services. Fees related to cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment, or the re-selling of cabinet space.

Co-location customers are not provided any separate or superior means of direct access to NASDAQ quoting and trading facilities. Nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among co-location customers themselves within in [sic] the datacenter. Likewise, NASDAQ does not make available to co-located customers any market data or data feed product or service for data going into, or out of, the Exchange systems that is not likewise available to all the Exchange members.[6] Finally, all orders sent to the Exchange market enter the marketplace through [sic] same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, the Exchange has created no special market technology or programming that is available only to co-located customers and the Exchange has organized its systems to minimize, to the greatest extent possible, any advantage for one customer versus another.

Co-location services are generally available to all qualified market participants who desire them. With the exception of customers participating in the Cabinet Proximity Option program, the Exchange allocates cabinets and power on a first-come/first-serve basis. Should available cabinet inventory shrink to 40 cabinets or less, the Exchange will limit new cabinet orders to a maximum of 4 cabinets each, and all new cabinets will be limited to a maximum power level of 5kW. Should available cabinet inventory shrink to zero, the Exchange will place firms seeking services on a waiting list based on that date the Exchange receives signed orders for the services from the firm. In order to be placed on the waiting list, a firm must have utilized all existing cabinets they already have in the datacenter. Once on the list, the firms, on a rolling basis, will allocated a single 5kW cabinet each time one becomes available. After receiving a cabinet, the firm will move to the bottom of the waiting list.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing codifies and makes transparent the uniform fees imposed by the Exchange's technology subsidiary for co-location services.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. 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, 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–NASDAQ–2010–019 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–019. 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

proximity to their existing equipment. Under the program, customers can reserve up to maximum of 20 cabinets which the Exchange will endeavor to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: Proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.

[5] These fees are for telecommunications connectivity only. Market Data fees are charged independently by NASDAQ and other exchanges.

[6] Currently, the Exchange makes available to co-located customers a 10Gb fiber connection. The Exchange will likewise make available a 10Gb fiber connection to other customers in the first quarter of 2010. The Exchange has not received any requests for 10Gb fiber connections from firms that are not co-located.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

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–NASDAQ–2010–019 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2861 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61485; File No. SR–OCC–2010–01]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options for Which the Premium and Exercise Price Are Expressed as a Multiple of the Per-Share Amount

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on January 14, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was 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 the Substance of the Proposed Rule Change

The proposed rule change would revise OCC's By-Laws and Rules to accommodate options for which the premium and exercise price are expressed on other than a per-unit basis.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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*

The purpose of this rule change is to revise OCC By-Law, Article I.A.5 (definition of "Aggregate Exercise Price") and OCC Rule 805(d)(2) to accommodate options for which the premium and exercise price are expressed as other than a per-unit basis. NYSE Amex LLC ("NYSE Amex") is proposing to trade physically-settled options on exchange-traded funds ("ETFs") with a unit of trading of 1,000 shares ("Grand Options") rather than the standard unit of trading of 100 shares.

When NYSE Amex previously introduced ETF options with units of trading of 1,000 shares, NYSE Amex followed the usual convention of quoting premiums and exercise prices as per-share amounts. The extended premium and aggregate exercise price were then calculated in the usual way by multiplying the per-share amount by the unit of trading (i.e. 1,000). In NYSE Amex's experience, this approach caused investor confusion because investors in some cases failed to realize that they were trading large-sized options until premiums equal to ten times the expected amount were debited from their accounts. To address this, NYSE Amex intends to modify the standard method of stating premiums and exercise prices for Grand Options by multiplying the per-share amount by 10. Extended premiums and exercise prices for such contracts would then be calculated by multiplying by 100 rather than the actual unit of trading of 1,000. NYSE Amex believes that, by increasing the size of the stated premiums and exercise prices by a factor of 10, the larger size of these options will be more apparent to investors.

To accommodate options for which the premium and exercise price are expressed as a multiple of the per-share amount, OCC proposes to make minor technical amendments to a few definitions in its By-Laws and to its rule governing expiration date exercise procedures. The changes being proposed can be viewed at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_10_01.pdf.*

OCC believes that the proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act[4] because the changes promote the prompt and accurate clearance and settlement of Grand Options, protect investors by reducing the likelihood of investor confusion, and permit Grand Options to be traded, cleared, and settled in the same basic manner as other currently available options and be subject to the same rules and procedures that have been successfully used by OCC to clear and settle other options. Furthermore, OCC states that the proposed rule change is not inconsistent with OCC's existing rules, including those proposed to be amended.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

### 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)(i) of the Act[5] and Rule 19b–4(f)(4)[6] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for

[9] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 C.F.R. 240.19b(f)(1).

which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule 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 No. SR–OCC–2010–01 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File No. SR–OCC–2010–01. 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 OCC's principal office and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_10_01.pdf.* 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 submission should refer to File No. SR–OCC–2010–01 and should be submitted on or before March 3, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2860 Filed 2–9–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61477; File No. SR–DTC–2010–01]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Invitation To Cover Shorts Capability To Include Short Positions Outside DTC

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 15, 2010, The Depository Trust Company ("DTC") 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 primarily by DTC. DTC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the proposed rule change is to expand the Invitation to Cover Shorts ("ICS") capability to include short positions outside DTC.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.*

DTC rules require Participants to cover short positions immediately and provide 130% of the market value of the relevant security until the position is covered. DTC's ICS capability offers Participants a means to cover short positions by inviting tenders of securities from other Participants that hold long positions.[5] Communication about these requests is facilitated through DTC's automated Participant Terminal System ("PTS").[6]

Participants initiate ICS requests by broadcasting a message to DTC.[7] DTC in turn automatically identifies Participants with long positions in the relevant security[8] and sends those Participants an automated PTS message asking for a response if the Participant wants to tender its securities. Participants inviting the tender are informed by DTC of any affirmative responses and the Participant responding to the tender offer is asked to send DTC an e-mail or letter of authorization stating its willingness to sell its shares at the price agreed upon

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185. DTC filed a proposed rule change with the Commission on April 4, 1989 to establish procedures for covering short positions using DTC's Participant Terminal System. The purpose of the rule change was to provide a means of reducing short positions at DTC. The ICS program is detailed in DTC's PTS Function Guide.

[6] If the Participant initiating the ICS request holds a security similar to the security in which it has a short position, then its invitation may include an offer to sell or swap the similar security.

[7] This message includes a quantity, price range, description, and CUSIP for the security. The Participant submitting the invitation also includes a contact name and phone number as well as any information about substitute securities.

[8] Because of its role as a securities depository, DTC is uniquely positioned to identify Participants with long positions in certain securities.

with the short Participant.[9] Once the appropriate authorizations are received, DTC staff inputs journal adjustments to debit the long Participant's account and credit the short Participant's account. A special payment order is then created by DTC to move the corresponding funds from the settlement account of the short Participant to that of the long Participant.

Participants recently asked DTC to expand its ICS capability to include short positions outside DTC.[10] Expanding ICS in this way would help Participants holding short positions outside DTC to avoid financial risks by locating Participants with long positions in those securities. Participants using the ICS capability for short positions outside DTC would be subject to similar procedures as apply to current use of the ICS capability. Once Participants agree to the transaction, DTC would either process it through the journal entry method described above or ask the Participants to communicate directly with one other and settle the obligation through a DTC delivery order.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[11] and the rules and regulations thereunder applicable to DTC because the proposed rule change expands the existing ICS capability to increase efficiency by eliminating short positions of DTC Participants and will not adversely affect the safeguarding of securities and funds in DTC's custody or control.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

[9] Involvement in ICS transactions is purely discretionary by Participants. DTC facilitates communication and keeps Participant identities confidential until both parties agree to the transaction.

[10] Until DTC develops an automated solution, these requests would be processed manually in a manner similar to the existing PTS application.

[11] 15 U.S.C. 78q–1.

**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)(iii) of the Act[12] and Rule 19b–4(f)(4)[13] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Electronic comments may be submitted by using 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–DTC–2009–01 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–DTC–2010–01. 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 Section, 100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2009/dtc/2010–01.pdf.* 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–DTC–2010–01 and should be submitted on or before March 3, 2010.

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(4).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2859 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61476; File No. SR–DTC–2010–02]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees Related to Invitation to Cover Short Requests

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 15, 2010, The Depository Trust Company ("DTC") 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 primarily by DTC. DTC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[2] and Rule 19b–4(f)(2)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the proposed rule change is to establish fees related to Invitation To Cover Short Requests.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to establish fees related to Invitation To Cover Short Requests. The proposed changes would create a Generation of Invitation To Cover Short Request fee of $300 per each submission received by DTC and would also create an hourly Extraordinary Processing/Research Fee of $100 per hour to cover the significant manual processing cost associated with the service. These proposed fee revisions are consistent with DTC's overall pricing philosophy of aligning service fees with underlying costs and of discouraging manual and exception processing. The proposed changes to DTC's Fee Schedule can be found in Exhibit 5 to proposed rule change SR–DTC–2010–02 at *http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010–02.pdf.*

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to DTC because the proposed rule change updates DTC's fee schedule and provides equitable allocation of fees among its Participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**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[6] and Rule 19b–4(f)(2)[7] thereunder because the proposed rule change is establishing or changing a due, fee, or other charge applicable only to a member. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Electronic comments may be submitted by using 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–DTC–2010–02 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–DTC–2010–02. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010–02.pdf.* 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–DTC–2010–02 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2858 Filed 2–9–10; 8:45 am]

BILLING CODE 8011–01–P

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61483; File Nos. SR–CBOE–2010–007; SR–ISE–2009–106; SR–NYSEAmex-2009–86; and SR–NYSEArca-2009–110]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, NYSE Amex LLC, and NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing and Trading Options on the ETFS Gold Trust and the ETFS Silver Trust

February 3, 2010.

Three options exchanges filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder to list and trade options on shares of the ETFS Gold Trust and the ETFS Silver Trust (collectively "ETFS Options"). Specifically, NYSE Amex LLC ("NYSE Amex") and NYSE Arca, Inc. ("NYSE Arca") both submitted their proposals on December 4, 2009 and the International Securities Exchange, LLC ("ISE") submitted its proposal on December 10, 2009. Each proposed rule change was published for comment in the **Federal Register** on December 30, 2009 for a 21-day comment period.[3] No comments were received on the proposed rule changes. This order approves the proposed rule changes.

In addition, on January 27, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Commission the proposed rule change as described in Items I and II below, which items have been prepared by the CBOE. The proposal submitted by the CBOE is substantively identical to the proposals of NYSE Amex, NYSE Arca, and ISE. Pursuant to Section 19(b)(1) of the Act [4] and Rule 19b–4 [5] thereunder, the Commission is publishing this notice to solicit comments on the CBOE proposed rule change from interested persons and is approving the proposal on an accelerated basis.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules to enable the listing and trading on the Exchange of options on the ETFS Silver Trust and the ETFS Gold Trust. The text of the rule proposal 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 III 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 Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Recently, the Commission authorized CBOE to list and trade options on the SPDR Gold Trust,[6] the iShares COMEX Gold Trust and the iShares Silver Trust.[7] Now, the Exchange proposes to list and trade options on the ETFS Silver Trust ("SIVR") and the ETFS Gold Trust ("SGOL").

Under current Rule 5.3, only Units (also referred to herein as exchange traded fund ("ETFs")) representing (i) interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments), or (ii) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust, or (iii) commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency, or (iv) represent interests in the streetTRACKS Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust, or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV are eligible as underlying securities for options traded on the Exchange.[8] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include SIVR and SGOL.

Apart from allowing SIVR and SGOL to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in Interpretation and Policy .06 to Rule 5.3.

Specifically, in addition to satisfying the aforementioned listing requirements, Units must meet either (1) the criteria and guidelines under Rule 5.3 and Interpretation and Policy .01 to Rule 5.3, *Criteria for Underlying Securities;* or (2) they must be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 61223 (December 22, 2009), 74 FR 69161; 61222 (December 22, 2009), 74 FR 69182; and 61228 (December 22, 2009), 74 FR 69180.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR–CBOE–2005–11).

[7] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (order approving SR–CBOE–2008–72).

[8] *See* Interpretation and Policy .06 to Rule 5.3.

the issuer, as provided in the respective prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on SIVR and SGOL. Specifically, under Interpretation and Policy .08 to Rule 5.4, options on Units may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Units, there are fewer than 50 record and/or beneficial holders of the Units for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which Units are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, SIVR and SGOL shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering SIVR and SGOL, if SIVR and SGOL ceases to be an "NMS stock" as provided for in paragraph (f) of Interpretation and Policy .01 of Rule 5.4 or SIVR and SGOL is halted from trading on its primary market.

The addition of SIVR and SGOL to Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits [9] or margin.[10]

The Exchange represents that its surveillance procedures applicable to trading in options on SIVR and SGOL will be similar to those applicable to all other options on other Units currently traded on the Exchange. The Exchange represents that its surveillance procedures applicable to trading in options on SIVR and SGOL will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. ("NYMEX") (a member of the Intermarket Surveillance Group) related to any financial instrument that is based, in whole or in part, upon an interest in or performance of gold or silver.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [11] of the Act, in general, and furthers the objectives of Section 6(b)(5) [12] 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, and to remove impediments to and perfect the mechanisms of a free and open market in a manner consistent with the protection of investors and the public interest. In particular, the Exchange believes that amending its rules to accommodate the listing and trading of options on the ETFS Gold Trust and the ETFS Silver Trust will benefit investors by providing them with valuable risk management tools.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received comments on the proposal.

## III. 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–2010–007 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–CBOE–2010–007. 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 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–CBOE–2010–007 and should be submitted on or before March 3, 2010.

## IV. Commission Findings

After careful consideration, the Commission finds that the proposed rule changes submitted by CBOE, ISE, NYSE Amex, and NYSE Arca (collectively, the "Proposals") are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [13] and, in particular, the requirements of Section 6 of the Act.[14] Specifically, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed 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. In accordance with the Memorandum of Understanding entered into between the Commodity Futures Trading Commission ("CFTC") and the Commission on March 11, 2008, and in

[9] *See* Rules 4.11, *Position Limits,* and 4.12, *Exercise Limits.*

[10] *See* Rule 12.3, *Margin Requirements.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

As national securities exchanges, each of the CBOE, ISE, NYSE Amex, and NYSE Arca is required under Section 6(b)(1) of the Act [16] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade ETFS Options will also be subject to best execution obligations and FINRA rules.[17] Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFS Options.[18] Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[19]

ETFS Options will trade as options under the trading rules of each of the exchanges. These rules, among other things, are designed to avoid trading through better displayed prices for ETFS Options available on other exchanges and, thereby, satisfy each exchange's obligation under the Options Order Protection and Locked/Crossed Market Plan.[20] Series of the ETFS Options will be subject to exchange rules regarding continued listing requirements, including standards applicable to the underlying ETFS Silver and ETF Gold Trusts. Shares of the ETFS Silver and ETFS Gold Trusts must continue to be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.[21] In addition, the underlying shares must continue to be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value.[22] If the ETFS Silver or ETFS Gold Trust shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFS Options.

CBOE, ISE, NYSE Amex, and NYSE Arca have all represented that they have surveillance programs in place for the listing and trading of ETFS Options. For example, these exchanges may obtain trading information via the ISG from the NYMEX related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, silver or gold. Additionally, the listing and trading of ETFS Options will be subject to the exchanges' rules pertaining to position and exercise limits [23] and margin.[24]

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[25] for approving the proposed rule change of CBOE prior to the thirtieth day after the date of publication of notice in the **Federal Register.** The Commission notes that CBOE's proposal is substantively identical to the proposals of ISE, NYSE Amex, and NYSE Arca, which were published for a 21-day comment period and generated no comments. Therefore, the Commission does not believe that the CBOE proposal raises any new regulatory issues different from that of the ISE, NYSE Amex, and NYSE Arca proposals. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[26] to approve the CBOE proposal on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule changes (SR–ISE–2009–106; SR–NYSEAmex–2009–86; and SR–NYSEArca–2009–110) be, and are hereby, approved and that the proposed rule change (SR–CBOE–2010–007) be, and is hereby, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2945 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78f(b)(1).

[17] *See* NASD Rule 2320.

[18] *See* CBOE Rule 9.15; ISE Rule 616; NYSE Amex Rule 926; and NYSE Arca Rule 9.18(g).

[19] *See* FINRA Rule 2360(b); CBOE Rules 9.7 and 9.9; ISE Rules 608 and 610; NYSE Amex Rule 923; and NYSE Arca Rule 918(b)–(c).

[20] *See* CBOE Rule 6.81; ISE Rule 1902; NYSE Amex Rule 991NY; and NYSE Arca Rule 6.94. Specifically, each of the exchanges is a participant in the Options Order Protection and Locked/Crossed Market Plan.

[21] 17 CFR 242.600.

[22] *See* Interpretation and Policy .06 to CBOE Rule 5.3; ISE Rule 502(a)–(b); NYSE Amex Rule 915 Commentary .06; and NYSE Arca Rule 5.3(a)–(b).

[23] *See* CBOE Rules 4.11 and 4.12; ISE Rules 412 and 414; NYSE Amex Rules 904 and 905; and NYSE Arca Rules 6.8 and 6.9.

[24] *See* CBOE Rule 12.3; ISE Rule 1202; NYSE Amex Rule 462; and NYSE Arca Rules 4.15 and 4.16. *See also* FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78s(b)(5).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61482; File No. SR–NYSEArca–2010–06]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding 75 Options Classes to the Penny Pilot Program

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2010, 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 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 designate 75 options classes to be added to the Penny Pilot Program for Options ("Penny Pilot" or "Pilot") on February 1, 2010. There are no changes to the rule text. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

NYSE Arca proposes to identify the next 75 options classes to be added to the Penny Pilot effective February 1, 2010. The Exchange recently received approval to extend and expand the Pilot through December 31, 2010.[3] In that filing, the Exchange had proposed expanding the Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.[4]

NYSE Arca proposes adding the following 75 options classes to the Penny Pilot on February 1, 2010, based on national average daily volume from July 1, 2009 through December 31, 2009:

| Nat'l ranking | Symbol | Company name | Nat'l ranking | Symbol | Company name |
|---|---|---|---|---|---|
| 131 | ABT | Abbott Laboratories | 192 | LEAP | Leap Wireless International Inc. |
| 169 | AEM | Agnico-Eagle Mines Ltd | 205 | LLY | Eli Lilly & Co. |
| 151 | AET | Aetna Inc | 162 | LO | Lorillard Inc. |
| 156 | AFL | Aflac Inc | 152 | LOW | Lowe's Cos Inc. |
| 181 | AKAM | Akamai Technologies Inc | 176 | M | Macy's Inc. |
| 178 | AMAT | Applied Materials Inc | 155 | MCO | Moody's Corp. |
| 117 | AMR | AMR Corp | 217 | MET | MetLife Inc. |
| 166 | ANF | Abercrombie & Fitch Co | 187 | MMM | 3M Co. |
| 172 | APC | Anadarko Petroleum Corp | 140 | MU | Micron Technology Inc. |
| 209 | ATVI | Activision Blizzard Inc | 177 | NUE | Nucor Corp. |
| 145 | BBD | Banco Bradesco SA | 157 | OXY | Occidental Petroleum Corp. |
| 190 | BCRX | BioCryst Pharmaceuticals Inc | 158 | PARD | Poniard Pharmaceuticals Inc. |
| 218 | BK | Bank of New York Mellon Corp/The. | 150 | PEP | PepsiCo Inc/NC. |
| 194 | BRCM | Broadcom Corp | 141 | PM | Philip Morris International Inc. |
| 184 | BTU | Peabody Energy Corp | 185 | PNC | PNC Financial Services Group Inc. |
| 144 | BX | Blackstone Group LP | 216 | QID | ProShares UltraShort QQQ. |
| 200 | CAL | Continental Airlines Inc | 149 | SHLD | Sears Holdings Corp. |
| 211 | CF | CF Industries Holdings Inc | 175 | SLM | SLM Corp. |
| 142 | CMCSA | Comcast Corp | 212 | SLW | Silver Wheaton Corp. |
| 203 | CSX | CSX Corp | 215 | SQNM | Sequenom Inc. |
| 143 | CVS | CVS Caremark Corp | 153 | STEC | STEC Inc. |
| 174 | CX | Cemex SAB de CV | 219 | STX | Seagate Technology. |
| 183 | DD | EI du Pont de Nemours & Co | 202 | SU | Suncor Energy Inc. |
| 146 | ERTS | Electronic Arts Inc | 207 | TCK | Teck Resources Ltd. |
| 121 | EWJ | iShares MSCI Japan Index Fund | 196 | TEVA | Teva Pharmaceutical Industries Ltd. |
| 186 | FDX | FedEx Corp | 135 | TLT | iShares Barclays 20+ Year Treasury Bond Fund. |
| 118 | FNM | Federal National Mortgage Association. | 214 | TZA | Direxion Daily Small Cap Bear 3X Shares. |
| 182 | FRE | Federal Home Loan Mortgage Corp. | 168 | UAUA | UAL Corp. |
| 179 | GILD | Gilead Sciences Inc | 154 | URE | ProShares Ultra Real Estate. |
| 198 | GLW | Corning Inc | 180 | UTX | United Technologies Corp. |
| 170 | HBC | HSBC Holdings PLC | 204 | WFR | MEMC Electronic Materials Inc. |
| 197 | HES | Hess Corp | 115 | WFT | Weatherford International Ltd. |
| 161 | HL | Hecla Mining Co | 165 | WLP | WellPoint Inc. |
| 193 | HOG | Harley-Davidson Inc | 191 | XLB | Materials Select Sector SPDR Fund. |
| 206 | HON | Honeywell International Inc | 173 | XRX | Xerox Corp. |
| 210 | JOYG | Joy Global Inc | 148 | XTO | XTO Energy Inc. |
| 213 | JWN | Nordstrom Inc | 130 | YRCW | YRC Worldwide Inc. |
| 137 | KFT | Kraft Foods Inc | | | |

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes to be added to the Pilot in a manner consistent with prior approvals and filings.

*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

[3] *See* Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (order approving SR–NYSEArca–2009–44).

[4] Index products would be included in the expansion if the underlying index level was under 200.

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 effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Exchange Act [5] and Rule 19b–4(f)(1) thereunder,[6] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–06 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-2010–06. 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 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 NYSE Arca's principal office and on its Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca-2010–06 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2953 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61496; File No. SR–NYSEArca–2009–113]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To List and Trade the Sprott Physical Gold Trust

February 4, 2010.

**I. Introduction**

On December 15, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade units [3] of the Sprott Physical Gold Trust (the "Trust") pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on January 4, 2010.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

The Exchange proposes to list and trade units ("Units") of the Trust under NYSE Arca Equities Rule 8.201. Sprott Asset Management LP is the sponsor or manager of the Trust ("Sponsor" or "Manager").[5] RBC Dexia Investor Services Trust is the trustee of the Trust. The Royal Canadian Mint is the custodian for the physical gold bullion owned by the Trust and RBC Dexia serves as the custodian of the Trust's assets other than physical gold bullion.

The Units will be issued in an initial public offering. The Trust may issue additional Units: (i) In future offerings if the gross proceeds received by the Trust per Unit is not less than 100% of the most recently calculated net asset value ("NAV") or (ii) by way of a distribution in Units in connection with an income distribution. The Trust will not issue Units on an ongoing or daily basis. At the start of trading, the Trust will issue a minimum of 1,000,000 Units to at least 400 holders ("Unitholders"). The Exchange states that the Units satisfy the remaining criteria of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[6]

The Trust's investment objective is for the Units to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations. The Trust expects to own only London Good Delivery physical gold bullion. The Trust is not actively managed and does not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of gold bullion.

The Exchange states that the Trust does not intend to create additional Units. The Units will be redeemable monthly at the option of the holder for physical gold bullion or for cash subject to the certain conditions. Generally, Units redeemed for physical gold will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Each unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of units.

[4] *See* Securities Exchange Act Release No. 61236 (December 23, 2009), 75 FR 170 ("Notice").

[5] The Manager is a limited partnership existing under the laws of Ontario, Canada, and acts as manager of the Trust pursuant to the Trust's trust agreement and the management agreement. The Manager provides management and advisory services to the Trust. Additional details regarding the Trust are set forth in the Registration Statement on Form F–1 for the Sprott Physical Gold Trust, filed with the Commission on December 9, 2009 (No. 333–163601) ("Registration Statement").

[6] With respect to application of Rule 10A–3 under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

be entitled to a redemption price equal to 100% of the NAV of the redeemed Units on the last business day of the calendar month in which the redemption request is processed, less redemption and delivery expenses. Units redeemed for cash will be entitled to a redemption price equal to 95% of the lesser of: (i) The volume-weighted average trading price of the Units traded on the NYSE Arca or, if trading has been suspended on NYSE Arca, the trading price of the units traded on the Toronto Stock Exchange, for the last five business days of the month in which the redemption request is processed and (ii) the NAV of the redeemed Units as of 4 p.m., Toronto time, on the last business day of such month.[7]

Additional information regarding the Trust, the Units, the Trust's investment objectives, strategies, policies, and restrictions, fees and expenses, creation and redemption of Units, the gold market, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and in the Registration Statement, as applicable.[8]

## III. Discussion and Commission's Findings

The Commisison has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

In addition, the Commission finds that the proposal to list and trade Units on the Exchange is consistent with Section 11(a)(1)(C)(iii) of the Act,[12] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Units will be available via the Consolidated Tape Association. The Trust's Web site will provide an intraday indicative value ("IIV") per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., New York time). The IIV will be calculated based on a price of gold derived from updated bids and offers indicative of the spot price of gold.[13] In addition, the Web site for the Trust will contain the following information, on a per Unit basis, for the Trust: (a) The mid-point of the bid-ask price[14] at the close of trading in relation to the NAV as of the time the NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site will provide the last sale price of the Units as traded in the U.S. market. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

The Commission further believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants. The Commission notes that the Exchange has received a representation from the Trust that, prior to listing, the NAV would be calculated daily and made available to all market participants at the same time.[15] Additionally, if the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[16] Further, the Exchange will consider suspension of trading pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12 month period following commencement of trading: (1) The value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, custodian or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[17]

In addition, NYSE Arca Equities Rule 8.201 sets forth certain requirements for ETP Holders acting as Market Makers in the Units. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying gold, related futures or options on futures or any other related derivative (including the Units).

In support of this proposal, the Exchange has made representations including:

[7] *See* Notice and the Registration Statement, *supra* notes 4 and 5, respectively, for additional information.

[8] *Id.*

[9] 15 U.S.C. 78f.

[10] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[13] The IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[14] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[15] *See supra* note 4.

[16] *See* e-mail, dated February 4, 2010, from Tim Malinowski, NYSE Arca, to Steve Varholik, Special Counsel, Division of Trading and Markets, Commission.

[17] *See* NYSE Arca Equities Rule 7.12.

(1) The Units will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.[18]

(3) 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 Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (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 Units; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [19] and the rules and regulations thereunder applicable to a national securities exchange.

[18] The Exchange notes that the New York Mercantile Exchange, of which the COMEX is a division, is an ISG member, however, the Tokyo Commodity Exchange, Inc. ("TOCOM") is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

[19] 15 U.S.C. 78f(b)(5).

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSEArca–2009–113) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2951 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61490; File No. SR–ISE–2010–10]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amending the Direct Edge ECN Fee Schedule

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members [3] to amend its fee schedule by (i) re-introducing a rebate; (ii) adding a fee for stocks priced less than $1 that remove liquidity on EDGA; (iii) eliminating certain tables on the fee schedule and (iv) making typographical and clarifying changes to the fee schedule. All of the changes described herein are applicable to ISE Members.

All of the changes described herein are applicable to ISE Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

### 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

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.

*Re-Introduction of Ultra Tier Rebate*

In SR–ISE–2009–68,[4] the Exchange amended the criteria for meeting the Ultra Tier by allowing ISE Members to receive a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID posts 1% of the total consolidated volume ("TCV") in average daily volume ("ADV"). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities. For competitive reasons, the Exchange is now seeking to re-introduce an Ultra Tier rebate of $0.0031 per share.

The Ultra Tier rebate ($0.0031 per share), which is a higher rebate than the next best rebate ($0.0029 per share) for adding liquidity on EDGX, is also more difficult to reach, as a higher volume threshold is required based on recent TCV figures. For example, 1% of the average TCV for January 2010 (8.9 billion) was approximately 89 million shares. This threshold far exceeds the criteria (no minimum share volume requirement) to meet the next best rebate of $0.0029 per share. In addition, the higher rebate also results in part from lower administrative costs associated with higher volume.

[4] *See* Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009) (SR–ISE–2009–68).

*Additional Changes to the Fee Schedule*

Effective January 1, 2010,[5] DECN adjusted its pricing model to be more consistent with other exchanges (even though DECN is not an exchange),[6] by de-linking the pricing structures of DECN to eliminate pricing offers that are contingent on activity across both platforms. Secondly, the Exchange simplified its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission). The Exchange believes that these same goals are also advanced for the most part in this filing, which proposes technical and clarifying changes to DECN's fee schedule.

To effectuate the foregoing, the Exchange deleted certain charges in footnote 1 of the fee schedule, including one whereby ISE Members were charged $0.0002 per share to add liquidity on EDGA unless the attributed MPID added a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Prior to January 1, 2010, any attributed MPID meeting the aforementioned minimum was not charged to add liquidity on EDGA. Since this charge was deleted from footnote 1, the Exchange proposes to delete the corresponding footnote 1 from flags B, V, Y, 3, and 4 from the EDGA column as this footnote no longer applies.

In order to further simplify its fee schedule for Members, the Exchange proposes to delete the table on the fee schedule entitled "Fees per Share for Special Order Types" as the Exchange believes that the information on this schedule is repetitive of the information in the "liquidity flags and associated fees" table below it. As a result of this proposed deletion, the Exchange proposes to relocate footnote numbers 4 and 5. Footnote 4 is proposed to be re-located to "Flag E" and added to "Flag 5" to clarify it. Footnote 5 is proposed to be relocated to "Flag O." These are the corresponding areas where these references belong.

The Exchange proposes to re-word the first sentence in footnote 1 to clarify that adding can include placing hidden orders.

In addition, the Exchange proposes to add a fee to its schedule to provide that stocks priced less than $1 will be charged 0.20% of the dollar value if they do not meet the minimum average daily share volume of 50,000 shares on EDGA to qualify for the removal rate. A conforming footnote 1 is proposed to be added in the first table on the fee schedule (next to the word "Free") for removing liquidity in stocks less than $1.00 on EDGA.

In SR–ISE–2009–108,[7] for securities priced less than $1, the Exchange changed the fee for adding liquidity on EDGX from free to a rebate of 0.15% of the dollar value of the transaction. The Exchange proposes to correct a typographical error on its current schedule by adding parenthesis around the "0.15% of dollar value" to clarify that this is a rebate, and *not* a charge, for adding liquidity on EDGX in securities priced less than $1.

For Flag P, the Exchange proposes to correct a typographical error on the schedule by inverting the columns that are currently displayed. For EDGX, flag P should read "N/A" and for EDGA it should read a rebate of $0.0025 per share (*i.e.,* (0.0025)).

The Exchange proposes to clarify Footnote 3. The second sentence of this footnote states that the "rebate for adding liquidity on the NYSE of $0.0010 per share." This information is already conveyed in Flag F and is proposed to be deleted in order to simplify and clarify the fee schedule. The first sentence of footnote 3 is also proposed to be deleted as it is repetitive of the amended third sentence in footnote 3 ("stocks prices below $1.00 on the NYSE are charged $0.0018 per share when removing liquidity.") As a result, on Flag J, footnote 3 is proposed to be deleted as the reference no longer applies. However, footnote 3 is proposed to be relocated to Flag D in order to further clarify it.

The changes discussed in this filing will become operative on February 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as 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 particular, simplifying the rate structure for Members provides pricing incentives to market participants that route orders to DECN, allowing DECN to remain competitive. ISE notes that DECN 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 proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to DECN. The proposed re-introduction of an Ultra Tier rebate also provides an incentive to Members who add significant order flow to EDGX. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECN rather than competing venues. The ISE also believes that the proposed rates are equitable in that they apply uniformly to all Members. Finally, to adjust DECN's pricing model to be more consistent with other exchanges (even though DECN is not an exchange), the Exchange desires to simplify part of its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to EDGA/EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission).

*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

[5] *See* Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010) (SR–ISE–2009–108).

[6] On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the **Federal Register** for notice and comment. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009).

[7] *See* Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

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) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–10 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–ISE–2010–10. 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,[12] 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 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 Number SR–ISE–2010–10 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(2).

[12] The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

[13] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61478; File No. SR–CBOE–2010–009]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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)(iii).

[4] 17 CFR 240.19b–4(f)(6).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to amend [sic] its rules relating to the Penny Pilot Program. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, at the Commission's Public Reference Room and on the Commission's Web site *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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

CBOE proposes to amend its rules in connection with the expansion of the Penny Pilot on February 1, 2010. Specifically, CBOE proposes to amend Rule 6.42 to provide that the minimum increment for all option series in the IWM and SPY option classes will be $0.01 effective February 1, 2010. Currently, the minimum increments in these two classes are $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). CBOE notes that the SEC recently approved an NYSEArca rule filing which provides that the minimum increment for all option series in the IWM and SPY option classes will be $0.01 effective February 1, 2010.[5]

CBOE also proposes to identify the 75 option classes that will be added to the Penny Pilot Program beginning on February 1, 2010. CBOE recently extended and expanded the Penny Pilot Program through December 31, 2010.[6] As described in its filing, the Pilot

[5] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), granting partial approval of SR–NYSEArca–2009–44, as modified by Amendment No. 4 thereto.

[6] *See* Securities Exchange Act Release No. 60864 (October 22, 2009), granting immediate effectiveness to SR–CBOE–2009–76.

Program will be expanded by adding 300 option classes, in groups of 75 classes each quarter on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010.[7] The option classes will be identified based on national average daily volume in the six calendar months preceding their addition to the Pilot Program using data compiled by The Options Clearing Corporation, except that the month immediately preceding their addition to the Pilot Program will not be utilized for purposes of the six-month analysis.

The following 75 option classes will be added to the Pilot Program beginning on February 1, 2010:

| Symbol | Company name | Symbol | Company name |
|---|---|---|---|
| ABT | Abbott Laboratories. | LEAP | Leap Wireless International Inc. |
| AEM | Agnico-Eagle Mines Ltd. | LLY | Eli Lilly & Co. |
| AET | Aetna Inc. | LO | Lorillard Inc. |
| AFL | Aflac Inc. | LOW | Lowe's Cos Inc. |
| AKAM | Akamai Technologies Inc. | M | Macy's Inc |
| AMAT | Applied Materials Inc. | MCO | Moody's Corp. |
| AMR | AMR Corp. | MET | MetLife Inc. |
| ANF | Abercrombie & Fitch Co. | MMM | 3M Co. |
| APC | Anadarko Petroleum Corp. | MU | Micron Technology Inc. |
| ATVI | Activision Blizzard Inc. | NUE | Nucor Corp. |
| BBD | Banco Bradesco SA. | OXY | Occidental Petroleum Corp. |
| BCRX | BioCryst Pharmaceuticals Inc. | PARD | Poniard Pharmaceuticals Inc. |
| BK | Bank of New York Mellon Corp/The. | PEP | PepsiCo Inc/NC. |
| BRCM | Broadcom Corp. | PM | Philip Morris International Inc. |
| BTU | Peabody Energy Corp. | PNC | PNC Financial Services Group Inc. |
| BX | Blackstone Group LP. | QID | ProShares UltraShort QQQ. |
| CAL | Continental Airlines Inc. | SHLD | Sears Holdings Corp. |
| CF | CF Industries Holdings Inc. | SLM | SLM Corp. |
| CMCSA | Comcast Corp. | SLW | Silver Wheaton Corp. |
| CSX | CSX Corp. | SQNM | Sequenom Inc. |
| CVS | CVS Caremark Corp. | STEC | STEC Inc. |
| CX | Cemex SAB de CV. | STX | Seagate Technology. |
| DD | EI du Pont de Nemours & Co. | SU | Suncor Energy Inc. |
| ERTS | Electronic Arts Inc. | TCK | Teck Resources Ltd. |
| EWJ | iShares MSCI Japan Index Fund. | TEVA | Teva Pharmaceutical Industries Ltd. |
| FDX | FedEx Corp. | TLT | iShares Barclays 20+ Year Treasury Bond Fund. |
| FNM | Federal National Mortgage Association. | TZA | Direxion Daily Small Cap Bear 3X Shares. |
| FRE | Federal Home Loan Mortgage Corp. | UAUA | UAL Corp. |
| GILD | Gilead Sciences Inc. | URE | ProShares Ultra Real Estate. |
| GLW | Corning Inc. | UTX | United Technologies Corp. |
| HBC | HSBC Holdings PLC. | WFR | MEMC Electronic Materials Inc. |
| HES | Hess Corp. | WFT | Weatherford International Ltd. |
| HL | Hecla Mining Co. | WLP | WellPoint Inc. |
| HOG | Harley-Davidson Inc. | XLB | Materials Select Sector SPDR Fund. |
| HON | Honeywell International Inc. | XRX | Xerox Corp. |
| JOYG | Joy Global Inc. | XTO | XTO Energy Inc. |
| JWN | Nordstrom Inc. | YRCW | YRC Worldwide Inc. |
| KFT | Kraft Foods Inc. | | |

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the "Act") 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.[8] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[9] 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. In particular, the proposed rule change allows for an expansion of the Penny Pilot Program for the benefit of market participants and identifies the option classes to be added to the Pilot Program in a manner consistent with CBOE's rule filing SR–CBOE–2009–76 to extend and expand the Pilot Program. The proposed rule change also allows for reductions in the minimum increments in IWM and SPY, which has been shown to reduce spreads.

*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 prior to 30 days from the date on which it was filed, or such shorter

[7] The classes to be added are among the most actively-traded, multiply-listed option classes that are not currently in the Pilot Program, excluding option classes with high premiums. An option class would be designated as "high premium" if, at the time of selection, the underlying security was priced at $200 per share or above, or the underlying index level was at 200 or above.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is based on a recent Commission-approved proposal submitted by another options exchange [13] and therefore does not raise any novel regulatory issues. Further, waiving the operative delay will allow the Exchange to commence quoting all series of IWM and SPY in increments of $0.01 effective February 1, 2010, contemporaneously with other options exchanges. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–009 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–009 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. CBOE has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See supra* note 5.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61489; File No. SR–CBOE–2010–008]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Co-location Service Fees

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2010, Chicago Board Options Exchange, Inc. ("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 the Proposed Rule Change

Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") proposes to amend its Fees Schedule relating to co-location service fees. The text of the proposed rule change is availableon the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

For a monthly fee, the Exchange provides members with cabinet space in CBOE's building for placement of network and server hardware. The fee is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

$10 per month per "U" of shelf space (which is equal to 1.75 inches).[3] A member also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange's servers, at no additional charge. This "co-location service" provides members with close physical proximity to the Exchange's electronic trading system, which helps meet their need for high performance processing and low latency.

The co-location service is available to any member that requests the service and pays the monthly fee.[4] The Exchange believes that for the foreseeable future it has sufficient space to accommodate all members who may request the co-location service. Other than the co-location service, the Exchange does not provide any co-locating member with any advantage over any other co-locating member or any non-co-locating member with respect to access to the Exchange's trading system. The Exchange's systems are designed to minimize, to the extent possible, any advantage for one member over another. The foregoing statements apply equally to both inbound and outbound data.

The Exchange proposes to clarify its Fees Schedule relating to co-location fees in a couple of respects. First, the Exchange proposes to move the co-location fees from Section 17 of the Fees Schedule (Hybrid Fees) to Section 8 (Facility Fees) because these fees are more accurately described as facility fees. Second, the Exchange proposes to clarify that the co-location fees are charged in increments of 4 "U" (which is equal to 7 inches) because the cabinet space is available in 4 U increments.

2. Statutory Basis

By clarifying the Exchange's fees for its co-location service and providing a fuller description of the service, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[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 its members and other persons using its facilities. In addition, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(5)[7] of the Act in that it is designed to 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, and, in general, to protect investors and the public interest.

*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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–008 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–2010–008. 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–2010–008 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2955 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[3] *See* Securities Exchange Act Release No. 57191 (January 24, 2008), 73 FR 5611 (January 30, 2008). The fee for a Sponsored User is $20 per month per "U". *See* Securities Exchange Act Release No. 58189 (July 18, 2008), 73 FR 43274 (July 24, 2008).

[4] A member using the co-location service may also pay certain CBOEdirect Connectivity Charges that are set forth in Section 16 of the Fees Schedule. These fees are charged for member connectivity to CBOEdirect regardless of whether or not a member is using the co-location service. These fees include a $40 per month "CMi Application Server" fee for server hardware used to connect to the CBOE CMi API, a $40 per month "Network Access Port" fee for use of the CMi API and a $40 per month "FIX Port" fee for use of the FIX API. *See* Securities Exchange Act Release No. 57191, supra footnote 1. Each of the foregoing fees are $80 per month for a Sponsored User. *See* Securities Exchange Act Release No. 58189, *supra* footnote 1.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61493; File No. SR–CHX–2010–03]**

## Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Provide Credit for Transactions Involving Issues Priced Less Than One Dollar

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) 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

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective February 1, 2010, to change its transaction fees and rebates to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

### 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

Through this filing, the Exchange would amend its Fee Schedule to increase the provide credit to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System.

The Exchange proposes to increase the provide credit in the transactions described above from 0.10% to 0.15% of the trade value.[5] The Exchange believes that the increased rebate will help attract additional orders to be displayed and executed on our trading facilities. The Exchange notes that some of our competitors have recently raised their provide rebates for securities priced under $1, and that our proposed increase will help us remain competitive with these entities.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(4) of the Act [8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the change to the fee schedule would provide incentives to Participants to increase the amount of liquidity provided on our trading facilities for securities priced less than $1, which may contribute to an increase in trading volume on the Exchange and in the income derived therefrom.

*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 Changes Received From Members, Participants or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(B)(3)(A)(ii) [*sic*] of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder [10] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose 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–CHX–2010–03 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–2010–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] "Trade value" is defined in our Fee Schedule as "a dollar amount equal to the price per share multiplied by the number of shares executed."

[6] The Direct Edge ECN raised its provide credit to 0.15% for transactions under $1 in Tape A, B and C securities for its EDGX trading platform beginning in the month of January 2010.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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–CHX–2010–03 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2949 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61490; File No. SR–ISE–2010–10]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amending the Direct Edge ECN Fee Schedule

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members[3] to amend its fee schedule by (i) re-introducing a rebate; (ii) adding a fee for stocks priced less than $1 that remove liquidity on EDGA; (iii) eliminating certain tables on the fee schedule and (iv) making typographical and clarifying changes to the fee schedule. All of the changes described herein are applicable to ISE Members.

All of the changes described herein are applicable to ISE Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.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 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*

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.

Re-introduction of Ultra Tier Rebate

In SR–ISE–2009–68,[4] the Exchange amended the criteria for meeting the Ultra Tier by allowing ISE Members to receive a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID posts 1% of the total consolidated volume ("TCV") in average daily volume ("ADV"). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities. For competitive reasons, the Exchange is now seeking to re-introduce an Ultra Tier rebate of $0.0031 per share.

The Ultra Tier rebate ($0.0031 per share), which is a higher rebate than the next best rebate ($0.0029 per share) for adding liquidity on EDGX, is also more difficult to reach, as a higher volume threshold is required based on recent TCV figures. For example, 1% of the average TCV for January 2010 (8.9 billion) was approximately 89 million shares. This threshold far exceeds the criteria (no minimum share volume requirement) to meet the next best rebate of $0.0029 per share. In addition, the higher rebate also results in part from lower administrative costs associated with higher volume.

Additional Changes to the Fee Schedule

Effective January 1, 2010,[5] DECN adjusted its pricing model to be more consistent with other exchanges (even though DECN is not an exchange),[6] by de-linking the pricing structures of DECN to eliminate pricing offers that are contingent on activity across both platforms. Secondly, the Exchange simplified its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission). The Exchange believes that these same goals are also advanced for the most part in this filing, which proposes technical and clarifying changes to DECN's fee schedule.

To effectuate the foregoing, the Exchange deleted certain charges in footnote 1 of the fee schedule, including one whereby ISE Members were charged $0.0002 per share to add liquidity on EDGA unless the attributed MPID added a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Prior to January 1, 2010, any attributed MPID meeting the aforementioned minimum was not charged to add liquidity on EDGA. Since this charge was deleted from footnote 1, the Exchange proposes

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] *See* Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009) (SR–ISE–2009–68).

[5] *See* Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010) (SR–ISE–2009–108).

[6] On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the **Federal Register** for notice and comment. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009).

to delete the corresponding footnote 1 from flags B, V, Y, 3, and 4 from the EDGA column as this footnote no longer applies.

In order to further simplify its fee schedule for Members, the Exchange proposes to delete the table on the fee schedule entitled "Fees per Share for Special Order Types" as the Exchange believes that the information on this schedule is repetitive of the information in the "liquidity flags and associated fees" table below it. As a result of this proposed deletion, the Exchange proposes to relocate footnote numbers 4 and 5. Footnote 4 is proposed to be relocated to "Flag E" and added to "Flag 5" to clarify it. Footnote 5 is proposed to be relocated to "Flag O." These are the corresponding areas where these references belong.

The Exchange proposes to re-word the first sentence in footnote 1 to clarify that adding can include placing hidden orders.

In addition, the Exchange proposes to add a fee to its schedule to provide that stocks priced less than $1 will be charged 0.20% of the dollar value if they do not meet the minimum average daily share volume of 50,000 shares on EDGA to qualify for the removal rate. A conforming footnote 1 is proposed to be added in the first table on the fee schedule (next to the word "Free") for removing liquidity in stocks less than $1.00 on EDGA.

In SR–ISE–2009–108,[7] for securities priced less than $1, the Exchange changed the fee for adding liquidity on EDGX from free to a rebate of 0.15% of the dollar value of the transaction. The Exchange proposes to correct a typographical error on its current schedule by adding parenthesis around the "0.15% of dollar value" to clarify that this is a rebate, and *not* a charge, for adding liquidity on EDGX in securities priced less than $1.

For Flag P, the Exchange proposes to correct a typographical error on the schedule by inverting the columns that are currently displayed. For EDGX, flag P should read "N/A" and for EDGA it should read a rebate of $0.0025 per share (*i.e.,* (0.0025)).

The Exchange proposes to clarify Footnote 3. The second sentence of this footnote states that the "rebate for adding liquidity on the NYSE of $0.0010 per share." This information is already conveyed in Flag F and is proposed to be deleted in order to simplify and clarify the fee schedule. The first sentence of footnote 3 is also proposed to be deleted as it is repetitive of the amended third sentence in footnote 3 ("stocks prices below $1.00 on the NYSE are charged $0.0018 per share when removing liquidity.") As a result, on Flag J, footnote 3 is proposed to be deleted as the reference no longer applies. However, footnote 3 is proposed to be relocated to Flag D in order to further clarify it.

The changes discussed in this filing will become operative on February 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as 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 particular, simplifying the rate structure for Members provides pricing incentives to market participants that route orders to DECN, allowing DECN to remain competitive. ISE notes that DECN 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 proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to DECN. The proposed re-introduction of an Ultra Tier rebate also provides an incentive to Members who add significant order flow to EDGX. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECN rather than competing venues. The ISE also believes that the proposed rates are equitable in that they apply uniformly to all Members. Finally, to adjust DECN's pricing model to be more consistent with other exchanges (even though DECN is not an exchange), the Exchange desires to simplify part of its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to EDGA/EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission).

*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) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–10 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–ISE–2010–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[7] *See* Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(2).

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,[12] 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 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 Number SR–ISE–2010–10 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2947 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[12] The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61497; File No. SR–FINRA–2009–073]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Hearing Location Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

February 4, 2010.

### I. Introduction

On October 28, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 12213(a) and 13313(a) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code"), respectively, to expand the criteria for selecting a hearing location for an arbitration proceeding. The proposed rule change was published for comment in the **Federal Register** on December 30, 2009.[3] The Commission received three comment letters, all of which supported the proposed rule change.[4] This order approves the proposed rule change.

### II. Description of the Proposed Rule Change

*Hearing Location Selection Under the Customer Code*

Currently, Rule 12213(a) of the Customer Code states that generally, the Director of FINRA Dispute Resolution ("Director") will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. FINRA has determined that its policy concerning selection of a hearing location under the Customer Code may be broader than the rule describes.

Under the current rule in the Customer Code, for example, if a customer in an arbitration proceeding lives in Hoboken, New Jersey, the Director will select the New York City hearing location, because this hearing location is closer to the customer's residence, Hoboken,[5] than FINRA's Newark, New Jersey hearing location.

There have been instances, however, in which the Director has granted customers' requests to select a hearing location in their state of residence at the time of the events giving rise to the dispute, even though the in-state hearing location may not be the closest hearing location. Thus, in the example above, if the customer requests the Newark, New Jersey hearing location, the Director generally will grant the request, even though the closest hearing location is the New York City location. The Director typically attempts to honor such requests as a convenience to public customers.

FINRA is proposing, therefore, to amend Rule 12213(a) of the Customer Code to add this criterion for selecting a hearing location. The proposed amendment to the rule would state that the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute, unless the hearing location closest to the customer's residence is in a different state. In that case, the customer may request a hearing location in the customer's state of residence at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. However, the Director would honor a customer's request for a different hearing location in the customer's state of residence.[6] FINRA believes the proposal is customer-friendly because it gives customers more control over the arbitration process, by providing them with a choice of hearing locations.

*Hearing Location Selection Under the Industry Code*

Rule 13213(a) of the Industry Code states, in relevant part, that in cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute. FINRA has not received requests from associated persons for different hearing locations, other than the closest hearing location under the current rule. However, FINRA believes that associated persons also should have the option to select a hearing location in their state of employment at the time of the events giving rise to the dispute, if the closest hearing location to their employment is in a different state.

Thus, FINRA is proposing to amend Rule 13213(a) of the Industry Code in two ways. First, FINRA would broaden the criteria for selecting the appropriate hearing location by referring to the time

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 74 FR 69184 (Dec. 30, 2009).

[4] See letters from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated December 29, 2009; Scott R. Shewan, President, Public Investors Arbitration Bar Association ("PIABA"), dated January 19, 2010; and Jill I. Gross, Director, The Investors Rights Clinic at Pace University Law School, dated January 20, 2010.

[5] Hoboken, New Jersey is less than a mile by ferry across the Hudson River from FINRA's New York City hearing location.

[6] If the customer requests a different hearing location other than the location closest to the customer's residence at the time of the events giving rise to the dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the customer requests a different hearing location other than the location closest to the customer's residence at the time of the events giving rise to the dispute and makes the request after the arbitrator or arbitrators are selected, the customer must submit the request to the arbitrator or panel.

of the events giving rise to the dispute. FINRA notes that this amendment clarifies current practice and makes the rule language under the Industry Code consistent with the comparable rule under the Customer Code. The second change to Rule 13213(a) would allow an associated person to request a different hearing location, other than the closest hearing location. Specifically, the proposal would state that the Director will select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute, unless the hearing location closest to the associated person's employment is in a different state. In that case, the associated person may request a hearing location in his or her state of employment at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute. However, the Director would honor an associated person's request for a different hearing location in the associated person's state of employment.[7] FINRA believes the proposal would benefit associated persons by providing them with a choice of hearing locations.

Three commenters addressed the proposed rule change and all three urged the Commission to approve it.[8]

## III. Discussion and Commission Findings

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[9] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would assist in the efficient administration of the arbitration process by further clarifying the procedures of selecting hearing locations.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–FINRA–2009–073) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2867 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[7] If the associated person requests a different hearing location other than the location closest to where the associated person was employed at the time of the of the events giving rise to dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the associated person requests a different hearing location other than the location closest to where the associated person was employed at the time of the of the events giving rise to dispute and makes the request after the arbitrator or arbitrators are selected, the associated person must submit the request to the arbitrator or panel.

[8] In its comment, PIABA also recommended that FINRA consider additional changes in a future rule filing. Those suggestions are outside the scope of the current proposed rule change.

[9] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61492; File No. SR–Phlx–2010–10]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Exchange's Quote Lock Counting Period

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Phlx has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentaries .02 and .03 to Exchange Rule 1082, Firm Quotations, to modify the duration of the "counting period" that is initiated when electronically submitted quotations of specialists, Streaming Quote Traders ("SQTs"),[4] and Remote Streaming Quote Traders ("RSQTs") [5] interact with one another and result in a locked market (*e.g.,* $1.00 bid—1.00 offer) or crossed market (*e.g.,* $1.10 bid—1.00 offer). The Exchange also proposes technical amendments as described below.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to give the Exchange the ability to improve the speed with which the Exchange's systems can automatically execute locked or crossed quotations against one another.

[4] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[5] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

When the Exchange deployed its initial electronic options trading platform, Phlx XL,[6] the Commission approved an Exchange proposal to establish a one-second "counting period," to begin when electronic quotations submitted by specialists and/or SQTs became locked, during which the SQT(s) and/or specialist whose quotations are locked could eliminate the locked market. If their markets became crossed, the Exchange would disseminate a locked market at the price of the quotation that was crossed and would initiate the one-second counting period. Subsequently, the Exchange reduced the one-second counting period to ¼ of one second.[7] Any unresolved locked or crossed markets remaining after the counting period are automatically executed.

The Exchange proposes to modify the duration of the counting period in order to provide more flexibility in increasing the speed with which locked and crossed markets may be resolved on the Exchange. Specifically, proposed Commentary .02 to Rule 1082 would state that the duration of the counting period will be established by the Exchange, will be the same for all options traded on the Exchange, and will not exceed .25 of one second. The duration of the counting period and any changes thereto will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

The effect of the proposed rule change would be to give the Exchange the ability to reduce the counting period from the current ¼ of one second[8] to a lesser time period, during which market participants may resolve locked and crossed markets, and after which, if the locked/crossed condition is not resolved, the Exchange's system will eliminate the condition by executing the transaction. The Exchange believes that any reduced counting period should improve market efficiency by eliminating locked and crossed markets in a more timely fashion, and should, in turn, facilitate compliance with firm quote obligations.

Technical Amendments

At the time the rule was originally adopted, the Exchange distinguished between "Streaming Quote Options" which are traded on the Exchange's automated options trading platform, Phlx XL (since modified and re-named Phlx XL II[9]), and "Non-Streaming Quote Options." All options traded on the Exchange are currently traded on Phlx XL II. Thus, the distinction is no longer necessary, and accordingly the Exchange proposes to delete references to "Streaming Quote Options" from the rule.

The Exchange proposes to modernize the rule by eliminating anachronistic references to the " ¼ of one second" counting period, and instead acknowledge the world of decimalization by referring to a counting period "not to exceed .25 of one second."

The Exchange further proposes to delete quotations surrounding the term "counting period" in all references thereto following its initial definition in the rule. The rule will simply refer to the counting period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, the Exchange believes that the proposal benefits customers by improving market efficiency by enabling the Exchange's system to eliminate locked and crossed markets in a more timely fashion.

*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 proposed rule change is designated by the Exchange as a "non-controversial" rule pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder,[13] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not 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, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing of the proposed rule change.[14] Specifically, the Exchange notes that a similar counting period has been established under the rules of another exchange.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Consequently, the rule is being filed for immediate effectiveness.

**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–Phlx–2010–10 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–Phlx–2010–10. This file number should be included on the

[6] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

[7] *See* Securities Exchange Act Release No. 55375 (February 28, 2007), 72 FR 10288 (March 7, 2007) (SR–Phlx–2006–31).

[8] The counting period would not exceed the current ¼ of one second.

[9] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] As required under Rule 19b–4(f)(6)(iii), the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date of this proposal.

[15] *See* Chicago Board Options Exchange Inc. ("CBOE") Rule 6.45A(d)(i)(B).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–10 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61479; File No. SR–NYSEAmex–2010–08]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 960NY Trading Differentials

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, 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 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.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its option trading rules to designate SPY (SPDR S&P 500 ETF Trust) and IWM (iShares Russell 2000 Index Fund) as eligible to quote and trade all options contracts in one cent increments effective February 1, 2010. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office, at the Commission's Public Reference Room, 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to designate two Penny Pilot Program [3] issues as eligible to quote and trade all options contracts in one cent increments, regardless of premium value. Specifically, the Exchange proposes to so designate SPY (SPDR S&P 500 ETF Trust) and IWM (iShares Russell 2000 Index Fund). In selecting these issues, the Exchange considered, among other things, that these symbols are (a) among the most actively traded issues nationally, with a wide array of investor interest, (b) have more series trading at a premium between $3 and $10, and (c) are trading at prices that are neither extremely low nor high, but are generally trading between $15—$50.

Furthermore, the Exchange proposes to designate SPY and IWM as eligible to quote and trade all options contracts in one cent increments as of February 1, 2010. This date corresponds with the second phase-in date for additional classes in the pilot. The Exchange believes that issues that meet these criteria benefit the most from the ability to quote and trade all options in penny increments.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [4] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [5] in particular in that it is 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, by allowing all SPY and IWM option series to quote in penny intervals.

*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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not

[16] 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 extended and expanded on November 2, 2009, adding 75 classes to the Pilot on that date. *See* Exchange Act Release No. 61106 (December 3, 2009) 74 FR–65193 (December 9, 2009).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

become operative for 30 days after the date of filing.[7] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[8] which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is based on a recent Commission-approved proposal submitted by another options exchange[9] and therefore does not raise any novel regulatory issues. Further, waiving the operative delay will allow the Exchange to commence quoting all series of IWM and SPY in increments of $0.01 effective February 1, 2010, contemporaneously with other options exchanges. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–08 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–2010–08. 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 NYSE's principal office and on its Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–08 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

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[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE Amex has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (granting partial approval of NYSEArca–2009–44).

[10] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61483; File Nos. SR–CBOE–2010–007; SR–ISE–2009–106; SR–NYSEAmex–2009–86; and SR–NYSEArca–2009–110]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, NYSE Amex LLC, and NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing and Trading Options on the ETFS Gold Trust and the ETFS Silver Trust

February 3, 2010.

Three options exchanges filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder to list and trade options on shares of the ETFS Gold Trust and the ETFS Silver Trust (collectively "ETFS Options"). Specifically, NYSE Amex LLC ("NYSE Amex") and NYSE Arca, Inc. ("NYSE Arca") both submitted their proposals on December 4, 2009 and the International Securities Exchange, LLC ("ISE") submitted its proposal on December 10, 2009. Each proposed rule change was published for comment in the **Federal Register** on December 30, 2009 for a 21-day comment period.[3] No comments were received on the proposed rule changes. This order approves the proposed rule changes.

In addition, on January 27, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Commission the proposed rule change as described in Items I and II below, which items have been prepared by the CBOE. The proposal submitted by the CBOE is substantively identical to the proposals of NYSE Amex, NYSE Arca, and ISE. Pursuant to Section 19(b)(1) of the Act[4] and Rule 19b–4[5] thereunder, the Commission is publishing this notice to solicit comments on the CBOE proposed rule change from interested persons and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 61223 (December 22, 2009), 74 FR 69161; 61222 (December 22, 2009), 74 FR 69182; and 61228 (December 22, 2009), 74 FR 69180.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

is approving the proposal on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend certain rules to enable the listing and trading on the Exchange of options on the ETFS Silver Trust and the ETFS Gold Trust. The text of the rule proposal 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 III 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 Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Recently, the Commission authorized CBOE to list and trade options on the SPDR Gold Trust,[6] the iShares COMEX Gold Trust and the iShares Silver Trust.[7] Now, the Exchange proposes to list and trade options on the ETFS Silver Trust ("SIVR") and the ETFS Gold Trust ("SGOL").

Under current Rule 5.3, only Units (also referred to herein as exchange traded fund ("ETFs")) representing (i) interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments), or (ii) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust, or (iii) commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency, or (iv) represent interests in the streetTRACKS Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust, or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV are eligible as underlying securities for options traded on the Exchange.[8] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include SIVR and SGOL.

Apart from allowing SIVR and SGOL to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in Interpretation and Policy .06 to Rule 5.3.

Specifically, in addition to satisfying the aforementioned listing requirements, Units must meet either (1) the criteria and guidelines under Rule 5.3 and Interpretation and Policy .01 to Rule 5.3, *Criteria for Underlying Securities;* or (2) they must be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on SIVR and SGOL. Specifically, under Interpretation and Policy .08 to Rule 5.4, options on Units may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Units, there are fewer than 50 record and/or beneficial holders of the Units for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which Units are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, SIVR and SGOL shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering SIVR and SGOL, if SIVR and SGOL ceases to be an "NMS stock" as provided for in paragraph (f) of Interpretation and Policy .01 of Rule 5.4 or SIVR and SGOL is halted from trading on its primary market.

[6] *See* Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR–CBOE–2005–11).

[7] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (order approving SR–CBOE–2008–72).

[8] *See* Interpretation and Policy .06 to Rule 5.3.

The addition of SIVR and SGOL to Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits [9] or margin.[10]

The Exchange represents that its surveillance procedures applicable to trading in options on SIVR and SGOL will be similar to those applicable to all other options on other Units currently traded on the Exchange. The Exchange represents that its surveillance procedures applicable to trading in options on SIVR and SGOL will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. ("NYMEX") (a member of the Intermarket Surveillance Group) related to any financial instrument that is based, in whole or in part, upon an interest in or performance of gold or silver.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [11] of the Act, in general, and furthers the objectives of Section 6(b)(5) [12] 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, and to remove impediments to and perfect the mechanisms of a free and open market in a manner consistent with the protection of investors and the public interest. In particular, the Exchange believes that amending its rules to accommodate the listing and trading of options on the ETFS Gold Trust and the ETFS Silver Trust will benefit investors by providing them with valuable risk management tools.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received comments on the proposal.

[9] *See* Rules 4.11, *Position Limits,* and 4.12, *Exercise Limits.*

[10] *See* Rule 12.3, *Margin Requirements.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

**III. 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–2010–007 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–CBOE–2010–007. 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 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–CBOE–2010–007 and should be submitted on or before March 3, 2010.

**IV. Commission Findings**

After careful consideration, the Commission finds that the proposed rule changes submitted by CBOE, ISE, NYSE Amex, and NYSE Arca (collectively, the "Proposals") are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [13] and, in particular, the requirements of Section 6 of the Act.[14] Specifically, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed 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. In accordance with the Memorandum of Understanding entered into between the Commodity Futures Trading Commission ("CFTC") and the Commission on March 11, 2008, and in particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

As national securities exchanges, each of the CBOE, ISE, NYSE Amex, and NYSE Arca is required under Section 6(b)(1) of the Act [16] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade ETFS Options will also be subject to best execution obligations and FINRA rules.[17] Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFS Options.[18] Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[19]

ETFS Options will trade as options under the trading rules of each of the exchanges. These rules, among other things, are designed to avoid trading

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(1).

[17] *See* NASD Rule 2320.

[18] *See* CBOE Rule 9.15; ISE Rule 616; NYSE Amex Rule 926; and NYSE Arca Rule 9.18(g).

[19] *See* FINRA Rule 2360(b); CBOE Rules 9.7 and 9.9; ISE Rules 608 and 610; NYSE Amex Rule 923; and NYSE Arca Rule 918(b)–(c).

through better displayed prices for ETFS Options available on other exchanges and, thereby, satisfy each exchange's obligation under the Options Order Protection and Locked/Crossed Market Plan.[20] Series of the ETFS Options will be subject to exchange rules regarding continued listing requirements, including standards applicable to the underlying ETFS Silver and ETF Gold Trusts. Shares of the ETFS Silver and ETFS Gold Trusts must continue to be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.[21] In addition, the underlying shares must continue to be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value.[22] If the ETFS Silver or ETFS Gold Trust shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFS Options.

CBOE, ISE, NYSE Amex, and NYSE Arca have all represented that they have surveillance programs in place for the listing and trading of ETFS Options. For example, these exchanges may obtain trading information via the ISG from the NYMEX related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, silver or gold. Additionally, the listing and trading of ETFS Options will be subject to the exchanges' rules pertaining to position and exercise limits[23] and margin.[24]

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[25] for approving the proposed rule change of CBOE prior to the thirtieth day after the date of publication of notice in the **Federal Register.** The Commission notes that CBOE's proposal is substantively identical to the proposals of ISE, NYSE Amex, and NYSE Arca, which were published for a 21-day comment period and generated no comments. Therefore, the Commission does not believe that the CBOE proposal raises any new regulatory issues different from that of the ISE, NYSE Amex, and NYSE Arca proposals. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[26] to approve the CBOE proposal on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule changes (SR–ISE–2009–106; SR–NYSEAmex–2009–86; and SR–NYSEArca–2009–110) be, and are hereby, approved and that the proposed rule change (SR–CBOE–2010–007) be, and is hereby, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2954 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[20] *See* CBOE Rule 6.81; ISE Rule 1902; NYSE Amex Rule 991NY; and NYSE Arca Rule 6.94. Specifically, each of the exchanges is a participant in the Options Order Protection and Locked/Crossed Market Plan.

[21] 17 CFR 242.600.

[22] *See* Interpretation and Policy .06 to CBOE Rule 5.3; ISE Rule 502(a)–(b); NYSE Amex Rule 915 Commentary .06; and NYSE Arca Rule 5.3(a)–(b).

[23] *See* CBOE Rules 4.11 and 4.12; ISE Rules 412 and 414; NYSE Amex Rules 904 and 905; and NYSE Arca Rules 6.8 and 6.9.

[24] *See* CBOE Rule 12.3; ISE Rule 1202; NYSE Amex Rule 462; and NYSE Arca Rules 4.15 and 4.16. *See also* FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78s(b)(5).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61494; File No. SR–CBOE–2010–012]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 8.85 and Rule 8.92 Regarding the Requirement To Own an Exchange Membership

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2010, 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 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

CBOE proposes to amend proposes to amend proposes to amend [sic] Rule 8.85 and Rule 8.92 regarding the requirement to own an Exchange membership. The text of the rule proposal 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

CBOE proposes to amend Rule 8.85 and Rule 8.92 to eliminate the requirement that a DPM organization and an e-DPM organization are required to own at least one Exchange membership. Instead, each DPM organization and each e-DPM organization will be required to own or lease such number of Exchange memberships as may be necessary based on the aggregate "appointment cost" for the classes allocated to the DPM organization or e-DPM organization. CBOE established this ownership requirement with respect to DPMs in 2000 and, at the time, believed that it was appropriate and would encourage DPMs to have a long-term commitment to CBOE.[3] CBOE later included this requirement when its e-DPM program was adopted.

CBOE no longer believes that this requirement is necessary particularly as its proposed restructuring approaches, and eliminating it may attract new DPM organizations to CBOE who otherwise may not be willing to apply to be a DPM due to this membership ownership requirement. CBOE notes that in connection with its plan to restructure from a Delaware non-stock corporation owned by its members to a Delaware stock corporation that will be a wholly-owned subsidiary of CBOE Holdings, this requirement will be eliminated.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (SR–CBOE–99–37).

Specifically, as part of CBOE's restructuring, the owners of membership interests will become stockholders of CBOE Holdings through the conversion of their memberships into shares of common stock of CBOE Holdings. Additionally, Trading Permits will provide trading access to the Exchange, and not Exchange memberships as is currently the case. A Trading Permit will not convey any ownership interest in the Exchange, and will only be available through the Exchange.[4] As part of this proposed rule change, CBOE proposes conforming changes to Rule 3.27, and proposes to delete Interpretation .04 of Rule 8.85 and Interpretation .01 of Rule 8.92 which are no longer necessary in light of the elimination of the membership ownership requirement.[5]

In connection with this proposed rule change, CBOE proposes to delete Interpretation .03 of Rule 8.85, which was adopted in 2003 for the purpose of allowing a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization, but only if the senior principal meets certain criteria. In light of the fact that CBOE is eliminating the membership ownership requirement, Interpretation .03 no longer is applicable or necessary.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the "Act") 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 that the proposed rule change is consistent with the Section 6(b)(5) Act[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 DPM and e-DPM membership ownership requirement is no longer necessary and eliminating it may attract new organizations to act in the capacity of a DPM (or e-DPM). Additionally, this requirement will be eliminated in connection with CBOE's restructuring.

*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 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, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–012 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–CBOE–2010–012. 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, 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–CBOE–2010–012 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2950 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[4] *See* Exchange Act Release No. 58425 (August 26, 2008), 73 FR 51652 (September 4, 2008) (noticing for comment SR–CBOE–2008–088). CBOE has consented to an extension of time for Commission action on this proposed rule change pending a membership vote.

[5] CBOE notes that Temporary Members under Rule 3.19.02 will not be adversely impacted by this proposed rule change.

[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).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61496; File No. SR–NYSEArca–2009–113]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To List and Trade the Sprott Physical Gold Trust

February 4, 2010.

### I. Introduction

On December 15, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade units [3] of the Sprott Physical Gold Trust (the "Trust") pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on January 4, 2010.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

The Exchange proposes to list and trade units ("Units") of the Trust under NYSE Arca Equities Rule 8.201. Sprott Asset Management LP is the sponsor or manager of the Trust ("Sponsor" or "Manager").[5] RBC Dexia Investor Services Trust is the trustee of the Trust. The Royal Canadian Mint is the custodian for the physical gold bullion owned by the Trust and RBC Dexia serves as the custodian of the Trust's assets other than physical gold bullion.

The Units will be issued in an initial public offering. The Trust may issue additional Units: (i) In future offerings if the gross proceeds received by the Trust per Unit is not less than 100% of the most recently calculated net asset value ("NAV") or (ii) by way of a distribution in Units in connection with an income distribution. The Trust will not issue Units on an on-going or daily basis. At the start of trading, the Trust will issue a minimum of 1,000,000 Units to at least 400 holders ("Unitholders"). The Exchange states that the Units satisfy the remaining criteria of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[6]

The Trust's investment objective is for the Units to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations. The Trust expects to own only London Good Delivery physical gold bullion. The Trust is not actively managed and does not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of gold bullion.

The Exchange states that the Trust does not intend to create additional Units. The Units will be redeemable monthly at the option of the holder for physical gold bullion or for cash subject to the certain conditions. Generally, Units redeemed for physical gold will be entitled to a redemption price equal to 100% of the NAV of the redeemed Units on the last business day of the calendar month in which the redemption request is processed, less redemption and delivery expenses. Units redeemed for cash will be entitled to a redemption price equal to 95% of the lesser of: (i) The volume-weighted average trading price of the Units traded on the NYSE Arca or, if trading has been suspended on NYSE Arca, the trading price of the units traded on the Toronto Stock Exchange, for the last five business days of the month in which the redemption request is processed and (ii) the NAV of the redeemed Units as of 4:00 p.m., Toronto time, on the last business day of such month.[7]

Additional information regarding the Trust, the Units, the Trust's investment objectives, strategies, policies, and restrictions, fees and expenses, creation and redemption of Units, the gold market, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and in the Registration Statement, as applicable.[8]

### III. Discussion and Commission's Findings

The Commisison has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [9] and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and opemarket and to protect investors and the public interest.

In addition, the Commission finds that the proposal to list and trade Units on the Exchange is consistent with Section 11(a)(1)(C)(iii) of the Act,[12] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Units will be available via the Consolidated Tape Association. The Trust's Web site will provide an intraday indicative value ("IIV") per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., New York time). The IIV will be calculated based on a price of gold derived from updated bids and offers indicative of the spot price of gold.[13] In addition, the Web site for the Trust will contain the following information, on a per Unit basis, for the Trust: (a) The mid-point of the bid-ask price [14] at the close of trading in relation to the NAV as of the time the NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Each unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of units.

[4] *See* Securities Exchange Act Release No. 61236 (December 23, 2009), 75 FR 170 ("Notice").

[5] The Manager is a limited partnership existing under the laws of Ontario, Canada, and acts as manager of the Trust pursuant to the Trust's trust agreement and the management agreement. The Manager provides management and advisory services to the Trust. Additional details regarding the Trust are set forth in the Registration Statement on Form F–1 for the Sprott Physical Gold Trust, filed with the Commission on December 9, 2009 (No. 333–163601) ("Registration Statement").

[6] With respect to application of Rule 10A–3 under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[7] *See* Notice and the Registration Statement, *supra* notes 4 and 5, respectively, for additional information.

[8] *Id.*

[9] 15 U.S.C. 78f.

[10] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[13] The IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[14] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

will provide the last sale price of the Units as traded in the U.S. market. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

The Commission further believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants. The Commission notes that the Exchange has received a representation from the Trust that, prior to listing, the NAV would be calculated daily and made available to all market participants at the same time.[15] Additionally, if the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[16] Further, the Exchange will consider suspension of trading pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12 month period following commencement of trading: (1) The value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, custodian or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[17]

In addition, NYSE Arca Equities Rule 8.201 sets forth certain requirements for ETP Holders acting as Market Makers in the Units. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying gold, related futures or options on futures or any other related derivative (including the Units).

In support of this proposal, the Exchange has made representations including:

(1) The Units will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.[18]

(3) 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 Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (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 Units; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSEArca–2009–113) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2960 Filed 2–9–10; 8:45 am]

BILLING CODE 8011–01–P

[15] *See supra* note 4.

[16] *See* e-mail, dated February 4, 2010, from Tim Malinowski, NYSE Arca, to Steve Varholik, Special Counsel, Division of Trading and Markets, Commission.

[17] *See* NYSE Arca Equities Rule 7.12.

[18] The Exchange notes that the New York Mercantile Exchange, of which the COMEX is a division, is an ISG member, however, the Tokyo Commodity Exchange, Inc. ("TOCOM") is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(2)

[21] 17 CFR 200.30–3(a)(12)

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61494; File No. SR–CBOE–2010–012]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 8.85 and Rule 8.92 Regarding the Requirement To Own an Exchange Membership

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

("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**

CBOE proposes to amend proposes to amend proposes to amend [sic] Rule 8.85 and Rule 8.92 regarding the requirement to own an Exchange membership. The text of the rule proposal 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

CBOE proposes to amend Rule 8.85 and Rule 8.92 to eliminate the requirement that a DPM organization and an e-DPM organization are required to own at least one Exchange membership. Instead, each DPM organization and each e-DPM organization will be required to own or lease such number of Exchange memberships as may be necessary based on the aggregate "appointment cost" for the classes allocated to the DPM organization or e-DPM organization. CBOE established this ownership requirement with respect to DPMs in 2000 and, at the time, believed that it was appropriate and would encourage DPMs to have a long-term commitment to CBOE.[3] CBOE later included this requirement when its e-DPM program was adopted.

CBOE no longer believes that this requirement is necessary particularly as its proposed restructuring approaches, and eliminating it may attract new DPM organizations to CBOE who otherwise may not be willing to apply to be a DPM due to this membership ownership requirement. CBOE notes that in connection with its plan to restructure from a Delaware non-stock corporation owned by its members to a Delaware stock corporation that will be a wholly-owned subsidiary of CBOE Holdings, this requirement will be eliminated. Specifically, as part of CBOE's restructuring, the owners of membership interests will become stockholders of CBOE Holdings through the conversion of their memberships into shares of common stock of CBOE Holdings. Additionally, Trading Permits will provide trading access to the Exchange, and not Exchange memberships as is currently the case. A Trading Permit will not convey any ownership interest in the Exchange, and will only be available through the Exchange.[4] As part of this proposed rule change, CBOE proposes conforming changes to Rule 3.27, and proposes to delete Interpretation .04 of Rule 8.85 and Interpretation .01 of Rule 8.92 which are no longer necessary in light of the elimination of the membership ownership requirement.[5]

In connection with this proposed rule change, CBOE proposes to delete Interpretation .03 of Rule 8.85, which was adopted in 2003 for the purpose of allowing a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization, but only if the senior principal meets certain criteria. In light of the fact that CBOE is eliminating the membership ownership requirement, Interpretation .03 no longer is applicable or necessary.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the "Act") 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 that the proposed rule change is consistent with the Section 6(b)(5) Act[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 DPM and e-DPM membership ownership requirement is no longer necessary and eliminating it may attract new organizations to act in the capacity of a DPM (or e-DPM). Additionally, this requirement will be eliminated in connection with CBOE's restructuring.

*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 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, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] *See* Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (SR–CBOE–99–37).

[4] *See* Exchange Act Release No. 58425 (August 26, 2008), 73 FR 51652 (September 4, 2008) (noticing for comment SR–CBOE–2008–088). CBOE has consented to an extension of time for Commission action on this proposed rule change pending a membership vote.

[5] CBOE notes that Temporary Members under Rule 3.19.02 will not be adversely impacted by this proposed rule change.

[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).

## 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–2010–012 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–CBOE–2010–012. 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, 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–CBOE–2010–012 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2959 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61493; File No. SR–CHX–2010–03]**

## Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Provide Credit for Transactions Involving Issues Priced Less Than One Dollar

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) 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

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective February 1, 2010, to change its transaction fees and rebates to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Through this filing, the Exchange would amend its Fee Schedule to increase the provide credit to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System.

The Exchange proposes to increase the provide credit in the transactions described above from 0.10% to 0.15% of the trade value.[5] The Exchange believes that the increased rebate will help attract additional orders to be displayed and executed on our trading facilities. The Exchange notes that some of our competitors have recently raised their provide rebates for securities priced under $1, and that our proposed increase will help us remain competitive with these entities.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the change to the fee schedule would provide incentives to Participants to increase the amount of liquidity provided on our trading facilities for securities priced less than $1, which may contribute to an increase

[5] "Trade value" is defined in our Fee Schedule as "a dollar amount equal to the price per share multiplied by the number of shares executed."

[6] The Direct Edge ECN raised its provide credit to 0.15% for transactions under $1 in Tape A, B and C securities for its EDGX trading platform beginning in the month of January 2010.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

in trading volume on the Exchange and in the income derived therefrom.

*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 Changes Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(B)(3)(A)(ii) [*sic*] of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder [10] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose 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–CHX–2010–03 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–2010–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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–CHX–2010–03 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2958 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61491; File No. SR–ISE–2010–11]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I 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, and is approving the proposal on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify the amounts that Direct Edge ECN ("DECN"), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.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 these statements may be examined at the places specified in Item III 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

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On January 29, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members [3] to simplify its fee schedule by (i) re-introducing a rebate; [4] (ii)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] In SR–ISE–2009–68, the Exchange amended the criteria for meeting the Ultra Tier by allowing ISE Members to receive a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID posts 1% of the total consolidated volume ("TCV") in average daily volume ("ADV"). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated

adding a fee for stocks priced less than $1 that remove liquidity on EDGA; [5] (iii) eliminating certain tables on the fee schedule; [6] and (iv) making typographical and clarifying changes to the fee schedule.[7] The changes made pursuant to SR–ISE–2010–10 became operative on February 1, 2010.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR–ISE–2010–10, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well an effective date of February 1, 2010. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive and be charged equivalent amounts and that the imposition of such amounts will begin on the same February 1, 2010 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

*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. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–11 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–ISE–2010–11. 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

transaction reporting plans for Tape A, B, and C securities. *See* Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009)(SR–ISE–2009–68). In SR–ISE–2010–10, the Exchange re-introduced an Ultra Tier rebate of $0.0031 per share for competitive reasons.

The Ultra Tier rebate ($0.0031 per share), which is a higher rebate than the next best rebate ($0.0029 per share) for adding liquidity on EDGX, is also more difficult to reach, as a higher volume threshold is required based on recent TCV figures. For example, 1% of the average TCV for January 2010 (8.9 billion) was approximately 89 million shares.

This threshold far exceeds the criteria (no minimum share volume requirement) to meet the next best rebate of $0.0029 per share. In addition, the higher rebate also results in part from lower administrative costs associated with higher volume.

[5] In SR–ISE–2010–10, the Exchange added a fee to its schedule to provide that stocks priced less than $1 will be charged 0.20% of the dollar value if they do not meet the minimum average daily share volume of 50,000 shares on EDGA to qualify for the removal rate. A conforming footnote 1 was added in the first table on the fee schedule (next to the word "Free") for removing liquidity in stocks less than $1.00 on EDGA.

[6] In SR–ISE–2010–10, in order to further simplify its fee schedule for Members, the Exchange deleted the table on the fee schedule entitled "Fees per Share for Special Order Types" as the Exchange believed that the information on this schedule was repetitive of the information in the "liquidity flags and associated fees" table below it. As a result of this deletion, the Exchange relocated footnote numbers 4 and 5. Footnote 4 was relocated to "Flag E" and also added to "Flag 5" to clarify it. Footnote 5 was relocated to "Flag O." These are the corresponding areas where these references belong.

[7] Effective January 1, 2010, DECN adjusted its pricing model to be more consistent with other exchanges (even though DECN is not an exchange), by de-linking the pricing structures of DECN to eliminate pricing offers that are contingent on activity across both platforms. *See* Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010) (SR–ISE–2009–108). Secondly, the Exchange simplified its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission). On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the **Federal Register** for notice and comment. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009). The Exchange believes that these same goals were also advanced for the most part in SR–ISE–2010–10, which made technical and clarifying changes to DECN's fee schedule.

In SR–ISE–2009–108, to effectuate the foregoing, the Exchange deleted certain charges in footnote 1 of the fee schedule, including one whereby ISE Members were charged $0.0002 per share to add liquidity on EDGA unless the attributed MPID added a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Prior to January 1, 2010, any attributed MPID meeting the aforementioned minimum was not charged to add liquidity on EDGA. Since this charge was deleted from footnote 1, in SR–ISE–2010–10, the Exchange deleted the corresponding footnote 1 from flags B, V, Y, 3, and 4 from the EDGA column as this footnote no longer applies.

In addition, in SR–ISE–2010–10, the Exchange re-worded the first sentence in footnote 1 to clarify that adding can include placing hidden orders.

In SR–ISE–2009–108, for securities priced less than $1, the Exchange changed the fee for adding liquidity on EDGX from free to a rebate of 0.15% of the dollar value of the transaction. In SR–ISE–2010–10, the Exchange corrected a typographical error on its current schedule by adding parenthesis around the "0.15% of dollar value" to clarify that this was a rebate, and *not* a charge, for adding liquidity on EDGX in securities priced less than $1.

In SR–ISE–2010–10, for Flag P, the Exchange corrected a typographical error on the schedule by inverting the columns that were displayed. For EDGX, flag P was corrected to read "N/A" and for EDGA it was corrected to read a rebate of $0.0025 per share (i.e., (0.0025)).

In SR–ISE–2010–10, the Exchange also clarified Footnote 3. The second sentence of this footnote states that the "rebate for adding liquidity on the NYSE of $0.0010 per share." This information was already conveyed in Flag F and was deleted in order to simplify and clarify the fee schedule. The first sentence of footnote 3 was also deleted as it is repetitive of the amended third sentence in footnote 3 ("stocks prices below $1.00 on the NYSE are charged $0.0018 per share when removing liquidity.") As a result, on Flag J, footnote 3 was deleted as the reference no longer applies. However, footnote 3 was relocated to Flag D in order to further clarify it.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[10] 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 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 Number SR–ISE–2010–11 and should be submitted on or before March 3, 2010.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) [12] of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members pursuant to SR–ISE–2010–10 (the "Member Fee Filing"). The fee changes made pursuant to the Member Fee Filing became operative on February 1, 2010. DECN receives rebates and is charged fees for transactions it executes on EGDX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers. The current proposal, which will apply retroactively to February 1, 2010, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.[13]

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register.** As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to February 1, 2010, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2010–11) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2957 Filed 2–9–10; 8:45 am]

**BILLING CODE 8011–01–P**

[10] The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

[12] 15 U.S.C. 78f(b)(4).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

# DEPARTMENT OF STATE

**[Public Notice: 6896]**

## Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: The Youth Exchange and Study (YES) Summer Academy

*Announcement Type:* New Grant.

*Funding Opportunity Number:* ECA/PE/C/PY–10–27.

*Catalog of Federal Domestic Assistance Number:* 19.415.

*Application Deadline:* March 19, 2010.

*Executive Summary:* The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for a grant for a summer academy for youth. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3), including accredited, post-secondary U.S. educational institutions, may submit proposals to provide a four-week U.S.-based Academy in July 2010 for up to 27 teenagers. Seventeen of the participants will be foreign students from multiple countries who have already been screened and selected for an exchange program in the United States. They will be joined at the Academy by 10 American teenagers selected by the U.S. grant recipient. The Academy's activities will focus on leadership development, critical thinking, communication skills, and community activism, in addition to exposure to U.S. culture and society through site visits and homestays with American families.

## I. Funding Opportunity Description

*Authority:* Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

*Purpose:* This Academy aims to foster relationships between American teenagers and teenagers from countries with significant Muslim populations to build strong linkages and an awareness of shared values, and to enable youth to face together the global challenges of the 21st Century. Through this Academy, diverse but intellectually curious students will participate in an intensive, four-week program in the United States in the summer of 2010. Participants will

be engaged in a variety of activities such as training sessions, workshops, community and/or school-based programs, and cultural events. Participants will work on projects that promote community engagement to be implemented in their home communities.

*Goals:* The goals of the Academy are (1) to develop a sense of civic responsibility and a commitment to cooperation among youth; (2) to foster relationships among youth from different ethnic, religious, and national groups; (3) to promote mutual understanding between the people of the United States and other countries; and (4) to stimulate the development of a cadre of young leaders who will share the knowledge and skills gained through participation in the Academy with their peers through positive action after they return to their home communities.

With the specific focus of these institutes, the following outcomes will indicate a successful project:

- Participants from abroad will demonstrate an improved understanding of the United States and its people, and the American students will better understand the interests of the people of the participating countries.
- Participants will work together to identify and overcome misunderstanding or lack of understanding among nations both during the institute and after they return home.
- Participants will develop critical thinking skills that will enable them to assess the reliability of media sources, and to analyze possible bias in journalism.
- Participants will demonstrate a better understanding of community service and leadership skills to carry out a successful project that addresses a need in their home communities.

*Participants:* The 17 participants from abroad were competitively selected through a rigorous screening process for an academic-year exchange program. These participants were unable to take part in that program as planned, and will be attending this Academy instead. The grant recipient will be required to work with the two organizations that selected them in order to provide pre-departure orientation materials, to arrange international travel, and to facilitate community service project implementation after participants return home. The international travel costs will be borne by these other two organizations through a separate funding arrangement.

*The Academy:* The U.S. program will begin and end in Washington, DC. At the outset, all participants will be engaged in a three- to four-day orientation and study tour of Washington. The closing session will include a meeting with State Department officials plus concluding workshops to prepare the participants for their return home and finalization of their action plans for service projects at home.

The intervening weeks of the Academy may take place in one or two communities and should offer the participants exposure to the variety of American life.

The Academy will take place on a U.S. university or college campus or at a similar group-oriented venue. For a portion of the academy, the participants will be housed together since living together will facilitate greater cooperation. For at least two weeks of the Academy, all participants will have homestays with local families.

During the course of the Academy, the grant recipient will arrange for mentors for the participants; the mentors may also serve as trainers or instructors, as appropriate. Adult staff should be available to support and supervise the participants during the course of the Institute.

*Program content:* Through an approach of "Think Globally, Act Locally," the Academy themes will cover issues of common concern to young adults worldwide. Applicants are encouraged to be creative in identifying specific issues that are of broad interest to this age group. To explore these topics, the participants will also look at volunteer community service, respect for diversity, and youth leadership through interactive activities, practical experiences, and other hands-on opportunities. Leadership training will cover communication skills, critical thinking, problem solving, and team building. The program should offer exposure to U.S. culture and society through site visits and homestays with American families. In addition to the selected American participants, program activities should engage American teenagers wherever possible. Social, cultural, and recreational activities will balance the schedule.

*Guidelines:* Pending the availability of funds, the grant will begin on or about May 28, 2010. Applicants should propose a U.S. academy that will take place for four weeks between July 1, 2010, and August 6, 2010. The grant period will be approximately eight months in duration, as appropriate to the program design.

The grant recipient will be responsible for the following:

- Recruitment, screening, and selection of ten American participants, ages 16–18, representing the diversity of the United States.
- The designing and planning of a substantive program in the United States that promotes international dialogue on key global issues, critical thinking, respect for diversity, leadership development, civic education, and community service. Some activities should be school and/or community-based, as feasible, and the projects will involve as much interaction with American peers, even beyond those directly participating in the Academy, as possible.
- Logistical arrangements, properly screened host family arrangements, other accommodations, disbursement of stipends, local travel, and travel between sites.
- Monitoring of the participants' safety and well-being while participating in the Academy, including during the homestays.
- Support in the planning and implementation of community service projects that the participants will implement upon their return home.

Applicant organizations must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience in working with diverse international groups. The grant recipient must be able to assist the in-country organizations and the U.S. embassies in supporting follow-on activities for the foreign alumni of the Academy. The grant recipient will assume sole responsibility for supporting the follow-on activities of the American alumni.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on how the major program activities will be implemented, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations for the International Visitor category. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

## II. Award Information

*Type of Award:* Grant Agreement.

*Fiscal Year Funds:* FY–2010.

*Approximate Total Funding:* $140,000.

*Number of Awards:* One.

*Approximate Average Award:* $140,000.

*Anticipated Award Date:* Pending availability of funds, May 28, 2010.

*Anticipated Project Completion Date:* December 31, 2010.

## III. Eligibility Information

### *III.1. Eligible Applicants*

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

### *III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

### *III.3. Other Eligibility Requirements*

(a.) Bureau grant guidelines require that organizations with less than four years' experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making two awards in amounts exceeding $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years' experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### *IV.1. Contact Information To Request an Application Package*

Please contact the Youth Programs Division (ECA/PE/C/PY), U.S. Department of State, SA–5, 3rd Floor, Washington, DC 20522–0503, Telephone (202) 632–6065, Fax (202) 632–9355, E-mail: *ORourkeMM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY–10–27) when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Carolyn Lantz and refer to the Funding Opportunity Name and Number located at the top of this announcement on all other inquiries and correspondence.

### *IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

### *IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Project Objectives, Goals and Implementation (POGI) document and the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its *USASpending.gov* Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J Visa.

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov/jexchanges/index.html* or from: Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

IV.3d.2. Diversity, Freedom and Democracy Guidelines.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation.

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will

be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. Grant requests may not exceed $140,000. This amount will not include the international travel costs for the foreign exchange participants. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

*Application Deadline Date:* Friday, March 19, 2010

*Reference Number:* ECA/PE/C/PY–10–27

**Methods of Submission**

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (i.e., Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or (2.) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications.

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–10–27, SA–5, Floor 4, Department of State, Washington, DC 20522–0504.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word and/or Excel to the program officer at *LantzCS@state.gov.*

IV.3f.2—Submitting Electronic Applications.

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov website includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the website. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov website, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support; Contact Center Phone: 800–518–4726; Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time; Email: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov website, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications.

Executive Order 12372 does not apply to this program.

**V. Application Review Information**

*V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will

be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below:

1. *Quality of the program idea:* The proposed program should be well developed, respond to design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning and ability to achieve program objectives:* A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail. Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the applicant will meet the program's objectives and plan.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

5. *Project evaluation:* The proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. The grant recipient will be expected to submit intermediate reports after each project component is concluded.

6. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

## VI. Award Administration Information

### *VI.1a. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### *VI.2. Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.*

### *VI.3. Reporting Requirements*

You must provide ECA with a hard copy original plus one copy of the following reports:

1. Quarterly reports, as required in the Bureau grant agreement.

2. A final program and financial report no more than 90 days after the expiration of the award;

3. A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

4. An SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

## VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division (ECA/PE/C/PY), U.S. Department of State, SA–5, 3rd Floor, Washington, DC 20522–0503, Telephone (202) 632–6421, Fax (202) 632–9355, E-mail: *LantzCS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the title, YES Summer Academy, and number, ECA/PE/C/PY–10–27.

Please read the complete announcement before sending inquiries

or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: *February 3, 2010.*

**Maura M. Pally,**

*Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 2010–2981 Filed 2–9–10; 8:45 am]

**BILLING CODE 4710–05–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 January 30, 2010

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–2010–0023.

*Date Filed:* January 25, 2010.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* February 16, 2010.

*Description:* Application of Wings Airways, Inc. requesting a certificate of public convenience and necessity to transport passenger, property and mail in interstate air transportation.

*Docket Number:* DOT–OST–2010–0028.

*Date Filed:* January 29, 2010.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* February 19, 2010.

*Description:* Application of Aero Republica S.A. requesting a foreign air carrier permit and corresponding exemption to enable it to engage in daily scheduled nonstop flights between Bogota, Colombia and Miami, Florida.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 2010–2903 Filed 2–9–10; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35346]**

### Nebraska Northwestern Railroad, Inc.—Acquisition and Operation Exemption—Dakota, Minnesota & Eastern Railroad Corporation

Nebraska Northwestern Railroad, Inc. (NNW), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase and lease) from Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and to operate approximately 28.1 miles of rail line as follows: (1) By purchase between milepost 404.5 near Chadron, NE., and milepost 411.72 Engineering Station 7492+73 near Dakota Junction, NE.; and (2) by lease between milepost 411.72 Engineering Station 7492+73 near Dakota Junction and milepost 432.6 near Crawford, NE., together with various side tracks, spur tracks, connections and other facilities located therein.

NNW states that the proposed transaction does not contain any provision or involve any agreement between it and DM&E that would limit NNW's future ability to interchange traffic with a third party connecting carrier.

NNW certifies that its projected annual revenues as a result of the transaction will not result in NNW becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

NNW states that it expects the transaction to be consummated as soon as practicable following the effective of this exemption. The earliest this transaction may be consummated is February 24, 2010, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 17, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35346, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael W. Blaszak, 211 South Leitch Avenue, La Grange, IL 60525.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 4, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2010–2875 Filed 2–9–10; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice

**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 April 12, 2010.

**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., and 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 William H. Henley, Jr. (202) 906–6540, 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:* Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.

*OMB Number:* 1550–0110.

*Form Numbers:* N/A.

*Regulation requirement:* 12 CFR Part 570.

*Description:* The collection helps to establish standards for financial institutions relating to administrative, technical, and physical safeguards to: (1) Ensure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer. A response program, of which this collection is a critical part, contains policies and procedures that enable the financial institution to: (a) Assess the situation to determine the nature and scope of the incident, and identify the information systems and types of customer information affected; (b) notify the institution's primary Federal regulator and, in accordance with applicable regulations and guidance, file a Suspicious Activity Report and notify appropriate law enforcement agencies; (c) take measures to contain and control the incident to prevent further unauthorized access to or misuse of customer information, including shutting down particular applications or third party connections, reconfiguring firewalls, changing computer access codes, and modifying physical access controls; and (d) address and mitigate harm to individual customers.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 657.

*Estimated Burden Hours per Response:* 16 hours for developing notices and 20 hours for notifying the customers.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Burden:* 16,912 hours.

Dated: February 5, 2010.

**Ira L. Mills,**

*Paperwork Clearance Officer, Office of Thrift Supervision.*

[FR Doc. 2010–2984 Filed 2–9–10; 8:45 am]

**BILLING CODE 6720–01–P**

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## DEPARTMENT OF THE TREASURY

### United States Mint

### Notification of Citizens Coinage Advisory Committee February 2010 Public Meeting

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for February 23, 2010.

*Dates:* February 23, 2010.

*Time:* 9 a.m. to 11 a.m.

*Location:* 2nd Floor, Conference Room C, United States Mint, 801 9th Street NW., Washington, DC 20220.

*Subject:* Review 2011 First Spouse Gold Coin and Medal Program Design Narratives, and discuss the 2009 Annual Report.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** Cliff Northup, United States Mint Liaison to the CCAC, 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: February 4, 2010.

**Edmund C. Moy,**

*Director, United States Mint.*

[FR Doc. 2010–2828 Filed 2–9–10; 8:45 am]

**BILLING CODE 4810–02–P**

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## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds—Termination: Trinity Universal Insurance Company

**AGENCY:** Financial Management Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 6 to the Treasury Department Circular 570, 2009 Revision, published July 1, 2009, at 74 FR 31536.

**FOR FURTHER INFORMATION CONTACT:** Surety Bond Branch at (202) 874–6850.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds is terminated effective today. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2009 Revision, to reflect this change.

With respect to any bonds currently in force with this company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from this company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: January 29, 2010.

**Vivian L. Cooper,**

*Director, Financial Accounting and Services Division.*

[FR Doc. 2010–2673 Filed 2–9–10; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900-New (VA Form 0857c)]**

### Proposed Information Collection (Reasonable Accommodation) Activity: Comment Request

**AGENCY:** Office of Human Resources and Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Office of Human Resources and Administration (HRA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each collection of information in use without an OMB control number, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant entitlement to receive reasonable accommodation during the application or interview process.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before April 12, 2010.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to David Walton, Office of Human Resources Management (06), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *david.walton@va.gov.* Please refer to "OMB Control No. 2900-New (VA Form 0857c)" in any correspondence. During the comment period, comments may be viewed online through at FDMS.

**FOR FURTHER INFORMATION CONTACT:** David Walton at (202) 461–4002.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, HRA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of HRA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:*

a. Request for Reasonable Accommodation, VA Form 0857c.

b. Authorization for Limited Release of Medical Information, VA Form 0857e.

*OMB Control Number:* 2900-New (VA Form 0857c).

*Type of Review:* Existing collection in use without an OMB control number.

*Abstract:* Applicants with a disability who are seeking a position at VA complete VA Form 0857c to request reasonable accommodation such as an interpreter or adaptive equipment during the application and interview process. In order to substantiate their claim for reasonable accommodation, applicants must complete VA Form 0857e to authorize their provider to release medical information to VA. The data collected will be used to determine the applicant's entitlement to reasonable accommodation.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 18 hours.

*Estimated Average Burden Per Respondent:* 30 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 35.

Dated: February 5, 2010.

By direction of the Secretary:

**Denise McLamb,**

*Enterprise Records Service.*

[FR Doc. 2010–2922 Filed 2–9–10; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–New (Insurance Surveys)]**

### Proposed Information Collection (Insurance Survey); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine how well the Insurance Service program meets customer service standards.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before April 12, 2010.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–New (Insurance Surveys) in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Insurance Survey.

*OMB Control Number:* 2900–New (Insurance Surveys).

*Type of Review:* New collection.

*Abstract:* VBA administers integrated programs of benefits and services, established by law for veterans and their survivors, and service personnel. Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. Customer satisfaction surveys are used to gauge customer perceptions of VA services as well as customer expectations and desires.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 48 hours.

*Estimated Average Burden per Respondent:* 6 minutes.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 480.

Dated: February 5, 2010.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2010–2923 Filed 2–9–10; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0092]**

## Proposed Information Collection (Rehabilitation Needs Inventory) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's entitlement to vocational rehabilitation services.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before April 12, 2010.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0092" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Rehabilitation Needs Inventory (Chapter 31, Title 38 U.S. Code, VA Form 28–1902w.

*OMB Control Number:* 2900–0092.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 28–1902w is mailed to service-connected disabled veterans who submitted an application for vocational rehabilitation benefits. VA will use data collected to determine the types of rehabilitation program the veteran will need.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 45,000 hours.

*Estimated Average Burden per Respondent:* 45 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 60,000.

Dated: February 5, 2010.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2010–2924 Filed 2–9–10; 8:45 am]

**BILLING CODE 8320–01–P**

Federal Register

Wednesday,
February 10, 2010

# Part II

# Department of Agriculture

## Office of Energy Policy and New Uses

## 7 CFR Part 2902

## Designation of Biobased Items for Federal Procurement; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Office of Energy Policy and New Uses**

**7 CFR Part 2902**

**RIN 0503–AA34**

## Designation of Biobased Items for Federal Procurement

**AGENCY:** Departmental Management, USDA.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add nine sections that will designate the following items within which biobased products would be afforded Federal procurement preference: Disposable tableware; expanded polystyrene foam recycling products; heat transfer fluids; ink removers and cleaners; mulch and compost materials; multipurpose lubricants; office paper; topical pain relief products; and turbine drip oils. USDA is also proposing minimum biobased contents for each of these items.

**DATES:** USDA will accept public comments on this proposed rule until April 12, 2010.

**ADDRESSES:** You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503–AA34. Also, please identify submittals as pertaining to the "Proposed Designation of Items."

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: biopreferred@usda.gov*. Include RIN number 0503–AA34 and "Proposed Designation of Items" on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, *etc.*) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov*; phone (202) 205–4008. Information regarding the preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov*.

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Today's Proposed Rule
IV. Designation of Items, Minimum Biobased Contents, and Time Frame
  A. Background
  B. Items Proposed for Designation
  C. Minimum Biobased Contents
  D. Compliance Date for Procurement Preference and Incorporation Into Specifications
V. Where Can Agencies Get More Information on These USDA-Designated Items?
VI. Regulatory Information
  A. Executive Order 12866: Regulatory Planning and Review
  B. Regulatory Flexibility Act (RFA)
  C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
  D. Executive Order 13132: Federalism
  E. Unfunded Mandates Reform Act of 1995
  F. Executive Order 12372: Intergovernmental Review of Federal Programs
  G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  H. Paperwork Reduction Act
  I. e-Government Act

### I. Authority

The designation of these items is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as "section 9002").

### II. Background

Section 9002 provides for the preferred procurement of biobased products by Federal procuring agencies and is referred to hereafter in this **Federal Register** notice as the "preferred procurement program." The definition of "procuring agency" in section 9002 includes both Federal agencies and "a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract." Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002, as amended in section 9002 of the 2008 Farm Bill.

The term "item" is used in the designation process to mean a generic grouping of specific products that perform a similar function, such as the various brands of crankcase oils or interior paints. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or the functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. Procuring agencies must procure biobased products within each designated item unless they determine that products within a designated item are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in 7 CFR Part 2902—"Guidelines for Designating Biobased Products for Federal Procurement" (Guidelines), biobased products that are merely incidental to Federal funding are excluded from the preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. In implementing the preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule. Rather, the effect of the designation of the items is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated items that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002 of the 2002 Farm Bill.

Section 9002(a)(3)(B) requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items and to recommend where appropriate the minimum level of biobased content to be contained in the procured products.

It is the responsibility of the manufacturers to "self-certify" that each product being offered as a biobased product for preferred procurement contains qualifying feedstock. USDA will develop a monitoring process for these self-certifications to ensure manufacturers are using qualifying feedstocks. If misrepresentations are found, USDA will remove the subject biobased product from the preferred procurement program and put a notice of this action on the BioPreferred Web site.

*Subcategorization.* Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are subgroups of products within the item that meet different requirements, uses and/or different performance specifications. For example, within the item category "hand cleaners and sanitizers," products that are used in medical offices may be required to meet performance specifications for sanitizing, while other products that are intended for general purpose hand washing may not need to meet these specifications. Where such subgroups exist, USDA intends to create subcategories. Thus, for example, for the item "hand cleaners and sanitizers," USDA has determined it is reasonable to create a "hand cleaner" subcategory and a "hand sanitizer" subcategory. Sanitizing specifications would be applicable to the latter subcategory, but not the former. In sum, USDA looks at the products within each item category to evaluate whether there are subgroups of products within the item that meet different performance specifications and, where USDA finds this type of difference, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

For some items, however, USDA may not have sufficient information at the time of proposal to create subcategories within an item. For example, USDA may know that there are different performance specifications that deicing products are required to meet, but it has information on only one type of deicing product. In such instances, USDA may either designate the item without creating subcategories (*i.e.,* defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the item until additional information is obtained. Once USDA has received sufficient additional information to justify the designation of a subcategory, the subcategory will be designated through the proposed and final rulemaking process.

USDA is not proposing to subcategorize any of the items being proposed for designation in today's action. However, public comments and additional data are being requested for several of the items and subcategories may be created in a future proposed rulemaking.

*Minimum Biobased Contents.* The minimum biobased contents being proposed with today's rule are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteer to invest the resources required to submit the samples.

In addition to considering the biobased content test data for each item, USDA also considers other factors including product performance information. USDA evaluates this information to determine whether some products that may have a lower biobased content also have unique performance or applicability attributes that would justify setting the minimum biobased content at a level that would include these products. For example, a lubricant product that has a lower biobased content than others within an item but is formulated to perform over a wider temperature range than the other products may be more desirable to Federal agencies. Thus, it would be beneficial to set the minimum biobased content for the item at a level that would include the product with superior performance features.

USDA also considers the overall range of the tested biobased contents within an item, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, the biobased contents of five tested products within an item being proposed for designation today are 5, 22, 31, 82, and 85 percent. Because this is a very wide range, and because there is a significant gap in the data between the 31 percent biobased product and the 82 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this item. USDA found that the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 5, 22, or 31 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this item based on the product with a tested biobased content of 82 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item because only one manufacturer volunteered to supply a sample for testing. As USDA obtains additional data on the biobased contents for products within these designated items and their subcategories, USDA will evaluate whether the minimum biobased content for a designated item will be revised. Where future revisions of established minimum biobased contents are justified, such revisions will be announced in a proposed rulemaking with an opportunity for public comment prior to finalizing the rulemaking.

USDA anticipates that the minimum biobased content of an item that is based on a single product is more likely to change as additional products within that designated item are identified and tested. In today's proposed rule, the minimum biobased contents for one of the designated items ("expandable polystyrene foam recycling products") is based on a single tested product. Given that only two biobased products have been identified in this item, and only one manufacturer supplied a sample for testing, USDA believes it is reasonable to set a minimum biobased content for this item based on the single data point.

Where USDA receives additional biobased content test data for products within any of these proposed items during the public comment period, USDA will take that information into consideration when establishing the minimum biobased content when the items are designated in the final rulemaking.

*Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002.* Some of the products that are biobased items designated for preferred procurement under the preferred procurement program may also be items the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered

materials. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies also may ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products," or the Building for Environmental and Economic Sustainability (BEES) analysis for evaluating and reporting on environmental performance of biobased products). Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products. Detailed information on ASTM Standard D7075, and other ASTM standards, can be found on ASTM's Web site at *http://www.astm.org*. Information on the BEES analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html*.

Section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such an item composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

Where a biobased item is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because "lubricating oils containing re-refined oil" has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, "lubricating oils containing re-refined oil." If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to reasonable price, availability, and performance considerations.

This proposed rule designates three items for preferred procurement for which there may also be an EPA-designated recovered content product. The first item is mulch and compost materials, which are also EPA-designated recovered content products "hydraulic mulch products" and "compost materials" under the "landscaping products" category of products. The second item is multipurpose lubricants, which, depending on how they are used, may be an EPA-designated recovered content product "re-refined lubricating oils." The third item is office paper, which is an EPA-designated recovered content product under the "paper and paper products" category of products. EPA provides recovered materials content recommendations for these recovered content products in a Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations for these CPG products can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

*Federal Government Purchase of Sustainable Products.* The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: the BioPreferred Program, the Environmental Protection Agency's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Procuring agencies should note that not all biobased products are "environmentally preferable." For example, unless cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. Household cleaning products that are formulated to be disinfectants are required, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to be registered with EPA and must meet specific labeling requirements warning of the potential risks associated with misuse of such products. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that the products have been reformulated in accordance with recommendations from the U.S. EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol ethers, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

In contrast, some biobased products may be more environmentally preferable than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's DfE program. To fully compare products, one must look at the "cradle-to-grave" impacts of the manufacture, use, and disposal of products. Biobased products that will be available for preferred procurement under this program have been assessed as to their "cradle-to-grave" impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new fossil carbon into the atmosphere. Fossil carbon is derived from non-renewable sources (typically fossil fuels such as coal and oil), whereas renewable biomass carbon is derived from renewable sources (biomass). Qualifying biobased products offer the user the opportunity to manage the carbon cycle and reduce the introduction of new fossil carbon into the atmosphere.

Manufacturers of qualifying biobased products under the preferred procurement program will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results

of the ASTM D7075, or the comparable BEES analysis which examines 12 different environmental parameters, including human health. Therefore, USDA encourages Federal procurement agencies to consider that USDA has already examined all available information on the environmental and human health effects of biopreferred products, when making their purchasing decisions.

*Other Preferred Procurement Programs.* Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*http://www.abilityone.gov*) indicated that four of the items being proposed today ("disposable tableware," "mulch and compost materials," "multipurpose lubricants," and "office paper") are available through the AbilityOne Program. While none of the specific products within these items are identified in the JWOD online catalog as being biobased products, it is possible that biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other items being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

*Outreach.* To augment its own research, USDA consults with industry and Federal stakeholders to the preferred procurement program during the development of the rulemaking packages for the designation of items. USDA consults with stakeholders to gather information used in determining the order of item designation and in identifying: Manufacturers producing and marketing products that fall within an item proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

*Future Designations.* In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing. Based on these results, USDA will then propose new items for designation for preferred procurement.

USDA has developed a preliminary list of items for future designation. This list is available on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with certainty which items will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those items that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, items with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list. USDA intends to update the list of items for future designation on the Biopreferred Web site every six months, or more often if significant changes are made to the list.

## III. Summary of Today's Proposed Rule

USDA is proposing to designate the following items for preferred procurement: Disposable tableware; expanded polystyrene (EPS) foam recycling products; heat transfer fluids; ink removers and cleaners; mulch and compost materials; multipurpose lubricants; office paper; topical pain relief products; and turbine drip oils. USDA is also proposing minimum biobased content for each of these items (*see* Section IV.C). Lastly, USDA is proposing a date by which Federal agencies must incorporate designated items into their procurement specifications (*see* Section IV.D).

In today's proposed rule, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life-cycle costs for each of the designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these items is not presented in this notice. Further, USDA has reached an understanding with manufacturers not to publish their names in conjunction with specific product data published in the **Federal Register** when designating items. This understanding was reached to encourage manufacturers to submit products for testing to support the designation of an item. Once an item has been designated, USDA will encourage the manufacturers of products within the designated item to voluntarily make their names and other contact information available for the BioPreferred Web site.

*Warranties.* Some of the items being proposed for designation today may affect original equipment manufacturers' (OEMs) warranties for equipment in which the items are used. For example, the manufacturer of a piece of equipment that requires lubrication typically includes a list of recommended lubricants in the owner/operator's manual that accompanies the equipment when purchased. If the purchaser of the equipment uses a lubricant (including a biobased lubricant) that is not among the lubricants recommended by the equipment manufacturer, the manufacturer may cite that as a reason not to honor the warranty on the equipment. At this time, USDA does not have information available as to the extent that OEMs have included, or will include, biobased products among their recommended lubricants (or other similar operating components). This does not necessarily mean that use of biobased products will void warranties, only that USDA does not currently have such information. USDA is requesting comments and information on this topic, but cannot be held responsible if damage were to occur. USDA encourages manufacturers of biobased products to test their products against all relevant standards, including those that affect warranties, and to work with OEMs to ensure that biobased products are accepted and recommended for use. Whenever manufacturers of biobased products find that existing performance standards for warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. In addition to outreach to biobased product manufacturers and Federal agencies, USDA will, as time and resources allow, work with OEMs on addressing any effect the use of biobased products may have on their warranties. If, in spite of these efforts, there is insufficient information regarding the use of a biobased product

and its effect of warranties, the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on the BioPreferred Web site. Updates to the BioPreferred Web site will occur whenever new information is submitted.

*Additional Information.* USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Web site before a procuring agency asks for it, in order to make the preferred program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through e-mail and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these items through the following Web site: *http://www.biopreferred.gov*.

*Comments.* USDA invites comment on the proposed designation of these items, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these items. In addition, USDA invites comments and information in the following areas:

1. Three items ("mulch and compost materials," "multipurpose lubricants," and "office paper") may overlap with products designated under EPA's Comprehensive Procurement Guideline for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting product-specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material as well as non-biobased products.

2. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed items. If you know of other such standards or relevant measures of performance for any of the proposed items, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

3. Many biobased products within the items being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the BioPreferred Web site. This information will then be available to Federal procuring agencies and will assist them in making informed sustainable procurement decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

4. Some items (*e.g.,* "disposable tableware," "heat transfer fluids," and "ink removers and cleaners") have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing minimum biobased content levels that would allow many of the tested products to be eligible for preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these items and whether there are potential subcategories within the items that should be considered.

5. As discussed above, the effect that the use of biobased products may have on original equipment manufacturers' warranties is uncertain. USDA requests comments and supporting information on any aspect of this issue.

6. Today's proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. Because USDA has been unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule, USDA requests comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

All comments should be submitted as directed in the **ADDRESSES** section above.

To assist you in developing your comments, the background information used in proposing these items for designation has been assembled in a technical support document, "Technical Support for Proposed Rule—Round 6 Designated Items," which is available on the BioPreferred Web site. The technical support document can be located by clicking on the Proposed and Final Regulations link on the right side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*). At the next screen, click on the Supporting Documentation link under Round 6 Designated Items under the Proposed Regulations section. This will bring you to the link to the technical support document.

## IV. Designation of Items, Minimum Biobased Contents, and Time Frame

### *A. Background*

In order to designate items for preferred procurement, section 9002 requires USDA to consider: (1) The availability of items and (2) the economic and technological feasibility of using the items, including the life-cycle costs of the items.

In considering an item's availability, USDA uses several sources of information. USDA performs Internet searches, contacts trade associations (such as the Bio organization) and commodity groups, searches the Thomas Register (a database, used as a resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts manufacturers and vendors to identify those manufacturers and vendors with biobased products within items being considered for designation. USDA uses the results of these same searches to determine if an item is generally available.

In considering an item's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of an item and its life-cycle cost and performance characteristics. This information is obtained from the sources used to assess an item's availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information

on the availability, relative prices, and performance of their products as well as by evidence of an item being purchased by a procuring agency or other entity, where available. In sum, USDA considers an item economically and technologically feasible for purposes of designation if products within that item are being offered and used in the marketplace.

In considering the life-cycle costs of items proposed for designation, USDA has obtained the necessary input information (on a voluntary basis) from manufacturers of biobased products and has used the BEES analytical tool to analyze individual products within each proposed item. The BEES analytical tool measures the environmental performance and the economic performance of a product. The environmental performance scores, impact values, and economic performance results for products within the Round 6 designated items analyzed using the BEES analytical tool can be found in "Technical Support for Proposed Rule—Round 6 Designated Items," located on the BioPreferred Web site (*http://www.biopreferred.gov*).

In addition to the BEES analytical tool, manufacturers wishing to make similar life-cycle information available may choose to use the ASTM Standard D7075 analysis. The ASTM Standard D7075 product analysis includes information on environmental performance, human health impacts, and economic performance. USDA is working with manufacturers and vendors to make this information available on the BioPreferred Web site in order to make the preferred procurement program more efficient.

As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make this information, including manufacturer contact information, available on the BioPreferred Web site in order to then make it available to procurement officials. Additional information on specific products within the items proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided a link on the BioPreferred Web site to the Defense Standardization Program and to the General Services Administration (GSA)-related standards lists used as guidance when procuring products. These lists can be accessed through the "Selling to the Federal Government" link on the BioPreferred Web site.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering information on industry standard test methods and performance standards that manufacturers are using to evaluate the functional performance of their products. (Test methods are procedures used to provide information on a certain attribute of a product. For example, a test method might determine how many bacteria are killed. Performance standards identify the level at which a product must perform in order for it to be "acceptable" to the entity that set the performance standard. For example, a performance standard might require that a certain percentage (*e.g.,* 95 percent) of the bacteria must be killed through the use of the product.) The primary source of information on these test methods and performance standards are manufacturers of biobased products within these items. Additional test methods and performance standards are also identified during meetings of the Interagency council and during the review process for each proposed rule. We have listed, under the detailed discussion of each item proposed for designation (presented in Section IV.B), the functional performance test methods, performance standards, product certifications, and other measures of performance associated with the functional aspects of products identified during the development of this **Federal Register** notice for these items.

While this process identifies many of the relevant test methods and standards, USDA recognizes that those identified herein do not represent all of the methods and standards that may be applicable for a designated item or for any individual product within the designated item. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the BioPreferred Web site.

In gathering information relevant to the analyses discussed above for this proposed rule, USDA has made extensive efforts to contact and request information and product samples within the items proposed for designation. For product information, USDA has attempted to contact representatives of the manufacturers of biobased products identified by the preferred procurement program. For product samples on which to conduct biobased content tests and BEES analysis, USDA has attempted to obtain samples and BEES input information for at least five different suppliers of products within each item in today's proposed rule. However, because the submission of information and samples is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who volunteer to invest the resources required to gather and submit the information and samples. The data presented are all the data that were submitted in response to USDA requests for information from manufacturers of the products within the items proposed for designation. While USDA would prefer to have complete data on the full range of products within each item, the data that were submitted support designation of the items in today's proposed rule.

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life-cycle costs. For some items, there may be numerous products available. For other items, there may be very few products currently available. Given the infancy of the market for some items, it is not unexpected that even single-product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate an item or subcategory for preferred procurement even when there is only a single product with a single supplier. However, USDA has also determined that in such situations it is appropriate to defer the effective preferred procurement date until such time that more than one supplier is identified in order to provide choice to procuring agencies. Similarly, the documented availability, benefits, and life-cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

*B. Items Proposed for Designation*

USDA uses a model (as summarized below) to identify and prioritize items for designation. Through this model, USDA has identified over 100 items for potential designation under the preferred procurement program. A list of these items and information on the model can be accessed on the BioPreferred Web site at *http://www.biopreferred.gov*.

In general, items are developed and prioritized for designation by evaluating

them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and manufacturers. These evaluations begin by looking at the cost, performance, and availability of products within each item. USDA then considers the following points:

- Are there manufacturers interested in providing the necessary test information on products within a particular item?
- Are there a number of manufacturers producing biobased products in this item?
- Are there products available in this item?
- What level of difficulty is expected when designating this item?
- Is there Federal demand for the product?
- Are Federal procurement personnel looking for biobased products?
- Will an item create a high demand for biobased feed stock?
- Does manufacturing of products within this item increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of items for designation. USDA then gathers information on products within the highest priority items and, as sufficient information becomes available for a group of items, a new rulemaking package is developed to designate the items within that group. USDA points out that the list of items may change, with items being added or dropped, and that the order in which items are proposed for designation is likely to change because the information necessary to designate an item may take more time to obtain than an item lower on the list.

In today's proposed rule, USDA is proposing to designate the following items for the preferred procurement program: Disposable tableware; EPS foam recycling products; heat transfer fluids; ink removers and cleaners; mulch and compost materials; multipurpose lubricants; office paper; topical pain relief products; and turbine drip oils. USDA has determined that each of these items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, USDA has sufficient information on these items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life-cycle costs.

*Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products.* In today's proposed rule, three items being designated for preferred procurement may overlap with EPA-designated recovered content products. The first item is "mulch and compost materials," which may overlap with the EPA-designated recovered content products "hydraulic mulch products" and "compost materials" under the "landscaping products" category of products. The second item is "multipurpose lubricants," which, depending on how they are used, may overlap with the EPA-designated recovered content product "re-refined lubricating oils." The third item is "office paper," which may overlap with the EPA-designated recovered content products under the "paper and paper products" category of products.

For these items, USDA is requesting that information on qualifying biobased products be made available by their manufacturers to assist Federal agencies in determining if an overlap exists between the biobased products and the applicable EPA-designated recovered content products. USDA is requesting this information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the BioPreferred Web site.

*Exemptions.* Products used in spacecraft systems and launch support applications and military equipment used in combat and combat-related applications are exempt from the biobased product procurement preference, but agencies may purchase biobased products wherever performance, availability and reasonable price indicates that such purchases are justified.

Although each item in today's proposed rule would be exempt from the procurement preference requirement when used in spacecraft systems or launch support application or in military equipment used in combat and combat-related applications, this exemption does not extend to contractors performing work other than direct maintenance and support of the spacecraft or launch support equipment or combat or combat-related missions. For example, if a contractor is painting the interior of a non-combat office building on a military base, the interior paint the contractor purchases and uses in the office building should be a biobased interior paint (provided it meets the specifications for the designated item "interior paints and coatings"). The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space or launch applications. After reviewing the regulatory requirement and their contract, where a contractor has any question on the exemption, they should contact the cognizant contracting officer.

USDA points out that it is not the intent of these exemptions to imply that biobased products are inferior to non-biobased products. If manufacturers of biobased products can meet the concerns of these two agencies, USDA is willing to reconsider such exemptions on an item-by-item basis. Any changes to the current exemptions would be announced in a proposed rule amendment with an opportunity for public comment.

The proposed designated items are discussed in the following sections.

1. Disposable Tableware (Minimum Biobased Content 72 Percent) [1]

Disposable tableware is one-time-use drink ware and dishware, including cups, plates, bowls, and serving platters used for dining.

USDA identified 19 different manufacturers and suppliers of 65 biobased disposable tableware products. These 19 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased disposable tableware, merely those identified during USDA information gathering activities. Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two performance standards and one product certification (as shown below) used in evaluating products within this item. While there may be additional performance standards, as

[1] Additional information on the determination of minimum biobased contents is presented in Section IV.C of this preamble.

well as test methods, product certifications, and other measures of performance applicable to products within this item, those identified by manufacturers of product within this item are:

*Performance Standards*

- ASTM D6400, "Standard Specification for Compostable Plastics;" and
- ASTM D6868, "Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates."

*Product Certifications and Other Measures*

- Biodegradable Products Institute certified compostable plastic products will biodegrade and compost satisfactorily in actively managed compost facilities.

USDA contacted procurement officials with various policy-making and procuring agencies including GSA, several offices within the Defense Logistics Agency, OFEE, USDA Departmental Administration, the National Park Service, EPA, Oak Ridge National Laboratory, and OMB in an effort to gather information on the purchases of disposable tableware and products within the other eight items proposed for designation today. Communications with these officials led to the conclusion that obtaining credible current usage statistics and specific potential markets within the Federal government for biobased products within the nine proposed designated items is not possible at this time.

Most of the contacted officials reported that procurement data are reported in higher level groupings of materials and supplies than the proposed designated items. Using terms that best match the items in today's proposed rule, USDA queried the GSA database for Federal purchases of products within today's proposed items. The results indicate purchases of products within items in today's proposed rule. The results of this inquiry can be found in the technical support document for this proposed rule. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally further obscures credible data on purchases of specific products.

USDA also investigated the Web site FEDBIZOPPS.gov, a site which lists Federal contract purchase opportunities greater than $25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of disposable tableware purchased by procuring agencies. However, Federal agencies routinely procure such products and contract for food preparation services involving the use of such products. Thus, they have a need for disposable tableware and for services that use disposable tableware. Designation of "disposable tableware" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased disposable tableware was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

2. Expanded Polystyrene (EPS) Foam Recycling Products (Minimum Biobased Content 90 Percent)

These are products formulated to dissolve EPS foam (examples would include foam coolers, hot drink cups, and flotation devices) to reduce the volume of recycled or discarded EPS foam items. The products are sprayed on the EPS foam, which is quickly dissolved into a concentrated material that can then be recycled or landfilled. The primary uses of these products are in recycling operations and construction/demolition projects.

USDA identified two manufacturers and one supplier of two biobased EPS foam recycling products. These manufacturers and supplier do not necessarily include all manufacturers of biobased EPS foam recycling products, merely those identified during USDA information gathering activities. Information supplied by the manufacturers and supplier indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, product certifications, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on "disposable tableware." These attempts were largely unsuccessful. USDA is aware that products used for recycling EPS foam represent a developing application that will be working into the market and that there are many potential applications where Federal facilities could benefit from this technology. For example, at this time, there is a project on the Lake of the Ozarks (Corps of Engineers) to recycle EPS foam from boat docks to prevent the material from getting into the power generation plants. Thus, USDA believes that designation of "EPS foam recycling products" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased EPS foam recycling products was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

3. Heat Transfer Fluids (Minimum Biobased Content 89 Percent)

Heat transfer fluids are products with high thermal capacities used to facilitate the transfer of heat from one location to another, including coolants or refrigerants for use in HVAC applications, internal combustion engines, personal cooling devices, thermal energy storage, or other heating or cooling closed-loops.

USDA identified five manufacturers and suppliers of six heat transfer fluids. These five manufacturers and suppliers do not necessarily include all manufacturers and suppliers of heat transfer fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any performance standards, test methods, or applicable industry measures of performance against which these products have been tested. As noted earlier in this preamble, the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of

performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for heat transfer fluids within the Federal government as discussed in the section on "disposable tableware." These attempts were largely unsuccessful. However, most Federal agencies routinely perform, or procure services to perform, activities that use these products. Thus, they have a need for heat transfer fluids and for services that require the use of heat transfer fluids. Designation of "heat transfer fluids" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased heat transfer fluids was performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

4. Ink Removers and Cleaners (Minimum Biobased Content 79 Percent)

Ink removers and cleaners are chemicals used for removing ink, haze, glaze, and other residual ink contaminants from ink presses, rollers, and other equipment used in the printing and textile industries.

USDA identified nine manufacturers and suppliers of 15 biobased ink removers and cleaners. These nine manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased ink removers and cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. As noted earlier in this preamble, the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, product certifications, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on "disposable tableware." These attempts were largely unsuccessful. However, Federal agencies (*e.g.,* Bureau of Engraving and Printing) have ink presses and similar equipment that would be cleaned with such products. In addition, such Federal agencies may contract for cleaning services that would use such products. Thus, they have a need for ink removers and cleaners and for services that require the use of ink removers and cleaners. Designation of "ink removers and cleaners" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased ink removers and cleaners was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

5. Mulch and Compost Materials (Minimum Biobased Content 95 Percent)

Mulch is a protective covering placed atop the soil, primarily to keep down weeds and to improve the appearance of landscaping. Compost is the aerobically decomposed remnants of organic materials used in gardening and agriculture as a soil amendment, and commercially by the landscaping and container nursery industries.

USDA identified 67 manufacturers and suppliers of 232 mulch and compost materials. These 67 manufacturers and suppliers do not necessarily include all manufacturers of mulch and compost materials, merely those identified during USDA information gathering activities. Information supplied by the manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified three test methods (as shown below) used in evaluating products within this item. While other test methods and measures of performance, as well as performance standards, applicable to products within this item may exist, the three test methods identified by manufacturers of products within this item and by others are:

*Test Methods*

- ASTM International C16 Standard Test Method for Load Testing Refractory Shapes at High Temperatures;
- ASTM International D18 Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates; and
- ASTM International D790 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials.

USDA attempted to gather data on the potential market for mulch and compost materials within the Federal government using the procedure described in the section on "disposable tableware." These attempts were largely unsuccessful. However, many Federal agencies routinely perform activities that use these products. In addition, many Federal agencies contract for activities involving the use of such products. Thus, they have a need for mulch and compost materials and for services that use mulch. Designation of "mulch and compost materials" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased mulch and compost materials was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

6. Multipurpose Lubricants (Minimum Biobased Content 88 Percent)

Multipurpose lubricants are products designed to reduce friction or rust in a variety of industrial settings. Products within this item are typically in liquid form. Greases, which are lubricants composed of oils thickened to a semisolid or solid consistency using soaps, polymers or other solids, or other thickeners, are not included in this item. In addition, as proposed, task-specific lubricants, such as chain and cable lubricants and gear lubricants, would not be included in this item.

Qualifying products within this item may overlap with the EPA-designated recovered content product: "Re-refined lubricating oils."

USDA identified 16 manufacturers and suppliers of 27 biobased multipurpose lubricant products. These 16 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased multipurpose lubricants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified several test methods and other measures of performance (as

shown below) used in evaluating products within this item. While other test methods and other measures of performance, as well as product certifications, and performance standards, applicable to products within this item may exist, those test methods and other measures of performance identified by manufacturers of products within this item and by others are:

*Test Methods*

- ASTM D1748, "Standard Test Method for Rust Protection By Metal Preservatives in the Humidity Cabinet;"
- ASTM D2266, "Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four Ball Method);"
- ASTM D130, "Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;"
- ASTM D482, "Standard Test Method for Ash from Petroleum Products;"
- ASTM D5864, "Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;"
- ASTM D665, "Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;"
- ASTM D92, "Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;"
- ASTM D97, "Standard Test Method for Pour Point of Petroleum Products;"
- ASTM D972, "Standard Test Method for Evaporative Loss of Lubricating Greases and Oils;" and
- Vickers I–286–S Tests for pump wear.

*Product Certifications and Other Measures*

- API GL–1 Service Designation denotes lubricants intended for manual transmissions operating under such mild conditions that straight petroleum or refined petroleum oil may be used satisfactorily;
- ISO 32 Calibration in analytical chemistry and use of certified reference materials;
- ISO 68 International Standards Organization Viscosity Guide; and
- Society of Automotive Engineers SAE 30 J300 Engine Oil Viscosity Classification.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on "disposable tableware." These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, activities that use machinery that requires multipurpose lubricants. Thus, they have a need for multipurpose lubricants. Designation of "multipurpose lubricants" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased multipurpose lubricants was performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

7. Office Paper (Minimum Biobased Content 95 Percent)

Office paper products are papers used in office printer and copier applications, writing, and coated papers for publications.

USDA identified 13 manufacturers and suppliers of 20 different biobased office papers. These 13 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased office paper, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified one performance standard (as shown below) used in evaluating products within this item. While other test methods and measures of performance, as well as performance standards, applicable to products within this item may exist, the performance standard identified by manufacturers of products within this item and by others is:

*Performance Standard*

- JCP A230 Printing Paper—High Yield Coated Opaque Offset (Light Coating).

USDA attempted to gather data on the potential market for office paper within the Federal government as discussed in the section on "disposable tableware." These attempts were largely unsuccessful. However, Federal agencies routinely perform activities that require the use of office paper. In addition, many Federal agencies contract for activities involving the use of such products. Thus, they have a need for office paper and for services that require the use of such products. Designation of "office paper" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased office papers was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

8. Topical Pain Relief Products (Minimum Biobased Content 91 Percent)

Topical pain relief products are balms, creams and other topical treatments for the relief of muscle, joint, headache, and nerve pain, as well as sprains, bruises, swelling, and other aches.

USDA identified 30 manufacturers of 48 biobased packaging material products. The 30 manufacturers do not necessarily include all manufacturers of biobased topical pain relief products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for topical pain relief products within the Federal government as discussed in the section on "disposable tableware." These attempts were largely unsuccessful. However, most Federal agencies routinely use, and procure services that use topical pain relief products. Thus, they have a need for topical pain relief products and for services that require the use of topical pain relief products. Designation of "topical pain relief products" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased topical pain relief products was performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

9. Turbine Drip Oils (Minimum Biobased Content 87 Percent)

Turbine drip oils are lubricants for use in drip lubrication systems for water well line shaft bearings, water turbine bearings for irrigation pumps, and other turbine bearing applications.

USDA identified four manufacturers and suppliers of four different biobased turbine drip oils. These four manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased turbine drip oils, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified nine test methods (as shown below) used in evaluating products within this item. While other test methods and measures of performance, as well as performance standards, applicable to products within this item may exist, the nine test methods identified by manufacturers of products within this item and by others are:

*Test Methods*

- ASTM International D2619 Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM International D2983 Standard Test Method for Low-Temperature Viscosity of Lubricants Measured by Brookfield Viscometer;
- ASTM International D5864 Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- ASTM International D665 Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM International D892 Standard Test Method for Foaming Characteristics of Lubricating Oils;
- International Organization for Standardization ISO 32 Oil Viscosity Grade;
- International Organization for Standardization ISO 46 Oil Viscosity Grade;
- Society of Automotive Engineers SAE 10W20 J300 Engine Oil Viscosity Classification; and
- Society of Automotive Engineers SAE 10W30 J300 Engine Oil Viscosity Classification.

USDA attempted to gather data on the potential market for turbine drip oils within the Federal government as discussed in the section on "disposable tableware." These attempts were largely unsuccessful. However, Federal agencies have facilities that require the use of turbine drip oils. In addition, Federal agencies may procure contract maintenance services that require the use of turbine drip oils. Thus, they have a need for turbine drip oils and for services that require the use of such products. Designation of "turbine drip oils" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased turbine drip oils was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

*C. Minimum Biobased Contents*

USDA has determined that setting a minimum biobased content for designated items is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimis biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for an item at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002.

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of samples to support the proposed designation of these items. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis.

As a result of public comments received on the first designated items rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for an item at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level three (3) percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA encourages procuring agencies to seek products with the highest biobased content that is practicable in all of the proposed designated items. To assist the procuring agencies in determining which products have the highest biobased content, USDA will update the information in the biobased products catalog to include the biobased content of each product. Those products within each designated item that have the highest biobased content will be listed first and others will be listed in descending order. USDA is specifically requesting comments on the proposed minimum biobased contents of designated items and also requests additional data that can be used to re-evaluate the appropriateness of the proposed minimum biobased contents. As the market for biobased products develops and USDA obtains additional biobased content data, it will re-evaluate the established minimum biobased contents of designated items and consider raising them whenever justified.

The following paragraphs summarize the information that USDA used to propose minimum biobased contents within each proposed designated item.

1. Disposable Tableware

Ten of the 65 biobased disposable tableware products identified have been tested for biobased content using ASTM D6866.[2] The biobased contents of these 10 biobased disposable tableware ranged from 32 percent to 100 percent, as follows: 32, 75, 90, 92, 98, and 100 percent (five products).

Considering that the range of biobased contents is large and there is a significant gap in the data points between the 32 and 75 percent biobased products, USDA evaluated the information available on these products to determine if there was justification for creating subcategories. USDA considered the possibility of creating subcategories based on product performance (*e.g.,* high temperature versus cold temperature applications),

[2] ASTM D6866, "Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis," is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

formulation, biodegradability characteristics, or product function (*e.g.,* plates, bowls, cups, cup lids). However, USDA found that there was not sufficient information to create subcategories. USDA also found no unique features found in the 32 percent biobased product that would justify considering that product when setting the minimum biobased content for the item. USDA requests that manufacturers provide information on the product characteristics mentioned above. If sufficient supporting data can be obtained, USDA will consider creating subcategories within this item in the final rule. Because of the lack of supporting data for subcategorization at this time, USDA is proposing to set the minimum biobased content for disposable tableware at 72 percent, based on the product with a tested biobased content of 75 percent.

2. EPS Foam Recycling Products

One of the two biobased EPS foam recycling products identified has been tested for biobased content using ASTM D6866. The biobased content of this EPS foam recycling product was 93 percent. USDA believes that this product adequately represents currently available products within this item and is, therefore, proposing to set the minimum biobased content for this item at 90 percent, based on the one tested product.

3. Heat Transfer Fluids

Three of the six biobased heat transfer fluids identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased heat transfer fluids range from 37 percent to 99 percent as follows: 37, 92, and 99 percent. There is a significant break between the 37 percent biobased product and the 92 percent product, and USDA found no performance features claimed for the 37 percent product that justified setting the minimum biobased content based on that product. Because the biobased contents of the remaining two products are within a narrow range, USDA is proposing to set the minimum biobased content for heat transfer fluids at 89 percent, based on the product with a tested biobased content of 92 percent.

4. Ink Removers and Cleaners

Five of the 15 biobased ink removers and cleaners identified have been test for biobased content using ASTM D6866. The biobased contents of these five biobased ink removers and cleaners are 5, 22, 31, 82, and 85 percent.

The tested biobased contents of the five products, as shown above, range from 5 to 85 percent. Because this is a very wide range, and because there is a significant gap in the data between the 31 percent biobased product and the 82 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this item. USDA found that the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 5, 22, or 31 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this item at 79 percent, based on the product with a tested biobased content of 82 percent. While USDA does not currently have data to support subcategories within this item, we continue to question whether products designed for continuous cleaning operations and those designed for infrequent use (such as in periodic maintenance) should be in different subcategories. USDA requests that manufacturers of products within this item provide information regarding the need to create subcategories within this item.

5. Mulch and Compost Materials

Seven of the 232 biobased mulch and compost materials identified have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased mulch and compost materials ranged from 98 percent to 100 percent, as follows: 98, 98, 100, 100, 100, 100, and 100.

Because the biobased contents of the seven products are within a narrow range, USDA is proposing to set the minimum biobased content for mulch and compost materials at 95 percent, based on the two products with tested biobased contents of 98 percent.

6. Multipurpose Lubricants

Four of the 30 biobased multipurpose lubricants identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased multipurpose lubricants ranged from 91 percent to 100 percent as follows: 91, 93, 100, and 100 percent.

Because the range of biobased contents among the tested products is so small, USDA is proposing to set the minimum biobased content for this item at 88 percent based on the product with a tested biobased content of 91 percent.

7. Office Paper

Seven of the 20 biobased office paper products identified have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased office paper products range from 98 to 100 percent, as follows: 98, 99, 100, 100, 100, 100 and 100 percent. Because the range of these seven values is very narrow, USDA is proposing to set the minimum biobased content for this item at 95 percent, based on the product with a tested biobased content of 98 percent.

8. Topical Pain Relief Products

Five of the 48 biobased topical pain relief products identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased topical pain relief products range from 94 to 100 percent, as follows: 94, 99, 100, 100 and 100 percent. Because the biobased contents of the five tested products are within a narrow range and the values are high, USDA is proposing to set the minimum biobased content for topical pain relief products at 91 percent, based on the product with a tested biobased content of 94 percent.

9. Turbine Drip Oils

Three of the four biobased turbine drip oils identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased turbine drip oils are as follows: 90, 95, and 96 percent. Because the biobased contents of the three tested products are within a narrow range and the values are high, USDA is proposing to set the minimum biobased content for turbine drip oils at 87 percent, based on the product with a tested biobased content of 90 percent.

*D. Compliance Date for Procurement Preference and Incorporation Into Specifications*

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, as proposed, procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated item would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect based on recognizing that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section 9002(a)(3) and section 2902(c) of 7 CFR part 2902 explicitly acknowledge the latter need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and

technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

By the time these items are promulgated for designation, Federal agencies will have had a minimum of 18 months (from the date of this **Federal Register** notice), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated items take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement actions involving any of the designated items.

## V. Where Can Agencies Get More Information on These USDA-Designated Items?

Information used to develop this proposed rule can be found in the technical support document, which can be accessed on the BioPreferred Web site, which is located at: *http://www.biopreferred.gov.* At the BioPreferred Web site, click on the Proposed and Final Regulations link on the left side of the page. At the next screen, click on the Supporting Documentation link under Round 6 Designated Items under the Proposed Regulations section.

Further, once the item designations in today's proposal become final, manufacturers and vendors voluntarily may make available information on specific products, including product and contact information, for posting by the Agency on the BioPreferred Web site. USDA will periodically audit the information displayed on the BioPreferred Web site and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the BioPreferred Web site, agencies will also be able to obtain the voluntarily-posted information on each product concerning: Relative price; life-cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information from the BEES analysis or the alternative analysis embedded in the ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products."

USDA has linked the BioPreferred Web site to DoD's list of specifications and standards, which can be used as guidance when procuring products. To access this list, go to the BioPreferred Web site and click on the "Selling to Federal Government" tab and look for the DoD Specifications link.

## VI. Regulatory Information

### *A. Executive Order 12866: Regulatory Planning and Review*

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." 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 this Executive Order."

Today's proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with today's proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within the nine designated items. These efforts were largely unsuccessful. Therefore, attempts to quantify the economic impact of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if price is "unreasonable," the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

#### 1. Summary of Impacts

Today's proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule. As discussed in Section III of this preamble, USDA is requesting comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

#### 2. Benefits of the Proposed Rule

The designation of these items is expected to provide benefits as outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of

the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Proposed Rule

Like the benefits, the costs of today's proposed rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

*B. Regulatory Flexibility Act (RFA)*

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its proposed designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, *etc.*) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the items designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the items being proposed for designation for preferred procurement in this rule are expected to be included under the following NAICS codes: 322231 (die-cut paper and paperboard office supplies manufacturing), 324191 (petroleum lubricating oil and grease manufacturing), 325211 (plastics materials and resin manufacturing), 325411 (medicinal and botanical manufacturing), 325612 (polish and other sanitation goods manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), and 326150 (urethane and other foam product manufacturing). USDA obtained information on these seven NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 3,696 companies within these seven NAICS categories and that these companies own a total of about 4,478 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 4,478 individual establishments, about 4,450 (99.3 percent) have less than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 55, with the plastics materials and resins segment reporting the highest average (about 90 employees per company). Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the items being designated, but believes that the impact will not be significant. Most of the items being proposed for designation in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the items being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items when biobased items do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

*C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

*D. Executive Order 13132: Federalism*

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

*E. Unfunded Mandates Reform Act of 1995*

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and Tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

*F. Executive Order 12372: Intergovernmental Review of Federal Programs*

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Today's proposed rule does not significantly or uniquely affect "one or more Indian Tribes, * * * the relationship between the Federal Government and Indian Tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian Tribes." Thus, no further action is required under Executive Order 13175.

*H. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this proposed rule is currently approved under OMB control number 0503–0011.

*I. e-Government Act Compliance*

USDA is committed to compliance 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. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to e-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

**List of Subjects in 7 CFR Part 2902**

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXIX as follows:

**CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES**

## PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 2902 continues to read as follows:

**Authority:** 7 U.S.C. 8102.

2. Add §§ 2902.52 through 2902.60 to subpart B to read as follows:

Sec.
2902.52 Disposable tableware.
2902.53 Expanded polystyrene (EPS) foam recycling products.
2902.54 Heat transfer fluids.
2902.55 Ink removers and cleaners.
2902.56 Mulch and compost materials.
2902.57 Multipurpose lubricants.
2902.58 Office paper.
2902.59 Topical pain relief products.
2902.60 Turbine drip oils.

### § 2902.52 Disposable tableware.

(a) *Definition.* Products used in dining, such as drink ware and dishware, including but not limited to cups, plates, bowls, and serving platters, and that are designed for one-time use. This item does not include disposable cutlery, which is a separate item.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 72 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable tableware. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased disposable tableware.

### § 2902.53 Expanded polystyrene (EPS) foam recycling products.

(a) *Definition.* Products formulated to dissolve EPS foam to reduce the volume of recycled or discarded EPS items.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 90 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased EPS foam recycling products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased EPS foam recycling products.

### § 2902.54 Heat transfer fluids.

(a) *Definition.* Products with high thermal capacities used to facilitate the transfer of heat from one location to another, including coolants or refrigerants for use in HVAC applications, internal combustion engines, personal cooling devices, thermal energy storage, or other heating or cooling closed-loops.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 89 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased heat transfer fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased heat transfer fluids.

### § 2902.55 Ink removers and cleaners.

(a) *Definition.* Chemical products designed to remove ink, haze, glaze, and other residual ink contaminants from the surfaces of equipment, such as rollers, used in the textile and printing industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based

on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased ink removers and cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased ink removers and cleaners.

**§ 2902.56 Mulch and compost materials.**

(a) *Definition.* Products designed to provide a protective covering placed over the soil, primarily to keep down weeds and to improve the appearance of landscaping. Compost is the aerobically decomposed remnants of organic materials used in gardening and agriculture as a soil amendment, and commercially by the landscaping and container nursery industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 95 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased mulch and compost materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased mulch and compost materials.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Landscaping products—"compost" and "hydraulic mulch". USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated landscaping products and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased mulch and compost materials within this designated item can compete with similar landscaping products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated landscaping products containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.15.

**§ 2902.57 Multipurpose lubricants.**

(a) *Definition.* Products designed to provide lubrication under a variety of conditions and in a variety of industrial settings to prevent friction or rust. Greases, which are lubricants composed of oils thickened to a semisolid or solid consistency using soaps, polymers or other solids, or other thickeners, are not included in this item. In addition, task-specific lubricants, such as chain and cable lubricants and gear lubricants, are not included in this item.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 88 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased multipurpose lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased multipurpose lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased multipurpose lubricant products within this designated item can compete with similar multipurpose lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

**§ 2902.58 Office paper.**

(a) *Definition.* Paper products used in office printer and copier applications, writing, and coated papers for publications.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 95 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased office paper. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased office paper.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Paper and paper products. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated paper and paper products and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased office paper within this designated item can

compete with similar paper and paper products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated paper and paper products containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.10.

**§ 2902.59 Topical pain relief products.**

(a) *Definition.* Products that can be balms, creams and other topical treatments used for the relief of muscle, joint, headache, and nerve pain, as well as sprains, bruises, swelling, and other aches.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased topical pain relief products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased topical pain relief products.

**§ 2902.60 Turbine drip oils.**

(a) *Definition.* Products that are lubricants for use in drip lubrication systems for water well line shaft bearings, water turbine bearings for irrigation pumps, and other turbine bearing applications.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased turbine drip oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased turbine drip oils.

Dated: February 2, 2010.

**Pearlie S. Reed,**

*Assistant Secretary for Administration, U.S. Department of Agriculture.*

[FR Doc. 2010–2651 Filed 2–9–10; 8:45 am]

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**Federal Register**

Vol. 75, No. 27

Wednesday, February 10, 2010

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## FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4973–5224 ..... 1
5225–5480 ..... 2
5481–5674 ..... 3
5675–5876 ..... 4
5877–6088 ..... 5
6089–6298 ..... 8
6299–6538 ..... 9
6539–6812 .....10

## CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
8476 .....6083
8477 .....6085
**Executive Orders:**
13530 .....5481
**Administrative Orders:**
Notices:
Notice of February 2, 2010 .....5675
Memorandums:
Memo. of January 29, 2010 .....5485
Memorandum of February 3, 2010 .....6087

**5 CFR**

**Proposed Rules:**
2423 .....5003

**6 CFR**

5 .....5487, 5491

**7 CFR**

247 .....5877
625 .....6539
650 .....6553
925 .....5879
944 .....5879
1208 .....6089
**Proposed Rules:**
929 .....5898, 5900
1208 .....6131
1450 .....6264
1720 .....5902
2902 .....6796

**8 CFR**

1 .....5225
292 .....5225

**9 CFR**

201 .....6299

**10 CFR**

50 .....5495
**Proposed Rules:**
431 .....5544

**11 CFR**

**Proposed Rules:**
100 .....6590
109 .....6590

**12 CFR**

706 .....6558
**Proposed Rules:**
701 .....6151
1225 .....6151

**14 CFR**

25 .....6092
39 .....5677, 5681, 5684, 5685, 5689 5690, 5692, 5695
43 .....5204
61 .....5204
71 .....6094, 6095
91 .....5204
97 .....5230, 5232
141 .....5204
314 .....5697
331 .....5234
**Proposed Rules:**
39 .....6154, 6157, 6160, 6162
61 .....6164
71 .....5007, 5702, 5703, 5704, 5904, 5905, 6319, 6320, 6592, 6593, 6594, 6595
121 .....6164

**15 CFR**

740 .....6301
902 .....5498

**17 CFR**

211 .....6290
231 .....6290
241 .....6290
**Proposed Rules:**
240 .....6596

**18 CFR**

284 .....5178

**20 CFR**

10 .....5499

**21 CFR**

73 .....5887
558 .....5887
1309 .....4973

**22 CFR**

**Proposed Rules:**
22 .....6321

**24 CFR**

201 .....5706
203 .....5706
3280 .....5888
3282 .....5888

**26 CFR**

54 .....5452
301 .....6095
**Proposed Rules:**
1 .....5253, 6166
31 .....6166
54 .....5410
301 .....6166

**28 CFR**

0 .....4982

**29 CFR**

2590 .....5410

**Proposed Rules:**
403 ....5456
1910 ....5545, 5707
2509 ....5253
2520 ....5253
2550 ....5253

**30 CFR**

**Proposed Rules:**
57 ....5009
75 ....5009
934 ....6330
950 ....6332

**31 CFR**

103 ....6560
548 ....5502

**32 CFR**

706 ....5235, 6096
**Proposed Rules:**
199 ....6335

**33 CFR**

165 ....5511, 6096
**Proposed Rules:**
165 ....5907

**37 CFR**

380 ....6097
382 ....5513
**Proposed Rules:**
41 ....5012

**38 CFR**

74 ....6098

**39 CFR**

965 ....6570
3020 ....5236, 6108

**40 CFR**

9 ....4983
50 ....6474
52 ....5514, 5698, 6112, 6305, 6307, 6309, 6570
58 ....6474
180 ....5515, 5518, 5522, 5526, 6314, 6576, 6583
721 ....4983
**Proposed Rules:**
52 ....5707, 6336, 6337, 6338
82 ....6338
228 ....5708
258 ....6597
320 ....5715
721 ....5546

**44 CFR**

64 ....5890, 5893, 6120
67 ....5894
**Proposed Rules:**
67 ....5909, 5925, 5929, 5930, 6600

**45 CFR**

146 ....5410

**47 CFR**

2 ....6316
80 ....5241
**Proposed Rules:**
4 ....6339
52 ....5013
73 ....5015, 6612

**48 CFR**

512 ....5241
552 ....5241
**Proposed Rules:**
1 ....5716
2 ....5716
3 ....5716
5 ....5716
6 ....5716
7 ....5716
8 ....5716
12 ....5716
13 ....5716
15 ....5716
16 ....5716
17 ....5716
19 ....5716
22 ....5716
23 ....5716
28 ....5716
32 ....5716
36 ....5716
42 ....5716
43 ....5716
50 ....5716
52 ....5716

**49 CFR**

7 ....5243
10 ....5243
26 ....5535
40 ....5243
171 ....5376
172 ....5376
173 ....5376
174 ....5376
178 ....5376
192 ....5224, 5536
195 ....5536
390 ....4996
571 ....6123
578 ....5224
599 ....5248
**Proposed Rules:**
23 ....5551
40 ....5722
107 ....5258
571 ....5553
572 ....5931
1244 ....5261

**50 CFR**

622 ....6318
648 ....5498, 5537, 6586
679 ....5251, 5541, 6129, 6588, 6589
**Proposed Rules:**
17 ....5263, 5732, 6438, 6613
223 ....6616
224 ....6616
226 ....5015
300 ....5745
648 ....5016

## LIST OF PUBLIC LAWS

This is the final list of public bills from the 1st session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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**H.R. 1817/P.L. 111–128**

To designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the "John S. Wilder Post Office Building". (Jan. 29, 2010; 123 Stat. 3487)

**H.R. 2877/P.L. 111–129**

To designate the facility of the United States Postal Service located at 76 Brookside Avenue in Chester, New York, as the "1st Lieutenant Louis Allen Post Office". (Jan. 29, 2010; 123 Stat. 3488)

**H.R. 3072/P.L. 111–130**

To designate the facility of the United States Postal Service located at 9810 Halls Ferry Road in St. Louis, Missouri, as the "Coach Jodie Bailey Post Office Building". (Jan. 29, 2010; 123 Stat. 3489)

**H.R. 3319/P.L. 111–131**

To designate the facility of the United States Postal Service located at 440 South Gulling Street in Portola, California, as the "Army Specialist Jeremiah Paul McCleery Post Office Building". (Jan. 29, 2010; 123 Stat. 3490)

**H.R. 3539/P.L. 111–132**

To designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the "Patricia D. McGinty-Juhl Post Office Building". (Jan. 29, 2010; 123 Stat. 3491)

**H.R. 3667/P.L. 111–133**

To designate the facility of the United States Postal Service located at 16555 Springs Street in White Springs, Florida, as the "Clyde L. Hillhouse Post Office Building". (Jan. 29, 2010; 123 Stat. 3492)

**H.R. 3767/P.L. 111–134**

To designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the "W. Hazen Hillyard Post Office Building". (Jan. 29, 2010; 123 Stat. 3493)

**H.R. 3788/P.L. 111–135**

To designate the facility of the United States Postal Service located at 3900 Darrow Road in Stow, Ohio, as the "Corporal Joseph A. Tomci Post Office Building". (Jan. 29, 2010; 123 Stat. 3494)

**H.R. 1377/P.L. 111–137**

To amend title 38, United States Code, to expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs for emergency treatment furnished in a non-Department facility, and for other purposes. (Feb. 1, 2010; 123 Stat. 3495)

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

**H.R. 4508/P.L. 111–136**

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 29, 2010; 124 Stat. 6; 1 page)

**S. 692/P.L. 111–138**

To provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances. (Feb. 1, 2010; 124 Stat. 7; 1 page)

**Last List February 1, 2010**

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