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Presidential Documents

Title 3—

The President

Memorandum of April 15, 2010

Respecting the Rights of Hospital Patients to Receive Visitors and to Designate Surrogate Decision Makers for Medical Emergencies

Memorandum for the Secretary of Health and Human Services

There are few moments in our lives that call for greater compassion and companionship than when a loved one is admitted to the hospital. In these hours of need and moments of pain and anxiety, all of us would hope to have a hand to hold, a shoulder on which to lean—a loved one to be there for us, as we would be there for them.

Yet every day, all across America, patients are denied the kindnesses and caring of a loved one at their sides—whether in a sudden medical emergency or a prolonged hospital stay. Often, a widow or widower with no children is denied the support and comfort of a good friend. Members of religious orders are sometimes unable to choose someone other than an immediate family member to visit them and make medical decisions on their behalf. Also uniquely affected are gay and lesbian Americans who are often barred from the bedsides of the partners with whom they may have spent decades of their lives—unable to be there for the person they love, and unable to act as a legal surrogate if their partner is incapacitated.

For all of these Americans, the failure to have their wishes respected concerning who may visit them or make medical decisions on their behalf has real consequences. It means that doctors and nurses do not always have the best information about patients' medications and medical histories and that friends and certain family members are unable to serve as intermediaries to help communicate patients' needs. It means that a stressful and at times terrifying experience for patients is senselessly compounded by indignity and unfairness. And it means that all too often, people are made to suffer or even to pass away alone, denied the comfort of companionship in their final moments while a loved one is left worrying and pacing down the hall.

Many States have taken steps to try to put an end to these problems. North Carolina recently amended its Patients' Bill of Rights to give each patient "the right to designate visitors who shall receive the same visitation privileges as the patient's immediate family members, regardless of whether the visitors are legally related to the patient"—a right that applies in every hospital in the State. Delaware, Nebraska, and Minnesota have adopted similar laws.

My Administration can expand on these important steps to ensure that patients can receive compassionate care and equal treatment during their hospital stays. By this memorandum, I request that you take the following steps:

1. Initiate appropriate rulemaking, pursuant to your authority under 42 U.S.C. 1395x and other relevant provisions of law, to ensure that hospitals that participate in Medicare or Medicaid respect the rights of patients to designate visitors. It should be made clear that designated visitors, including individuals designated by legally valid advance directives (such as durable powers of attorney and health care proxies), should enjoy visitation privileges that are no more restrictive than those that immediate family members

enjoy. You should also provide that participating hospitals may not deny visitation privileges on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, or disability. The rulemaking should take into account the need for hospitals to restrict visitation in medically appropriate circumstances as well as the clinical decisions that medical professionals make about a patient's care or treatment.

2. Ensure that all hospitals participating in Medicare or Medicaid are in full compliance with regulations, codified at 42 CFR 482.13 and 42 CFR 489.102(a), promulgated to guarantee that all patients' advance directives, such as durable powers of attorney and health care proxies, are respected, and that patients' representatives otherwise have the right to make informed decisions regarding patients' care. Additionally, I request that you issue new guidelines, pursuant to your authority under 42 U.S.C. 1395cc and other relevant provisions of law, and provide technical assistance on how hospitals participating in Medicare or Medicaid can best comply with the regulations and take any additional appropriate measures to fully enforce the regulations.

3. Provide additional recommendations to me, within 180 days of the date of this memorandum, on actions the Department of Health and Human Services can take to address hospital visitation, medical decisionmaking, or other health care issues that affect LGBT patients and their families.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
WASHINGTON, April 15, 2010

[FR Doc. 2010–9211
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Rules and Regulations

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 894

RIN 3206–AL78

Changes in the Federal Employees Dental and Vision Insurance Program

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations on changes in the Federal Employees Dental and Vision Insurance Program (FEDVIP). We are amending the regulations to authorize retroactive enrollment changes when an enrollee has lost his or her spouse through death or divorce or the enrollee's last eligible child dies, marries, or reaches age 22. We are also amending the regulations to add that an individual may enroll 31 days before the enrollee or an eligible family member loses other dental and/or vision coverage. We are amending the regulations to clarify the reference to excluded positions in 5 U.S.C. 8901(1). We are also including in the regulations certain former Senate restaurant employees who were employees of the Architect of the Capitol as individuals who are eligible to elect to continue enrollment in FEDVIP if they are eligible and elect to continue their retirement coverage.

DATES: Effective May 20, 2010.

FOR FURTHER INFORMATION CONTACT: Ron Brown, (202) 606–0004, or e-mail at *ronald.brown@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2004, Public Law 108–496, 118 Stat. 4001, was signed into law. This law established a dental benefits and vision benefits program for Federal employees, annuitants, and their eligible family members. The first effective date of coverage was December 31, 2006. The existing regulations allow an enrollment change based on a Qualifying Life Event (QLE) only when the enrollee requests it during the period beginning 31 days before the QLE and ending 60 days after the QLE. The change in enrollment is effective the first day of the first pay period following the date of the request. If the enrollee has no more eligible family members and he or she misses the 60-day time limit, there is no provision that will allow for the change in enrollment to be made retroactive to the first day of the first pay period following the date the family member lost eligibility. Enrollees are being forced to pay for a family enrollment or a self plus one enrollment even though their family members are deceased or no longer eligible for coverage, until the next Open Season opportunity to change enrollment. This amendment will lift the deadline by which such an enrollee must change his or her enrollment and will allow the enrollment change to take effect retroactively when the enrollee has a self plus one enrollment and his or her family member dies or loses eligibility, through divorce or when the dependent child marries or reaches age 22. This amendment will also allow retroactive enrollment changes from a family enrollment that includes two family members to a self plus one enrollment if one of the family members loses eligibility (i.e., when there is a death or divorce, or when a dependent child marries or reaches age 22).

When an eligible family member loses dental or vision coverage, the existing regulations allow the enrollee to increase his or her type of enrollment during the period beginning 31 days before the event and ending 60 days after the event. However, the regulations allow an employee who is not enrolled, and who loses his or her other dental or vision coverage, to enroll within 60 days after the event. This amendment will correct this inconsistency and allow an employee who loses other dental or vision coverage to enroll from 31 days before until 60 days after the event.

The existing regulations (5 CFR 894.302) state that excluded positions are described in 5 U.S.C. 8901(1)(I). This amendment will clarify that excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv).

Public Law 110–279, enacted July 17, 2008, provides for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after the operations of the Senate Restaurants are contracted to be performed by a private business concern. The law provides that a Senate Restaurants employee, who is an employee of the Architect of the Capitol on the date of enactment and who accepts employment by the private business concern as part of the transition, may elect to continue Federal benefits during continuous employment with the business concern. We are revising the FEDVIP regulations to address continuation of coverage for these individuals.

On June 2, 2009, OPM published proposed regulations in the **Federal Register** (74 FR 26302–26303) and comments were requested by August 3, 2009.

OPM received one comment from a FEDVIP enrollee who requested that OPM allow FEDVIP enrollees to cancel their coverage when their dental or vision provider terminates participation in the Program. When the Program began, OPM determined that it would create a financial hardship on the participating dental and vision plans if we allowed enrollees to cancel at anytime. OPM also advises prospective FEDVIP enrollees that the participation of any one provider cannot be guaranteed. Therefore, we will not consider the termination of the participation of a provider as a Qualifying Life Event to allow a cancellation of enrollment. The regulation as proposed has not been changed.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects dental and vision benefits of Federal employees and annuitants.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that

this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Part 894

Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

John Berry,

Director.

■ Accordingly, OPM amends 5 CFR part 894 as follows:

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION PROGRAM

■ 1. The authority citation for part 894 is revised to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; subpart C also issued under sec. 1 of Pub. L. 110–279, 122 Stat. 2604.

Subpart C—Eligibility

■ 2. Revise § 894.301 to read as follows:

§ 894.301 Am I eligible to enroll in the FEDVIP?

You are eligible if—

(a) You meet the definition of *employee* in 5 U.S.C. 8901(1), unless you are in an excluded position;

(b) You are an employee of the United States Postal Service or the District of Columbia courts; or

(c)(1) You were employed by the Architect of the Capitol as a Senate Restaurants employee the day before the food services operations of the Senate Restaurants were transferred to a private business concern; and

(2) You accepted employment by the business concern and elected to continue your Federal retirement benefits and your FEDVIP coverage. You continue to be eligible for FEDVIP coverage as long as you remain employed by the business concern or its successor.

■ 3. Revise § 894.302 introductory text to read as follows:

§ 894.302 What is an excluded position?

Excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv) and 5 CFR 890.102(c), except that employees of the United States Postal Service and District of Columbia courts are not excluded positions.

* * * * *

Subpart E—Enrollment and Changing Enrollment

■ 4. Revise § 894.501(d) to read as follows:

§ 894.501 When may I enroll?

* * * * *

(d) From 31 days before you or an eligible family member loses other dental/vision coverage to 60 days after a QLE that allows you to enroll.

■ 5. Revise § 894.510(c) and (d) to read as follows:

§ 894.510 When may I decrease my type of enrollment?

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, you may decrease your type of enrollment only during the period beginning 31 days before your QLE and ending 60 days after your QLE.

(2) You may make any of the following enrollment changes at any time beginning 31 days before a QLE listed in § 894.511(a):

(i) A decrease in your self plus one enrollment;

(ii) A decrease in your self and family enrollment to a self plus one enrollment, when you have only one remaining eligible family member; or

(iii) A decrease in your self and family enrollment to a self only enrollment, when you have no remaining eligible family members.

(d)(1) Except as provided in paragraph (d)(2) of this section, your change in enrollment is effective the first day of the first pay period following the one in which you make the change.

(2) If you are making an enrollment change described in paragraph (c)(2) of this section, your change in enrollment is effective on the first day of the first pay period following the QLE on which the enrollment change is based.

* * * * *

[FR Doc. 2010–8944 Filed 4–19–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–FV–09–0073; FV10–929–1 FR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changes to Reporting Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes reporting dates prescribed under the marketing order that regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The order is administered locally by the Cranberry Marketing Committee (Committee). This rule revises the due dates of handler reports to provide more time for handlers to file their reports with the Committee, and would improve handler compliance with the order's reporting regulations.

DATES: *Effective Date:* April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail: *Patricia.Petrella@ams.usda.gov* or *Kenneth.Johnson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929, both as amended (7 CFR part 929), regulating the handling of cranberries produced in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law

and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the due dates of handler reports from January 5, May 5, and August 5 of each fiscal period and September 5 of the succeeding fiscal period to January 20, May 20, and August 20 of each fiscal period and September 20 of the succeeding period, respectively. The new reporting dates will provide more time for handlers to file their reports. It has become more difficult for handlers to meet the current filing deadlines due to the demands of growing domestic and international markets and the larger volumes of cranberries handled.

Currently, § 929.62(d) of the order provides that each handler shall, upon request of the Committee, file promptly with the Committee a certified report as to the quantity of cranberries handled during any designated period or periods. Further, § 929.105 provides that certified reports shall be filed with the Committee, on a form provided by the Committee, by each handler not later than January 5, May 5, and August 5 of each fiscal period and by September 5 of the succeeding fiscal period. These reports must show the total quantity of cranberries acquired and the total quantity of cranberries and Vaccinium oxycoccus cranberries the handler handled from the beginning of the reporting period indicated through December 31, April 30, July 31, and August 31, respectively. The reports must also show the total quantity of cranberries and *Vaccinium oxycoccus* cranberries as well as cranberry products and *Vaccinium oxycoccus* cranberry products held by the handler on January 1, May 1, August 1, and August 31 of each fiscal period. Information to be submitted to the Committee on the handler reports will not be changed by this action.

The Committee recommended that the order's reporting regulations be changed to allow handlers additional time to submit these reports. Over time, the amount of cranberries being grown and handled has increased, and the greater demands associated with expanding markets have made it increasingly difficult for handlers to gather the information required for the reports before the filing deadline.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,200 cranberry growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Based on information maintained by the Committee, the majority of growers and handlers of cranberries under the order would be considered small entities under SBA's standards.

Under the order, handlers are required to submit acquisition, handling, and inventory reports to the Committee four times per year. Such information is used by the Committee in the administration of the order. The currently prescribed due dates follow the end of each respective reporting period by five days. Handlers indicated that it has become difficult to comply with the current reporting deadlines because five days is not enough time to compile the information required for the reports.

This rule revises the due dates of mandatory handler reports from January 5, May 5, and August 5 of each fiscal period; and September 5 of the succeeding fiscal period to January 20, May 20, and August 20 of each fiscal period; and September 20 of the succeeding period, respectively. The new reporting dates will provide more time for handlers to file their reports.

At its August 21, 2009, meeting, the Committee discussed whether the current due dates needed to be changed to allow more time for handlers to comply with the reporting requirements. The Committee staff indicated that compliance with the order's reporting requirements will improve if handlers were given additional time to file the reports.

The Committee discussed alternatives to this change, including not making the change at all. However, the Committee believes that this change is necessary to ensure that handlers have adequate time to comply with the order's requirements.

This rule is not expected to have any economic impact on growers or handlers of any size. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or growers than for larger entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 21, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this proposal, including the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on February 5, 2010 (75 FR 5898). Copies of the rule were mailed or sent facsimile to all Committee members and cranberry handlers. The rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending March 8, 2010, was provided to allow interested persons to respond to the proposal. One comment was received in support of the proposal from Ocean Spray Cranberries, Inc.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: *http://www.ams.usda.gov*. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the next reporting period ends on May 20 and the Committee needs to inform all handlers of this change to the reporting time. Therefore, this rule should be implemented as soon as possible. Further, handlers were made aware of this change which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 929

Marketing agreements, Reporting and recordkeeping requirements, Cranberries.

■ For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 929.105 by revising the introductory text of paragraph (b) to read as follows:

§ 929.105 Reporting.

* * * * *

(b) Certified reports shall be filed with the committee, on a form provided by the committee, by each handler not later than January 20, May 20, and August 20 of each fiscal period and by September 20 of the succeeding fiscal period showing:

* * * * *

Dated: April 7, 2010.

David R. Shipman

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–8273 Filed 4–19–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE305; Special Conditions No. 23–245–SC]

Special Conditions: Cirrus Design Corporation, Model SF50; Fire Extinguishing for Upper Aft Fuselage Mounted Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cirrus Design Corporation, model SF50 airplane. This single turbofan engine airplane will have a novel or unusual design feature(s) associated with mounting the engine in the aft fuselage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 12, 2010.

We must receive your comments by May 20, 2010.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, Attn: Rules Docket No. CE305, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE305. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Leslie B. Taylor, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4134; facsimile (816) 329–4090, email *leslie.b.taylor@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested persons to submit such written data, views, or arguments as they desire. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 9, 2008, Cirrus Design Corporation applied for a type certificate for their new model SF50. The model SF50 is a 7 seat (5 adults and 2 children), pressurized, retractable gear, carbon composite, airplane with one turbofan engine mounted partially in the upper aft fuselage.

The single turbofan engine is mounted on the upper aft fuselage, not in the pilot's line of site. Upper aft fuselage mounted engine installations, along with the need to protect such installed engines from fires, were not envisioned in the development of the part 23 normal category regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Cirrus Design Corporation must show that the model SF50 meets the applicable provisions of part 23, as amended by Amendment 23–1 through Amendment 23–59 thereto.

If the Administrator finds that the applicable airworthiness regulations, part 23, do not contain adequate or appropriate safety standards for the model SF50 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model SF50 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The model SF50 will incorporate the following novel or unusual design features: An aft fuselage mounted engine is not in the pilot's line of sight. This type of configuration was not envisioned in the development of part 23 normal category airplanes. Therefore, a special condition for the fire extinguishing system for the engine on the model SF50 is required.

Regulations requiring and defining engine compartment fire extinguishing systems already exist for part 23 commuter category airplanes. These regulations will provide an adequate level of safety for the normal category model SF50 with the aft mounted engine except SC 23.1195 will require a two shot system.

As the extinguishing agent is subject to change during the service life of the airplane, the certification basis must include 14 CFR 23.1197, 23.1199, 23.1201 in their entirety.

Discussion

Part 23 has historically addressed fire protection through prevention, identification, and containment. Prevention has been accomplished by minimizing the potential for ignition of flammable fluids and vapors. Identification has traditionally been achieved by the location of the engines within the pilot's primary field of view and/or with the incorporation of fire detection systems. This philosophy has provided for both the rapid detection of a fire and confirmation when it has been extinguished. Containment has been provided through the isolation of designated fire zones through flammable fluid shutoff valves and firewalls. The containment philosophy also ensures that components of the engine control system will function effectively to permit a safe shutdown of the engine. However, containment has only been required to be demonstrated for 15 minutes. In the event of a fire in a traditional part 23 airplane, the corrective action is to land as soon as possible. For a small, simple aircraft originally envisioned by part 23, it is possible to descend the aircraft to a suitable landing site within 15 minutes. Thus, if the isolation means do not extinguish the fire, the occupants can safely exit the aircraft prior to the firewall being breached. These simple and traditional aircraft normally have the engine located away from critical flight control systems and primary structure. This has ensured that throughout the fire event the pilot can maintain control and continue safe flight. It has also made predicting the effects of a fire relatively easy. Other design features of these simple and traditional aircraft, such as low stall speeds and short landing distances, ensure that even in the event of an off field landing the potential for a catastrophic outcome has been minimized.

Excluding commuter category, normal category airplanes incorporating one or more engines on the aft fuselage were not envisioned in part 23. Engine(s) located on the aft fuselage offer minimal opportunity to visually detect a fire. The ability to extinguish an engine fire becomes extremely critical due to this location. In a traditional pylon engine there is a standoff distance from the fuselage where there is no possible impingement of fluid or flame on the fuselage. Thus after 5 minutes if the fluid lines succumb to the fire any liberated fluid would not come into contact with any other critical structure or the fuselage. In essence the engine could burn off of the pylon and not adversely compromise the fuselage. The Cirrus design configuration does not benefit from this consideration and thus there is a greater risk due to fire. Also, if there was a fire due to a buildup of fuel in the exhaust nozzle a low velocity flame could impinge upon the fuselage or empennage.

Airplanes of the classic configuration with twin aft pylon mounted engines have fire extinguishing "one-shot" systems. A two shot system is necessary for fuselage embedded engines since the metallic components in the fire zone can be hot enough to re-ignite flammable fumes after the first fire has been extinguished. The consequences of a fire in these locations can be more varied, adverse, and difficult to predict than the engine fire envisioned for a typical part 23 airplane. The Cirrus aft engine installation is more indicative of an embedded engine rather than a pylon mounted engine.

Applicability

As discussed above, these special conditions are applicable to the model SF50. Should Cirrus Design Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cirrus Design Corporation model SF50 airplanes.

Fire Extinguishing for Upper Aft Fuselage Mounted Engine

SC 23.1195 Fire Extinguishing Systems

Fire extinguishing systems must be installed and compliance shown with the following:

(a) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids or gases for which a fire originating in these sections is shown to be controllable, a fire extinguisher system must serve each engine compartment.

(b) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "two shot" system must be used.

(c) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

SC 23.1197 Fire Extinguishing Agents

The following applies:

(a) Fire extinguishing agents must—

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system; and

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored.

(b) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors (from leakage during normal operation of the airplane or as a result of discharging the fire extinguisher on the ground or in flight) from entering any personnel compartment, even though a defect may exist in the extinguishing system. This must be shown by test except for built-in carbon dioxide fuselage compartment fire extinguishing systems for which—

(1) Five pounds or less of carbon dioxide will be discharged, under established fire control procedures, into any fuselage compartment; or

(2) Protective breathing equipment is available for each flight member on flight deck duty.

SC 23.1199 Extinguishing Agent Containers

The following applies:

(a) Each extinguishing agent container must have a pressure relief valve to prevent bursting of the container by excessive internal pressures.

(b) The discharge end of each discharge line from a pressure relief connection must be located so that discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(c) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(d) The temperature of each container must be maintained under intended operating conditions to prevent the pressure in the container from —

(1) Falling below that necessary to provide an adequate rate of discharge; or

(2) Rising high enough to cause premature discharge.

(e) If a pyrotechnic capsule is used to discharge the extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

SC 23.1201 Fire Extinguishing System Materials

The following apply:

(a) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard.

(b) Each system component in an engine compartment must be fireproof.

Issued in Kansas City, Missouri on April 12, 2010.

Steve Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–9026 Filed 4–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE306; Special Conditions No. 23–246–SC]

Special Conditions: Cirrus Design Corporation Model SF50 Airplane; Full Authority Digital Engine Control (FADEC) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cirrus Design Corporation model SF50 airplane. This airplane will have a novel or unusual design feature(s) associated with the use of an electronic engine control system instead of a traditional mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 12, 2010.

We must receive your comments by May 20, 2010.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, Attn: Rules Docket No. CE306, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE306. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments

received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received.

All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket.

Commenters' wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE306." The postcard will be date stamped and returned to the commenter.

Background

On September 9, 2008, Cirrus Design Corporation applied for a type certificate for their new model SF50. The Cirrus Design Corporation model SF50 is a low-wing, five-plus-two-place (2 children), single-engine turbofan-powered aircraft. It incorporates an Electronic Flight Information System (EFIS), pressurized cabin, retractable gear, and a V-tail. The turbofan engine is mounted on the upper fuselage/tail cone along the aircraft centerline. It is constructed largely of carbon and fiberglass composite materials. Like other Cirrus products, the SF50 includes a ballistically deployed airframe parachute.

The model SF50 has a maximum operating altitude of 28,000 feet, where it cruises at speeds up to 300 KTAS. Its V_{MO} will not exceed 0.62 Mach. The maximum takeoff weight will be at or below 6000 lbs with a range at economy cruise of roughly 1000 nm. Cirrus intends for the model SF50 to be certified for single-pilot operations under 14 CFR part 91 and 14 CFR part 135 operating rules. The following operating conditions will be included:

- Day and Night VFR.
- IFR.
- Flight Into Known Icing.

The Cirrus Design Corporation model SF50 airplane is equipped with a Williams International FJ33–5A turbofan engine using an electronic engine control system (FADEC) instead of a traditional mechanical control system. Even though the engine control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to critical environmental effects and possible effects on or by other airplane systems, for example, indirect effects of lightning, radio interference with other airplane electronic systems, shared engine and airplane data and power sources.

The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems and critical environmental effects, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned. Therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309. However, the integral nature of these systems makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system.

In some cases, the airplane that the engine is used in will determine a higher classification than the engine controls are certificated for, requiring the FADEC systems be analyzed at a higher classification. As of November 2005, FADEC special conditions mandated the classification for 23.1309 analysis for loss of FADEC control as catastrophic for any airplane. This is not to imply an engine failure is classified as catastrophic, but that the digital engine control must provide an equivalent reliability to mechanical engine controls.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Cirrus Design Corporation must show that the model SF50 meets the applicable provisions of part 23, as amended by Amendments 23–1 through 23–59, thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 23) do not contain adequate or appropriate safety standards for the model SF50 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model SF50 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. Also, the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Cirrus Design Corporation model SF50 will incorporate the following novel or unusual design features:

Electronic engine control system.

Applicability

As discussed above, these special conditions are applicable to the model SF50. Should Cirrus Design Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well as under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the model SF50 airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Cirrus Design Corporation model SF50 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cirrus Design Corporation model SF50 airplanes.

1. Electronic Engine Control

The installation of the electronic engine control system must comply with the requirements of 14 CFR 23.1309(a) through (e) at Amendment 23–49. The intent of this requirement is not to reevaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in 14 CFR 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement; however, the effects of the installation on this data must be addressed.

For these evaluations, the loss of FADEC control will be analyzed utilizing the threat levels associated with a catastrophic failure.

Issued in Kansas City, Missouri, on April 12, 2010.

Steve Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–9027 Filed 4–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 772 and 774

[Docket No. 0912031426–0047–01]

RIN 0694–AE79

Revisions to the Export Administration Regulations Based on the 2009 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the November 2009 Plenary in Rio de Janeiro, Brazil. In addition, this rule corrects an error published in a final rule on December 10, 2009 (74 FR 65662).

DATES: *Effective Date:* This rule is effective: April 20, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE79, by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include "RIN 0694–AE79" in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE79.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE79)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Dennis L. Krepp, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1309.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world's advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries implement in accordance with their national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow into the global marketplace of missile systems capable of delivering weapons of mass destruction.

While the MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead, it was expanded in January 1992 to also address threats associated with delivery systems for chemical and biological weapons. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

Amendments to the Export Administration Regulations

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the November 2009 Plenary in Rio de Janeiro, Brazil. Corresponding MTCR Annex references are provided below for the MTCR Annex changes agreed to at the November 2009 Plenary.

MTCR member countries agreed to clarify the meaning of "production facilities", the export of which is prohibited by the MTCR Guidelines for Category I. This clarification is reflected in the changes set forth in section 772.1 (Definitions of Terms as Used in the Export Administration Regulations), which amend the definition of the term "production facilities" to add the word production before the word equipment. The definition will therefore state that "production facilities" means "production equipment" and specially designed "software" therefor integrated into installations for "development" or for one or more phases of "production" (MTCR Annex Change Definitions: "Production Facilities"). This clarification more specifically describes the type of equipment that is included under the definition of "production facilities". BIS expects this change to have no impact on license applications.

In addition, this rule amends the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) to reflect changes to the MTCR Annex. Specifically, the following Export Control Classification Numbers (ECCNs) are affected:

ECCN 1C117 is amended by revising the heading and the "items" paragraph in the List of Items Controlled section (MTCR Annex Change Category II: Item 6.C.7). A significant agreement was reached by MTCR member countries on the control of tungsten and molybdenum on the MTCR Annex. New controls were added for copper infiltrated tungsten, silver infiltrated tungsten, and tungsten alloys in solid

form (including dimensional aspects). These controls are applied when these materials are used for fabrication of missile components for rockets or missiles capable of achieving a "range" equal to or greater than 300 km. This change addresses the issue of a proliferation concern identified by MTCR member countries related to refractory metals used for missile components. Specifically, the control text for tungsten and molybdenum on the MTCR Annex was modified to include new controls for solid tungsten and tungsten alloy billets for the fabrication of missile components. This revision to ECCN 1C117 implements this expansion of controls.

The heading of ECCN 9A101 is amended by removing the phrase "(including turbocompound engines)" because agreement was reached by MTCR member countries on the deletion of this term. This term is deleted from this ECCN heading because the international community does not refer to turbojet or turbofan engines as turbo-compound engines. Accordingly, turbo-compound engines are not meant to be included within the scope of this ECCN entry. The missile proliferation concern for these types of engines is on turbojet and turbofan engines, so it is appropriate to remove engines that are not those types of engines from this ECCN, especially in this case where this term is not used by the international community to describe these engines. Additionally, turbo-compound engines are not a missile proliferation concern. This change is expected to have a minimal impact on license applications.

Correction and Clarification to EAR Final Rule

The 2008 MTCR Plenary implementation rule published on November 9, 2009 (74 FR 57581) clarified ECCN 1C011 by revising the License Requirements and "items" paragraph of ECCN 1C011 by deleting the reference to boron carbide and replacing it with boron alloys in the MT control section of this ECCN, and by making conforming changes to the MT and NS License Requirements for this ECCN. To effect this change, reference to boron alloys was included in the November 2009 final rule in a new "items" paragraph in ECCN 1C011.e, but reference to boron carbide was retained in the NS controlled section of this ECCN because boron carbide is listed on the Wassenaar control list and therefore is still controlled under this ECCN. Subsequently, an EAR final rule published on December 10, 2009 (74 FR 65662) inadvertently removed the new paragraph 1C011.e that was added in the November 2009 MTCR Plenary rule.

When drafting this rule, BIS considered reinserting paragraph 1C011.e into the ECCN entry. Upon consideration, BIS determined that rather than replacing the removed paragraph 1C011.e, it would be better to add boron alloys to ECCN 1C111. This addition is an improved means of controlling boron alloys as metal fuels on the CCL because grouping the boron alloys with other propellants and constituent chemicals for propellants will assist the regulated community in classifying these items on the CCL. This rule effects this change by revising ECCNs 1C011 and 1C111. Specifically, ECCN 1C111 is amended by creating two sub-sets of metal fuels with a particle size of less than 60 μm controlled under "items" paragraph a.2 of this ECCN entry: metal fuels consisting 97% by weight or more of any of the following: Zirconium, Beryllium, Magnesium or Alloys of the these three metals (controlled under paragraphs a.2.a.1, a.2.a.2, a.2.a.3 or a.2.a.4); and metal fuels consisting of boron alloys with a purity of 85% by weight or more (controlled under paragraph a.2.b). The boron alloys that are being added to a.2.b are the boron alloys that were controlled under 1C011.e prior to their inadvertent removal in the December 10, 2009 final rule. Lastly, ECCN 1C011 is amended by revising the NS and MT control sections of this ECCN to remove the references to paragraph 1C011.e. This is a conforming change associated with the shift of boron alloys from 1C011.e to 1C111.a.2.b. These changes to ECCN 1C011 and 1C111 are expected to have no impact on license applications.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on April 20, 2010, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before *May 20, 2010.* Any such items not actually exported or reexported before midnight, on *May 20, 2010,* require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of Executive Order 12866.

2. 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 requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 772 and 774 of the Export Administration Regulations (15

CFR parts 730–774) are amended as follows:

PART 772—[AMENDED]

■ 1. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Section 772.1 is amended by revising the definition of "production facilities", as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Production Facilities. (MTCR Context only). (Cat 7 and 9)—Means "production equipment" and specially designed "software" therefor integrated into installations for "development" or for one or more phases of "production".

* * * * *

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 4. In Supplement No. 1 to part 774, under Category 1, Export Control Classification Number (ECCN) 1C011 is amended by revising the first two entries in the table under the "Reason for Control" heading in the License Requirements section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1C011 Metals and Compounds, as Follows (see List of Items Controlled)

License Requirements

Reason for Control: * * *

Control(s)	Country chart
NS applies to entire entry ..	NS Column 1
MT applies to 1C011.a and .b (for boron).	MT Column 1

* * * * *

■ 5. In Supplement No. 1 to part 774, under Category 1, ECCN 1C111 is amended by revising paragraph a.2 of the "items" paragraph in the List of Items Controlled section, to read as follows:

1C111 Propellants and Constituent Chemicals for Propellants, Other Than Those Specified in 1C011, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a.2. Metal fuels, other than that controlled by the U.S. Munitions List, in particle sizes of less than 60×10^{-6} m (60 micrometers), whether spherical, atomized, spheroidal, flaked or ground, as follows:

a.2.a. Consisting of 97% by weight or more of any of the following:

a.2.a.1. Zirconium;

a.2.a.2. Beryllium;

a.2.a.3. Magnesium; or

a.2.a.4. Alloys of the metals specified by a.2.a.1 to a.2.a.3 above.

Technical Note: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

a.2.b. Boron alloys with a purity of 85% by weight or more.

* * * * *

■ 6. In Supplement No. 1 to part 774, under Category 1, ECCN 1C117 is amended:

■ a. By revising the heading; and

■ b. By revising the "items" paragraph in the List of Items Controlled section, to read as follows:

1C117 Materials for the Fabrication of Missile Components for Rockets or Missiles Capable of Achieving a "Range" Equal to or Greater Than 300 km, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

a. Tungsten and alloys in particulate form with a tungsten content of 97% by weight or more and a particle size of 50×10^{-6} m (50 μm) or less;

b. Molybdenum and alloys in particulate form with a molybdenum content of 97% by weight or more and a particle size of 50×10^{-6} m (50 μm) or less;

c. Tungsten materials in the solid form having all of the following:

c.1. Any of the following material compositions:

c.1.a. Tungsten and alloys containing 97% by weight or more of tungsten;

c.1.b. Copper infiltrated tungsten containing 80% by weight or more of tungsten; *or*

c.1.c. Silver infiltrated tungsten containing 80% by weight or more of tungsten; *and*

c.2. Able to be machined to any of the following products:

c.2.a. Cylinders having a diameter of 120 mm or greater and a length of 50 mm or greater;

c.2.b. Tubes having an inner diameter of 65 mm or greater and a wall thickness of 25 mm or greater and a length of 50 mm or greater; *or*

c.2.c. Blocks having a size of 120 mm × 120 mm × 50 mm or greater.

■ 7. In Supplement No. 1 to part 774, under Category 9, ECCN 9A101 is amended by revising the heading, to read as follows:

9A101 Turbojet and Turbofan Engines, Other Than Those Controlled by 9A001, as Follows (See List of Items Controlled)

* * * * *

Dated: April 9, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–8919 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. FDA–2010–N–0002]

New Animal Drugs; Change of Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Minrad, Inc. to Piramal Critical Care, Inc. The sponsor's mailing address will also be changed.

DATES: This rule is effective April 20, 2010.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Minrad, Inc., 836 Main St., 2d floor, Buffalo, NY 14202 has informed FDA that it has changed its name and address to Piramal Critical Care, Inc., 3950 Schelden Circle, Bethlehem, PA 18017. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect this change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because

it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for "Minrad, Inc." and alphabetically add a new entry for "Piramal Critical Care, Inc."; and in the table in paragraph (c)(2), revise the entry for "060307" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Piramal Critical Care, Inc., 3950 Schelden Circle, Bethlehem, PA 18017	060307
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
060307	Piramal Critical Care, Inc., 3950 Schelden Circle, Bethlehem, PA 18017
* *	* * *

Dated: April 15, 2010.

Elizabeth Rettie,

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

[FR Doc. 2010–9045 Filed 4–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. FDA–2010–N–0002]

New Animal Drugs; Change of Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Parnell Laboratories (Aust) Pty. Ltd. to Parnell Technologies Pty. Ltd. In addition, the sponsor's mailing address will be changed.

DATES: This rule is effective April 20, 2010.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Parnell Laboratories (Aust) Pty. Ltd., Century Estate, unit 6, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia, has informed FDA that it has changed its name and address to Parnell Technologies Pty. Ltd., unit 4, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect this change.

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

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), revise the entry for "Parnell Laboratories (Aust) Pty. Ltd."; and in the table in paragraph (c)(2), revise the entry for "068504" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Parnell Technologies Pty. Ltd., unit 4, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia	068504
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
068504	Parnell Technologies Pty. Ltd., unit 4, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia
* *	* * *

Dated: April 15, 2010.

Elizabeth Rettie,

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

[FR Doc. 2010–9057 Filed 4–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0370]

RIN 1625–AA11

Regulated Navigation Areas; Port of Portland Terminal 4, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two Regulated Navigation Areas (RNA) at the Port of Portland Terminal 4 on the Willamette River in

Portland, Oregon. The RNAs are necessary to preserve the integrity of engineered sediment caps placed within Slip 3 and Wheeler Bay at the Portland Harbor Superfund Site as part of a removal action at that site. The RNAs will do so by prohibiting activities that could disturb or damage the engineered sediment caps in that area.

DATES: This rule is effective May 20, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0370 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0370 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST1 Jaime Sayers, Waterways Management, USCG Sector Portland; telephone 503–240–9319, e-mail *Jaime.A.Sayers@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 30, 2009, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Areas; Port of Portland Terminal 4, Willamette River, Portland, OR" in the **Federal Register** (74 FR 69047). We received one comment on the proposed rule. There were no requests for a public meeting and none was held.

Background and Purpose

As part of a removal action at the Portland Harbor Superfund Site in 2008, engineered sediment caps were placed within Slip 3 and Wheeler Bay at the Port of Portland Terminal 4 Facility in order to contain underlying contaminated sediment and shoreline soil. The Port of Portland Terminal 4 Facility is located between River Miles 4.1 and 4.5 on the Willamette River.

The engineered sediment caps are designed to be compatible with normal marine operations, but could be damaged by other maritime activities including anchoring, dragging, dredging, or trawling. Such damage could disrupt the function or affect the integrity of the caps to contain the underlying contaminated sediment and shoreline soil in these areas. As such, the RNAs are necessary to help ensure the engineered sediment caps are protected and will do so by prohibiting certain maritime activities that could disturb or damage them.

Discussion of Comments and Changes

The one comment received questioned the use, in the Background and Purpose section of the NPRM, of the term "port" rather than "marine" to describe the activities that may take place in the area where the sediment caps are located. In light of the potential confusion about what activities are being discussed, the term "port" was replaced with "marine" in the "Background and Purpose" section of this final rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that the RNAs cover a relatively small area and that area can still be used for most maritime activities.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule could affect the following entities, some of which might be small entities: the owners or operators of vessels operating in the areas covered by the RNAs. The RNAs would not have a significant economic impact on a substantial number of small entities, however, because the RNAs cover a relatively small area and that area can still be used for most maritime activities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1326 to read as follows:

§ 165.1326 Regulated Navigation Areas; Port of Portland Terminal 4, Willamette River, Portland, OR

(a) *Regulated navigation areas.* Each of the following areas is a regulated navigation area:

(1) All waters of the Willamette River in the head of the Port of Portland's Terminal 4 Slip 3, encompassed by a line commencing at 45° 36′ 01.861″ N/122°46′ 20.995″ W thence to 45° 36′ 01.455 N/122° 46′ 20.887″ W thence to 45° 36′ 00.993″ N/122° 46′ 20.714″ W thence to 45° 36′ 00.725″ N/122° 46′ 20.923″ W thence to 45° 36′ 00.731″ N/122° 46′ 21.262″ W thence to 45° 36′ 00.712″ N/122° 46′ 21.823″ W thence to 45° 36′ 01.230″ N/122° 46′ 22.048″ W thence to 45° 36′ 01.651″ N/122° 46′ 22.168″ W thence to 45° 36′ 01.684″ N/122° 46′ 22.372″ W thence to 45° 36′ 01.873″ N/122° 46′ 22.303″ W thence to 45° 36′ 02.065″ N/122° 46′ 21.799″ W thence to 45° 36′ 01.989″ N/122° 46′ 21.574″ W thence to 45° 36′ 01.675″ N/122° 46′ 21.483″ W thence to 45° 36′ 01.795″ N/122° 46′ 21.442″ W thence to 45° 36′ 01.861″ N 122° 46′ 20.995″ W.

(2) All waters of the Willamette River in Wheeler Bay between Slip 1 and Slip 3 in the Port of Portland's Terminal 4, encompassed by a line commencing at 45° 36′ 10.634″ N/122° 46′ 39.056″ W thence to 45° 36′ 10.269″ N/122° 46′ 37.140″ W thence to 45° 36′ 10.027″ N/122° 46′ 36.050″ W thence to 45° 36′ 09.722″ N/122° 46′ 34.181″ W thence to 45° 36′ 09.425″ N/122° 46′ 33.118″ W thence to 45° 36′ 08.960″ N/122° 46′ 32.150″ W thence to 45° 36′ 08.653″ N/122° 46′ 31.681″ W thence to 45° 36′ 08.191″ N/122° 46′ 31.341″ W thence to 45° 36′ 07.886″ N/122° 46′ 31.269″ W thence to 45° 36′ 07.517″ N/122° 46′ 31.038″ W thence to 45° 36′ 07.235″ N/122° 46′ 31.066″ W thence to 45° 36′ 07.040″ N/122° 46′ 30.941″ W thence to 45° 36′ 06.697″ N/122° 46′ 30.987″ W thence to 45° 36′ 06.509″ N/122° 46′ 31.251″ W thence to 45° 36′ 06.201″ N/122° 46′ 31.517″ W thence to 45° 36′ 06.081″ N/122° 46′ 1.812″ W thence to 45° 36′ 06.550″ N/122° 46′ 32.124″ W thence to 45° 36′ 06.970″ N/122° 46′ 31.895″ W thence to 45° 36′ 07.172″ N/122° 46′ 31.868″ W thence to 45° 36′ 07.883″ N/122° 46′ 32.316″ W thence to 45° 36′ 08.370″ N/122° 46′ 32.927″ W thence to 45° 36′ 08.775″ N/122° 46′ 33.888″ W thence to 45° 36′ 09.121″ N/122° 46′ 35.337″ W thence to 45° 36′ 09.230″ N/122° 46′ 36.166″ W thence to 45° 36′ 09.442″ N/122° 46′ 37.759″ W thence to 45° 36′ 09.865″ N/122° 46′ 39.511″ W thence to 45° 36′ 10.421″ N/122° 46′ 39.469″ W thence to 45° 36′ 10.634″ N/122° 46′ 39.056″ W.

(b) *Regulations.* All vessels are prohibited from anchoring, dragging, dredging, or trawling in the regulated navigation areas established in paragraph (a) of this section.

Dated: April 2, 2010.

G.T. Blore,

Rear Admiral, U.S. Coast Guard

Commander, Thirteenth Coast Guard District.

[FR Doc. 2010–9018 Filed 4–19–10; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2010–1]

Section 111 and Interest Payments

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule: technical amendment.

SUMMARY: The Copyright Office makes a technical amendment to its rule on interest payments by cable operators.

DATES: This technical amendment is effective April 20, 2010.

FOR FURTHER INFORMATION CONTACT: Ben E. Golant, Assistant General Counsel or Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Cable systems submitting statutory payments in an untimely fashion, or who have underpaid the amount due, must include the proper interest charge along with their royalties. *See Assessment of Interest Regarding the Cable Compulsory License*, 54 FR 14217, 14220–21 (Apr. 10, 1989). It has been the Office's longstanding practice that interest is not due when the amount has been less than or equal to five dollars. Section 201.17(i)(2)(iii) had codified this practice. However, this rule was inadvertently removed when the Office updated its electronic funds transfer requirements four years ago. Prior to the adoption of these regulations, Section 201.17(i)(2)(iii) read as follows, "Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars." To correct this error we are amending Section 201.17(i)(4) to restore this language on the five dollar threshold.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Rule

■ In consideration of the foregoing, part 201 of 37 CFR chapter II is amended as follows:

PART 201—GENERAL PROVISIONS

■ 1.The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.17 [Amended]

■ 2. Amend § 201.17(i)(4) by adding "Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars." after "then the accrual period shall end on the date of the actual receipt by the Copyright Office."

Dated: April 14, 2010

Tanya Sandros,

Deputy General Counsel,

U.S. Copyright Office

[FR Doc. 2010–8970 Filed 4–19–10; 8:45 am]

BILLING CODE 1410–30–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0911161406–0170–03]

RIN 0648–AY37

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published on December 15, 2008, that revised the Individual Fishing Quota (IFQ) Program for the sablefish and halibut fisheries off Alaska. The December 2008 final rule erroneously removed a paragraph requiring the IFQ permit holder be aboard the vessel at all times during a fishing trip and be present during the landing of harvested fish. This action corrects the error by restoring the removed paragraph, thereby eliminating the public's possible confusion about the program's owner-on-board requirements and restoring NMFS' ability to enforce the provision. This action is intended to promote the goals and objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Effective April 20, 2010.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The IFQ Program, a limited access management system for the fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish *(Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992 and approved by NMFS in January 1993. Initial implementing rules were published on November 9, 1993 (58 FR 59375). Fishing under the IFQ program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding quota share (QS) in specific management regions. The IFQ Program for the sablefish fishery is implemented by Amendment 15 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (BSAI), Amendment 20 to the FMP for Groundfish Fishery of the Gulf of Alaska (GOA), and implemented by Federal regulations at 50 CFR part 679 under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act.

The IFQ Program's principal management measures, with certain exceptions, were: to limit the amount of QS that could be used by any person; to limit the amount of IFQ halibut or sablefish that could be harvested on a vessel; and for catcher vessels, to require the IFQ permit holder to be onboard the vessel during fishing operations. An IFQ permit authorizes participation in fixed-gear harvests of Pacific halibut off Alaska, and most sablefish fisheries off Alaska. The requirement for the IFQ permit holder to be on board the vessel at all times during the fishing trip and to be present at the landing of fish ensures active participation in the fishery by IFQ permit holders, which has an important objective of the Council. The requirement also guaranteed the IFQ permit holder's presence at landing for interviews by the enforcement personnel and to resolve any issues regarding QS account management, such as landing fish in excess of the permit holder's IFQ account. Although the requirement was published in the IFQ program's initial regulations in 1993, the regulatory text was revised at paragraph 679.42(c)(1)(ii) by a final rule (68 FR 44473) published July 29, 2003.

Need for Correction

On June 29, 2007, NMFS published a proposed rule to implement a new Internet-based fisheries landings information system, called "eLandings," and revise other recordkeeping and

reporting requirements (72 FR 35748). The proposed rule also included revisions to regulations governing fishing permits, including the IFQ program permits. NMFS published a supplemental proposed rule (73 FR 55368) that further reorganized recordkeeping and reporting regulatory text, permit requirements, and integrated the electronic and non-electronic requirements. The proposed and supplemental proposed regulatory changes were complex and technical. NMFS published a final rule (referred to below as the Interagency Electronic Reporting System (IERS) Rule) in the **Federal Register** on December 15, 2008 (73 FR 76136).

Section 679.42(c) was among the regulations that were reorganized by the IERS Rule. The section describes conditions on the use of QS and IFQ. The IERS Rule removed all of the sub-paragraphs from 679.42(c) and in an attempt to streamline text, revised the paragraph.

The revision resulted in the erroneous omission of the words "and must be" before the word "aboard". The resulting regulatory text requires that a valid IFQ permit be aboard the vessel, but removed in error the requirement that the holder of the permit must be aboard the vessel at all times during the fishing trip and be present during the landing.

This action corrects the existing paragraph 679.42(c) by revising it.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment otherwise required by the section because it is contrary to the public interest. No aspect of this action is controversial. It was not NMFS' intent in the IERS rule to remove the requirement that QS holders who harvest halibut or sablefish with fixed gear be aboard the vessel at all times during the fishing trip and present during the landing. As discussed in the preamble above, this unintended omission was the result of the agency's reorganization of the regulations. The agency seeks to correct immediately this error to eliminate potential confusion by the regulated public as this inadvertent omission was not discussed in the IERS preambles or analyzed in the supporting document. If left unrevised, the measure creates ambiguous guidance, and thus is likely to mislead fisheries participants and may weaken regulatory enforcement efforts. Without the holder's presence at landings, it is difficult for NMFS enforcement officers to verify how much was caught at any particular time during a fishing trip or ensure access to the individual primarily responsible for the QS account management, such as overages. Further, the 2010 IFQ halibut and sablefish fishing season opened on March 6, 2010. If NMFS enforcement cannot verify catch amounts in the current opening, then catch-accounting managers will likely be unable to prevent overfishing or foresee excessive catches that result in harm to both IFQ holders and the biological resource.

For the same reasons, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30 day delay in effective date.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 14, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For reasons explained in the preamble, 50 CFR part 679 is corrected by making the following correcting amendment:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 2. In § 679.42, paragraph (c) is revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(c) *Permit holder aboard requirement.* Any individual who harvests halibut or sablefish with fixed gear must have a valid IFQ permit, and if a hired master is conducting the harvest, a valid IFQ hired master permit, and must be aboard the vessel at all times during the fishing trip and be present during the landing.

* * * * *

[FR Doc. 2010–9065 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 75
Tuesday, April 20, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0514; Airspace Docket No. 07–AWA–1]

RIN 2120–AA66

Proposed Amendment to Class B Airspace; Cleveland, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Cleveland, OH, Class B airspace to contain aircraft conducting Instrument Flight Rules (IFR) instrument approach procedures to Cleveland-Hopkins International Airport (CLE) within Class B airspace. This action also would update two geographic coordinates listed in the description. This action would contain aircraft operations conducting instrument approaches within Cleveland Class B airspace, further supporting the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: Comments must be received on or before June 21, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2009–0514 and Airspace Docket No. 07–AWA–1 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2009–0514 and Airspace Docket No. 07–AWA–1) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA–2009–0514 and Airspace Docket No. 07–AWA–1." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/regulations_policies/rulemaking/recently_published/.*

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, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd. Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In 1974, the FAA issued a final rule which established the Cleveland, OH (Cleveland-Hopkins International Airport), Terminal Control Area (39 FR 11256). As a result of the Airspace Reclassification final rule (56 FR 65638), which became effective in 1993, the terms "terminal control area" and "airport radar service area" were replaced by "Class B airspace area," and "Class C airspace area," respectively. The primary purpose of a Class B airspace area is to reduce the potential for midair collisions in the airspace surrounding airports with high density air traffic operations by providing an area in which all aircraft are subject to certain operating rules and equipment requirements.

The Cleveland Class B airspace area was last modified in 1970 when it was the Cleveland, Ohio (Cleveland-Hopkins International Airport), control zone, using 1970s air traffic activity levels, and has not been modified since. In recent years, the City of Cleveland has accomplished construction projects to modernize, enhance safety, and provide sufficient capacity at CLE. These projects included the construction of a replacement Runway 6L/24R at CLE that increased the lateral distance between runways 6L/24R and 6R/24L to 1,241 feet. This increase in lateral distance between the runways has allowed simultaneous arrival and departure operations under visual flight rules (VFR) conditions and simultaneous approaches during marginal VFR conditions through the use of Precision Runway Monitor/Simultaneous Offset

Instrument Approaches (PRM/SOIA). Operationally, PRM/SOIA results in higher arrival acceptance rates during lower VFR minimums, but requires aircraft to be established on the final approach courses not less than 15 miles from the airport. During periods with moderate levels of air traffic, this requirement quickly extends the final approach course to a distance of 25–30 miles from the airport; placing aircraft outside the confines of the current Cleveland Class B airspace.

Since the Cleveland Class B airspace area was established, CLE has experienced increased traffic levels, a considerably different fleet mix, and airport infrastructure improvements enabling simultaneous instrument approach procedures. For calendar year 2008, CLE documented 550,171 total operations and was rated number 34 among all Commercial Service Airports with 5,387,625 passenger enplanements.

With the current Class B airspace configuration, aircraft routinely enter, exit, and then reenter Class B airspace while flying published instrument approach procedures, contrary to FAA directives. The procedural requirements for using PRM/SOIA to establish aircraft on final at least 15 miles from the airport has resulted in aircraft exceeding the lateral boundaries of the current Class B airspace by up to 5 to 10 miles during moderate levels of air traffic. Modeling of existing traffic flows has shown that the proposed expanded Class B airspace extensions would enhance safety by containing all instrument approach procedures, and associated traffic patterns, within the confines of Class B airspace and better segregate IFR aircraft arriving/departing CLE and VFR aircraft operating in the vicinity of the Cleveland Class B airspace. The proposed Class B airspace modifications described in this NPRM are intended to address these issues.

Pre-NPRM Public Input

In 2007, the FAA initiated action to form an ad hoc committee to provide comments and recommendations regarding the planned modifications to the Cleveland Class B airspace area. Participants in the committee included representatives from Cleveland Airport System, Reader Botsford Field, Cleveland City Council, Aircraft Owners and Pilots Association, Air Line Pilots Association, Continental Airlines, Soaring Society of America, local soaring clubs, and local communities. One ad-hoc committee meeting was held at Burke Lakefront Airport on January 11, 2008. Although the ad-hoc committee did not reach consensus on an airspace design, a variety of alternatives were recommended.

In addition, as announced in the **Federal Register** (73 FR 40446), informal airspace meetings were held on September 16, 2008, at the Wellington Town Hall, Wellington, OH; and on September 17, 2008, at the Burke Lakefront Airport, Cleveland, OH. These meetings provided interested airspace users with an opportunity to present their views and offer suggestions regarding the planned modification of the Cleveland Class B airspace. All comments received as a result of the informal airspace meetings, along with the recommendations made by the ad hoc committee were considered in developing this proposal.

Discussion of Recommendations and Comments

Ad hoc Committee Recommendations

The ad hoc committee recommended the FAA raise the floor of Area F from 5,000 feet mean sea level (MSL) to 6,000 feet MSL or layering it. Area F was originally proposed as a single area extension to the southwest described from the 20-mile arc of the CLE Runway 24L ILS/DME antenna (I–HPI) to the 30-mile arc of I–HPI, with the northern boundary 6 miles north and parallel to the runway 6L localizer (I–LIZ) signal extended and the southern boundary 6 miles south and parallel to the runway 6R localizer (I–EYU) signal extended, from 5,000 feet MSL to and including 8,000 feet MSL. The FAA originally discounted this recommendation based on current operating procedures and flight safety concerns, however, the FAA carried the recommendation forward for further review and consideration.

The ad hoc committee suggested three other recommendations that were not adopted. These recommendations were: (1) Use a Letter of Agreement to delegate a portion of airspace within Area F (as originally proposed) for glider operations and allow tow aircraft to communicate to air traffic control for the gliders when the Class B extension is not needed by air traffic control; (2) retain IFR arrival aircraft turns to the final approach course inside the current 20-mile Class B airspace boundary; and (3) move Area F (as originally proposed) further to the North.

The recommendation to use a Letter of Agreement to delegate airspace and "third-party" communication procedures for gliders operating within Class B airspace, when the airspace is not needed, was not adopted due to the regulatory nature of Class B airspace. The associated operational and equipage requirements to operate within Class B airspace cannot be waived by Letter of Agreement. Additionally, air traffic control must be able to provide positive separation and control of all aircraft within Class B airspace at all times.

The recommendation to retain aircraft turning to the final approach course within the current Class B airspace was not adopted because approximately 15 to 18 percent of IFR arrivals currently extend beyond the existing boundary. This alternative would require imposing in-trail spacing requirements, prohibiting use of PRM/SOIA, and using airborne holding. While these measures might be of minor benefit in keeping aircraft within the confines of the present day Cleveland Class B airspace, the associated detrimental impacts to the national airspace system would be excessive.

The recommendation to move the Area F extension (as originally proposed) further to the North was not adopted because the extension would no longer align with the runway centerlines extended, nor the instrument final approach courses. The purpose for establishing the Class B airspace extensions, *i.e.* to retain IFR arrival aircraft on instrument approaches within Class B airspace, would not be realized and the current situation of IFR arrival aircraft entering, exiting, and reentering the Class B airspace would continue.

Informal Airspace Meeting Comments

Twelve commenters raised concerns that Area F (as originally proposed) would impose on the existing glider operations at Reader-Botsford Airport. The 5,000 feet MSL floor of the area would provide only 4,200 feet above ground level (AGL) airspace for gliders to operate within and they would be unable to reach adequate altitudes for safe departures and returns from cross-country soaring. Six of these commenters suggested dividing Area F into a north area with the 5,000 feet MSL floor the FAA proposed, and a south area with a 6,000 feet MSL floor to support cross-country glider operations. And, four of these commenters further suggested using railroad tracks that run west to east under the originally proposed Area F as a visual reference to mark the boundary between the north and south areas. The FAA partially agrees. The originally proposed Area F has been redefined into a north area (named Area F in the proposal section below) and a south area (named Area G in the proposal section below). The "new" Areas F and G are expected to provide the gliders operating at Reader-Botsford Airport

with additional airspace for their operations while preserving the integrity of the Class B airspace containing IFR aircraft flying instrument approaches to CLE. The FAA does not agree with using the railroad tracks to define the two areas and is proposing the boundary between the proposed Areas F and G be described by the runway 6R localizer (I–CLE) signal extended. The railroad tracks suggested by the commenters does not divide the originally proposed Area F in a manner supportive of containing IFR aircraft on instrument approaches within Class B airspace.

Four commenters expressed concern that the planned establishment of Areas E and F (as originally proposed) with a 5,000 feet MSL floor would compress general aviation traffic into lower altitudes and cause traffic compression. The FAA partially agrees with these comments. For general aviation aircraft to remain clear of the Cleveland Class B airspace areas, they would have to fly either below or above the Class B airspace extensions. However, these areas are necessary to (1) retain IFR aircraft on instrument approaches in the Cleveland Class B airspace area and (2) ensure general aviation traffic and the large turbine-powered aircraft conducting instrument approaches are segregated. Additionally, aircraft conducting simultaneous, parallel instrument approaches may not be assigned the same altitude during turn-on to the final approach course, resulting in aircraft being assigned altitudes that may differ by a minimum of 1,000 feet. In order to accommodate containment of these aircraft flying simultaneous instrument approaches within Class B airspace, and ensure segregation from general aviation traffic, the Cleveland Class B airspace area must be modified to establish the additional extensions as proposed.

One commenter cited Area F (as originally proposed) would be an impediment to general aviation aircraft operating at Elyria and Lorain County Regional Airports, as descents and climbs would have to be modified to get below the proposed 5,000 feet MSL extension. The FAA does not agree. Both Elyria and Lorain County Regional Airports are located under the Cleveland Class B airspace Area C (floor altitude 3,000 feet MSL), which is unchanged by this proposal. The current Cleveland Class B airspace Area D extends 5 miles west of the airports (floor altitude 4,000 feet MSL) and is also unchanged by this proposal. The newly proposed Class B airspace extension, comprised of Areas F and G, would be established at 5,000 feet MSL and 6,000 feet MSL, respectively, and located beyond the existing Area D. The flight profile impacts for general aviation aircraft operating at Elyria and Lorain County Regional Airports should be minimal since departures to or arrivals from the West or South are expected to be unaffected by the proposed extension.

Ten commenters, including a representative from the Village of Wellington, stated concerns regarding potential loss of revenue to the village, the Reader-Botsford Airport land owner, and the Fun Country Soaring Club should the glider operations cease because of the Class B airspace proposal. The FAA does not agree. As noted above, the Area F extension (as originally proposed) was modified to provide additional airspace to the soaring club operators at Reader-Botsford Airport. Since the majority of glider operations occur to the south and west, the new Areas F and G are expected to enable glider operations to continue with negligible impact to local area or cross-country glider flights. As such, the FAA does not expect the soaring club operation at Reader-Botsford Airfield to relocate; thus, averting the financial impacts to the Village of Wellington, the airport land owner, or the soaring club, as raised by the commenters.

Two commenters questioned the need for the Cleveland Class B modifications in light of the recent reduction of air carrier traffic at CLE. The FAA does not agree. The Class B airspace extensions proposed are aimed at ensuring IFR aircraft flying instrument approaches to CLE are contained within Class B airspace during their arrival. As noted in the ad hoc committee recommendations section, even with the reduced air carrier traffic levels today, there continues to be approximately 15 to 18 percent of IFR aircraft arrivals to CLE that enter, exit, and re-enter the Class B airspace. The FAA considers this proposed modification to the Cleveland Class B airspace to be the minimum amount of airspace necessary to contain all IFR arrivals within Class B airspace.

Four commenters stated the FAA should determine a way to "turn the airspace [original proposed Area F extension] on and off", while one suggested the use of a Letter of Agreement to enable gliders to gain access/entry to the Class B airspace extension proposed overhead Reader-Botsford Airfield. The FAA does not agree. Class B airspace is established via rulemaking and when established, the airspace and the regulatory requirements associated with accessing and operating within it are specific and in effect at all times for all operations. The regulatory requirements for aircraft to enter and operate within Class B airspace may not be waived, modified, or exempted by Letter of Agreement.

The Proposal

The FAA is proposing an amendment to Title 14 of the Code of Federal Regulations (14 CFR) part 71 to modify the Cleveland, OH, Class B airspace area. This action (depicted on the attached chart) would add two airspace extensions (one, Area E, to the Northeast and one, defined by Areas F and G, to the Southwest) in order to provide additional airspace needed to contain aircraft conducting instrument approach operations within the confines of Class B airspace, especially when PRM/SOIA are utilized. Additionally, the proposed modifications would better segregate IFR aircraft arriving/departing CLE and VFR aircraft operating in the vicinity of the Cleveland Class B airspace area. The current Cleveland Class B airspace area consists of four subareas (A through D) while the proposed configuration would consist of seven subareas (A through G). The proposed modifications to the Cleveland Class B airspace area are:

Areas A–D. Except for a proposed administrative correction to the legal description in Area B, which excludes the airspace within a 2-mile radius of Burke Lakefront Airport in error, there are no changes to the airspace descriptions of Area A through D. The airspace contained within Area B does not overlap with the airspace contained within a 2-mile radius of the Burke Lakefront Airport. Therefore, the Area B exclusion language addressing that airspace within a 2-mile radius of Burke Lakefront Airport is unnecessary.

Area E. The FAA proposes to establish Area E to the Northeast of CLE. This modification would extend from the existing Area D boundary defined by the 20-mile arc of I–HPI to the 30-mile arc of I–HPI. The northern boundary is proposed to be defined 6-miles north and parallel to the Runway 24R localizer (I–PVY) signal extended, and the southern boundary is proposed to be defined 6-miles south and parallel to the Runway 24L localizer (I–FVZ) signal extended. This new area would be established with the floor extending upward from 5,000 feet MSL to and including 8,000 feet MSL, overlying the Willoughby Lost Nation Airport in Willoughby, OH. The effect of this new area would be to ensure IFR aircraft flying instrument approaches to runways 24L and 24R are contained within the confines of Class B airspace throughout the approach, yet provide

airspace below and above this area for VFR aircraft operations outside of the Class B airspace.

Area F. The FAA proposes to establish Area F to the Southwest of CLE. This modification would extend from the existing Area D boundary defined by the 20-mile arc of I–HPI to the 30-mile arc of I–HPI. The northern boundary is proposed to be defined 6-miles north and parallel to the Runway 6L localizer (I–LIZ) signal extended, and the southern boundary is proposed to be defined by the Runway 6R localizer (I–CLE) signal extended. This new area would be established with the floor extending upward from 5,000 feet MSL to and including 8,000 feet MSL, and to the north and west of the town of Wellington, OH. Similar to the effect of Area E, this new area, with Area G described below, would ensure IFR aircraft flying instrument approaches to runways 6L and 6R are contained within the confines of Class B airspace throughout the approach, yet provide airspace below and above this area for VFR aircraft operations outside of the Class B airspace.

Area G. The FAA proposes to establish Area G to the Southwest of CLE. This modification would extend from the existing Area D boundary defined by the 20-mile arc of I–HPI to the 30-mile arc of I–HPI. The northern boundary is proposed to be defined by the Runway 6R localizer (I–CLE) signal extended, and the southern boundary is proposed to be defined 6-miles south and parallel to the Runway 6R localizer (I–EYU) signal extended. This new area would be established with the floor extending upward from 6,000 feet MSL to and including 8,000 feet MSL, overlying the Reader-Botsford Airport located in Wellington, OH. Similar to the effect of Areas E and F, this new area, with Area F described above, would ensure IFR aircraft flying instrument approaches to runways 6L and 6R are contained within the confines of Class B airspace throughout the approach, yet provide airspace below and above this area for VFR aircraft operations outside of the Class B airspace.

Finally, this proposed action would update the CLE airport reference point coordinates and the I–HPI coordinates in the legal description to reflect current National Airspace System data.

Implementation of these proposed modifications to the Cleveland Class B airspace area would enhance the efficient use of the airspace for the safety and management of aircraft operations in the Cleveland terminal area.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9T, Airspace Designations and Reporting Points, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing United States standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of United States standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

After consultation with a diverse cross-section of stakeholders that participated in the Cleveland airport ad hoc advisory committee, in addition to thorough review of public comments as a result of an informal meeting, the FAA expects the proposed modifications to the Cleveland Class B airspace to result in minimal cost. Existing traffic flow modeling to CLE shows commercial aircraft routinely enter, exit and then reenter the current Class B airspace while flying published instrument approach procedures, contrary to FAA directives. The Class B extension proposed will increase safety by encompassing the actual flight paths of commercial aircraft on instrument approach. Commercial aircraft are already performing instrument approaches to CLE in accordance to the proposed extensions to Class B airspace.

As a result of the aforementioned public meeting, only four commenters—all of whom are individual glider pilots—mentioned concerns over general aviation compression with the extended Class B airspace extension. However, the FAA discounts such compression arguments because as mentioned above current commercial procedures for approach to CLE are occurring in the proposed Class B extension. The FAA also adjusted the proposed extension of Class B airspace by bifurcation of the affected area and increasing the floor altitude from 5,000 MSL to 6,000 MSL in the area most trafficked by the gliders out of Reader-Botsford Airport, to the south and to the west of the airport.

Commenters worry a soaring club may discontinue operation resulting in a loss of revenue to the Village of Wellington, the landowner of Reader-Botsford Airport, as a result of the proposed extension. The FAA does not believe the proposed Class B extension will cause the soaring club to close down; therefore, the costs would be minimal, if any. The FAA included accommodations to the proposed extension. The area to the south and the west of Reader-Botsford Airport included in the proposed Class B airspace extension gives a 6,000 MSL minimal floor as compared to 5,000 MSL minimal floor in other portions of the proposed extension to the Class B airspace. This accommodation would allow for a vaster amount of airspace for gliders. Additionally, this rule does not regulate any nearby airspace outside of the current and proposed Class B airspace which is available to general aviation and gliders but not to commercial aircraft on approach to CLE.

The benefits of the proposed extension of Cleveland Class B airspace far exceed any minimal cost associated with this proposed rule. As mentioned earlier this change is primarily to encapsulate already practiced instrument landing approaches thereby increasing the safety of not only the commercial traffic but also the general aviation community already being affected. The FAA also recognizes the

significant benefits of having increased number of simultaneous lateral approaches of commercial aircraft both for instrument approaches and visual approaches.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes the proposal would not have a significant economic impact on a substantial number of small entities as the economic impact is expected to be minimal. Based on the Small Business Administration small entity criterion for small government jurisdictions the rule would impact a substantial number of small entities. Reader-Botsford Airport is a regional airport that's land is owned by a government with a population less than 50,000, the Village of Wellington, Ohio. The FAA does not believe Wellington will be significantly impacted by the proposed extension of Cleveland Class B airspace because the proposed rule would not force a local soaring club to cease operations. The FAA proposed a higher ceiling to accommodate the soaring club. Additionally, commercial flights are currently using the proposed Class B extended airspace. The FAA believes these changed patterns result in a minimal economic impact. Therefore the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. We request comments from the potentially affected entities which would include estimated compliance cost and revenue, such that we could provide a measure of economic impact.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for United States standards. The FAA has assessed the potential effect of this proposed rule to change the airspace classification for CLE and determined that it would not have a potential effect on trade-sensitive activities as discussed above.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Conclusion

FAA has, therefore, determined that the extension of Cleveland Class B airspace is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

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 the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, dated August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace

* * * * *

AGL OH B Cleveland, OH [Modified]

Cleveland-Hopkins International Airport (Primary Airport)
(Lat. 41°24′34″ N., long. 81°51′18″ W.)
Cleveland-Hopkins International Airport Runway 24L ILS/DME Antenna (I–HPI)
(Lat. 41°23′44″ N., long. 81°52′18″ W.)
Gilbert Airport (Pvt)
(Lat. 41°22′00″ N., long. 81°58′00″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within a 5-mile radius of I–HPI, excluding that airspace within a 1-mile radius of Gilbert Airport.

Area B. That airspace extending upward from 1,900 feet MSL to and including 8,000 feet MSL within an 8.5-mile radius of I–HPI, excluding Area A previously described.

Area C. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius of I–HPI, excluding Areas A and B previously described.

Area D. That airspace extending upward from 4,000 feet MSL to and including 8,000 feet MSL within a 20-mile radius of I–HPI, excluding Areas A, B, and C previously described.

Area E. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL starting at point lat. 41°30′41″ N., long. 81°27′22″ W., then northeast to point lat. 41°37′00″ N., long. 81°16′29″ W., then northwest along the 30-mile arc of I–HPI to point lat. 42°47′20″ N., long. 81°27′36″ W., then southwest to point lat. 42°40′43″ N., long. 81°38′13″ W., then southeast along the

20-mile arc of I–HPI to the point of beginning.

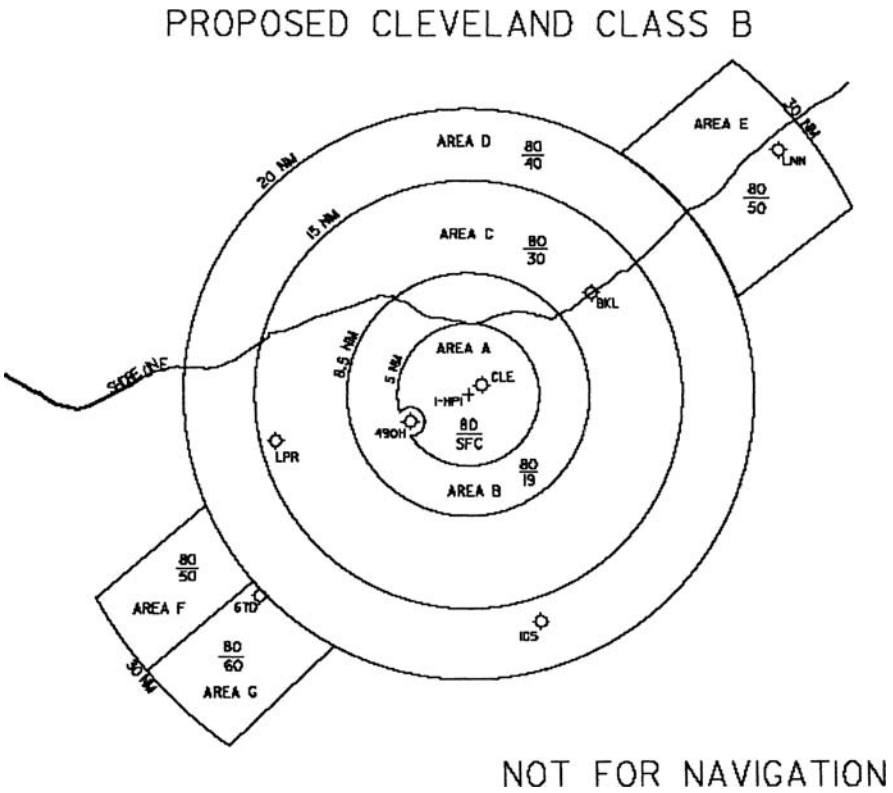
Area F. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL starting at point lat. 41°16′17″ N., long. 82°16′56″ W., then southwest to point lat. 41°09′35″ N., long. 82°27′23″ W., then southeast along the 30-mile arc of I–HPI to point lat. 41°04′24″ N., long. 82°22′43″ W., then northeast to point lat. 41°10′52″ N., long. 82°12′37″ W., then northwest along the 20-mile arc of I–HPI to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 8,000 feet MSL starting at point lat. 41°06′13″ N., long. 82°05′07″ W., then southwest to point lat. 40°59′08″ N., long. 82°15′03″ W., then northwest along the 30-mile arc of I–HPI to point lat. 41°04′24″ N., long. 82°22′43″ W., then northeast to point lat. 41°10′52″ N, long. 82°12′37″ W, then southeast along the 20-mile arc of I–HPI to the point of beginning.

Issued in Washington, DC, on April 13, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.



[FR Doc. 2010–9024 Filed 4–19–10; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

[Docket No. CPSC–2010–0029]

Interpretation of "Children's Product"

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed interpretative rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is issuing a proposed interpretative rule that would interpret the term "children's product" as used in the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Public Law 110–314. The proposal would provide additional guidance on the factors that must be considered when evaluating what is a children's product.

DATES: Written comments and submissions in response to this notice must be received by June 21, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0029, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan D. Midgett, Office of Hazard Identification, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone

(301) 504–7692, e-mail *jmidgett@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 235(a) of the CPSIA amended section 3(a)(2) the Consumer Product Safety Act ("CPSA") by creating a new definition of "children's product." 15 U.S.C. 2052(a)(2). "Children's product" is defined as "a consumer product designed or intended primarily for children 12 years of age or younger." Several CPSIA provisions use the term "children's product." For example, section 101(a) of the CPSIA provides that, as of August 14, 2009, children's products may not contain more than 300 parts per million (ppm) of lead. On August 14, 2011, the limit shall be reduced to 100 ppm, unless the Commission determines that it is not technologically feasible to move to this lower limit for a particular product or product category. As another example, section 102 of the CPSIA requires third party testing of certain children's products, and section 103 of the CPSIA requires tracking labels for children's products.

The statutory definition of "children's product" also specifies certain factors that are to be taken into consideration when making a determination about "whether a consumer product is primarily intended for a child 12 years of age or younger." These factors are:

- A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable;
- Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

The proposed interpretative rule would create a new § 1500.92, "Definition of Children's Product." [1] The proposal would discuss the statutory definition and accompanying factors to provide guidance on how manufacturers can evaluate consumer products to determine whether such products are children's products. The additional guidance will provide a better understanding by manufacturers and the public of our approach to evaluating children's products.

II. Description of the Proposed Interpretative Rule

A. Designed or Intended "Primarily" for Children

Section 3(a)(2) of the CPSA defines a "children's product" as "a consumer product designed or intended primarily for children 12 years of age or younger." We interpret the term "designed or intended primarily" to apply to those consumer products mainly for children 12 years old or younger. A determination of whether a product is a "children's product" will be based on consideration of the four specified statutory factors as further described in the discussion and examples provided in this interpretative rule. Because each of those four factors incorporates the concept of "use" by the child in some manner, we further interpret the term "for use" by children 12 years or younger to generally mean that children will physically interact with such products based on the reasonably foreseeable use and misuse of such product.

In contrast, products intended for general use, are products that are not designed or intended primarily for use by children 12 years old or younger. General use products are those consumer products mainly for consumers older than 12 years of age. Some products may be designed or intended for consumers of all ages, including children 12 years old or younger, but are intended mainly for consumers older than 12 years of age. The Commission has given examples of what it considers to be general use products. For example, most pens, or other office supplies, are not considered children's products because they are mainly used by the general public. The fact that pens or other office supplies may also be used by children does not convert them into children's products. However, when a general use product, such as a pen, is decorated or embellished by adding certain features that may appeal to children, such as childish themes or play value, the general use product may be converted or transformed into a children's product due to these additional features or characteristics. A further evaluation would be made regarding whether, in fact, a child would be likely to physically interact with such a pen, and how such interactions would occur, including the reasonably foreseeable use and misuse of the product by the child. If a child is unlikely to interact with the pen because the theme would not be of interest, or if an older child or adult is as likely, or more likely to interact with the pen than a child, such a pen would not be a product designed or intended primarily for children 12 years of age or younger, and thus, would not be considered a children's product.

Where a product such as a backpack or certain recreational equipment may be just as appealing for a child older than 12, or if consumers older than 12 years of age are as likely or more likely to use the product, those products may not be considered children's products. Although these products can be used by children under the age of 12, the long-term use of these products would extend to consumers older than 12 years of age. However, other products used by 12-year-olds (*e.g.,* child-themed lunchboxes) have a declining appeal for teenagers. Where a product's appeal lessens as a child moves past the age of 12, it is likely that the product may be considered as designed or intended primarily for children 12 years of age or younger.

Other products are specifically not intended for use by children 12 years of age or younger. These products, such as cigarette lighters, candles, and fireworks, which the Commission has traditionally warned adults to keep away from children, are not subject to the CPSIA's lead limits, tracking label requirement, and third-party testing and certification provisions. Similarly, we have indicated that products that incorporate performance requirements for child resistance are not children's products as they are designed specifically to ensure that children cannot access the contents. This would include products such as portable gasoline containers and special packaging under the Poison Prevention Packaging Act.

In evaluating whether a particular product is designed or intended primarily for a child, the CPSC staff makes an age determination for the product which considers all of the facets of a product and the following statutory factors.

B. Factors Considered (Proposed § 1500.92(a) Through 1500.92(d))

1. Manufacturer's Statement

Section 3(a)(2)(A) of the CPSA lists a statement by a manufacturer about the product's intended use, "including a label on such product if such statement

[1] The Commission voted 5–0 to publish this proposed interpretative rule, with changes, in the **Federal Register**. Chairman Inez M. Tenenbaum, and Commissioners Thomas H. Moore, Nancy Nord, Robert Adler, and Anne Northup voted to publish the notice with changes. Chairman Tenenbaum issued a statement, and the statement can be found at *http://www.cpsc.gov/PR/tenenbaum03312010.pdf.* Commissioner Northup also issued a statement, and the statement can be found at *http://www.cpsc.gov/pr/northup03312010.pdf.*

is reasonable," as a factor to be considered in determining whether a product is primarily intended for a child 12 years of age or younger. 15 U.S.C. 2052(a)(2)(A). A manufacturer's statement that the product is not intended for children does not preclude a product from being regulated as a children's product if the primary appeal of the product is to children 12 years of age or younger. Similarly, a label indicating that a product is for ages 10 and up does not necessarily make it a children's product if it is a general use product. Such a label may recommend 10 years old as the earliest age for a prospective user, not necessarily the age for which the product is primarily intended.

A manufacturer's statement about a product's intended use, including the product's label, should be reasonably consistent with the expected use patterns for a product. The Commission will examine the labeling to determine whether a product is appropriately age graded consistent with the foreseeable uses and abuses of that product. The Commission has never considered a manufacturer's label with regard to age to be determinative where the stated age does not take into account the foreseeable use and abuse of a product attractive to children. The manufacturer's label, in and of itself, is not considered to be determinative. We discuss common use patterns in further detail under part I.B.3 of this preamble below.

2. Product Presentation

Another factor, at section 3(a)(2)(B) of the CPSA, is whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger. 15 U.S.C. 2052(a)(2)(B). These representations can be express (such as product advertising declaring that the product is for use by children 12 years of age or younger) or implied (such as product advertising showing the product being used by young children). These representations may be found in packaging, text, illustrations and/or photographs depicting consumers using the product, instructions, assembly manuals, or advertising media used to market the product. The prominence, conspicuousness, and or other emphasis given to each portrayal of a product's uses or intended users on packaging or in advertising media can be weighted differently according to which images or messages are the strongest and most obvious to the consumer at the point of purchase. For example, labeling in large, high contrast letters on the front of a package sends a stronger message than block letters in a small box on the package's side panel.

Besides labeling and illustrations, a product's physical location in a retail outlet or visual associations in the pages of an online distributor's Web site could imply its suitability for a certain age group. The close association of a product in a store or on a Web site with other products that are clearly intended for children 12 years of age or younger could affect consumer perceptions of the intended age group for that product. However, the retail location of a product may not be dispositive of a children's product determination. For example, if an electronic media device, such as a video game console, were sold at toy stores, but were also sold in electronics stores or department stores and marketed to consumers older than 12 years of age, then that video game console likely would be considered a general use product rather than a children's product. The Commission recognizes that manufacturers need some certainty about whether their products are children's products long before they reach store shelves, as tracking labels must be applied and third-party testing must occur much earlier in the chain of commerce. The Commission generally evaluates products based on the entire domestic market as opposed to conducting a shelf-by-shelf or store-by-store analysis. As a result, for instance, inclusion in a catalogue focused exclusively on furnishings for babies and toddlers does not necessarily convert a product that may have more general appeal, such as a plain light blue, yellow, or ivory rug, into a children's product.

Manufacturers may also include a general use item as one of several items packaged together, such as a paper clip included in a magnet set primarily intended for children ages 7 through 10 years old. The paper clip may be a general use item but when included as part of the magnet set, it would need to be tested to the applicable children's product safety rules since the product is targeted primarily to children 12 years of age or younger.

Sometimes a product commonly recognized as primarily intended for children is packaged with an adult product complicating the determination of the intended recipient. Take, for example, a stuffed animal packaged with a candle as a sentimental gift for Valentine's Day or some other holiday. The candle is not a children's product and need not comply with the requirements for children's products. The stuffed animal, on the other hand, is likely to be considered a children's product even though it has been combined in a promotion with a general use or adult product. The stuffed animal must meet all the applicable children's safety rules for the stuffed animal (*i.e.,* small parts and sharp edges under 16 CFR 1500.49 through 1500.53, the lead content or lead paint limits under section 101 of the CPSIA and 16 CFR part 1303). The manufacturer should expect that an adult will use the candle but likely might give the stuffed animal to a child. In other words, a children's product that is packaged with a general use product is likely to remain a children's product.

3. Commonly Recognized by Consumers

Another factor, at section 3(a)(2)(C) of the CPSA, in determining whether a consumer product is designed or intended primarily for a child 12 years of age or younger is whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger. 15 U.S.C. 2052(a)(2)(C). For example, traditional board and table games like chess, checkers, backgammon, playing cards, or Chinese checkers are commonly recognized as equally attractive to children and adults because the level of difficulty increases or decreases depending on the player's skill. Versions of these games, and similar games commonly considered by consumers to appeal to a general audience, are not considered children's products. However, if a manufacturer adds marketing portrayals or other features to the game or its packaging that make it more attractive to or suitable for children than a general use product would normally be, then the game could be considered a children's product. Specifically, where a product such as a board game exists in junior and regular versions, the junior version likely would be considered a children's product and the regular version likely would be considered a general use product.

To assess whether a product is commonly recognized by consumers as being primarily intended for a child, a manufacturer should evaluate the reasonably foreseeable uses and misuses of a product to determine how the product will be perceived and used by consumers of that product. Manufacturers could also refer to sales data, market analyses, focus groups, or other marketing studies for their analyses of consumer perceptions of their products as described further below.

(i). Features and Characteristics of Children's Products

A consumer product will commonly be recognized by consumers as being intended for use by a child 12 years of age or younger based on certain product features or characteristics. Certain childish features or characteristics of children's products can be defined generally, although there may be exceptions. Features that distinguish children's products from adult products include, but are not limited to, such factors as:

- Small sizes that would not be comfortable for the average adult;
- Exaggerated features (large buttons, bright indicators) that simplify the product's use;
- Safety features that are not found on similar products intended for adults;
- Colors commonly associated with childhood (pinks, blues, bright primary colors);
- Decorative motifs commonly associated with childhood (such as animals, insects, small vehicles, alphabets, dolls, clowns, and puppets);
- Features that do not enhance the product's utility, (such as cartoons), but contribute to its attractiveness to children 12 years of age or younger; and
- Play value, *i.e.,* features primarily attractive to children 12 years of age or younger that promote interactive exploration and imagination for fanciful purposes (whimsical activities lacking utility for accomplishing mundane tasks; actions performed for entertainment and amusement).

The more of these types of characteristics that a product has, the greater the likelihood that the product is a children's product. For example, a pen which is decorated or whose advertising and marketing features themes that correspond to obvious children's interests, *e.g.,* preschool characters, will greatly influence the purchase for preschool children.

However, there also are "novelty" pens that could appeal to children 12 years of age or younger as well as older children and adults; such novelty pens would not be considered to be primarily intended for children. For example, a simple ball point stick pen bearing an elementary school's name, without any other decorations, would likely appeal to anyone (*i.e.* students, teachers, parents) connected with the school. A pen with a silly head on the top, not associated with any particular mass media (and not sold in toy stores), may have just as much appeal to adults as it would to children. Pens with puzzle features that allow the user to take them apart and reconfigure the design also are likely to appeal to children and adults alike, and thus, are not likely to be considered children's products because they are not primarily intended for children.

(ii). Principal Perceived Uses

When making a determination about the intended age of a product's users, an evaluation of the product's reasonably foreseeable uses and misuses should take into account the possible actions that a product makes available. In essence, this is an analysis of what uses a consumer perceives a subject product affords, even if what the product does is unintended. For example, the principal use of a screwdriver is turning screws, but it may also be used to stir paint. The principal use for a broom is floor cleaning, but a broom may also be used as an imaginary knight's lance, a horse, a magical flying vehicle, or another role-playing prop. However, in the age determination analysis, the principal uses take precedence over other actions that are less likely to be performed with a product, so even though a product could present some uses that appeal to children, like the broom being used as an imagined magical flying vehicle, that fact does not necessarily mean that the broom is a children's product. The individual features of a product may be weighted in the analysis with more obvious uses given a greater weight than less obvious uses.

(iii). Cost Considerations

A product's cost may also be considered in evaluating whether a consumer product is primarily intended for use by a child or an adult. The cost of a given product may influence the determination of the age of intended users. Very expensive items are less likely to be given to children 12 years of age or younger, depending on the product. We have not identified a price point where any given product achieves automatic adult status but, in general terms, within a given product category (like models or remote controlled vehicles), products intended for adults cost more than products intended for children because children are often less careful with their belongings than adults and therefore are more likely to be entrusted with less expensive models.

(iv). Children's Interaction With the Product

In making an age determination, the foreseeable use or misuse of the product by a child must be evaluated. Most products intended for children will involve the child having physical interaction with the product. There are a few products that are intended for use in a child's environment, but such products are not for use by a child. These products are unlikely to be handled by children and children do not physically interact with such products. Such products may include a nursery-themed lamp or clock, or nursery decorations that are manufactured for placement in an infant's room but are not operated or handled by children, because such infants lack the motor skills or physical capacity to interact with such items. These types of products are considered to be home furnishings or decorations primarily intended for use by adults, rather than products intended for use by children.

Home furnishings or fixtures that are embellished with features or characteristics that incorporate elements of play value (a toy train on a lamp) for an older child, would be evaluated to ascertain the appropriate age group for which the product was intended given the product's design, marketing and advertising, the child's physical interaction, if any, with the product, and consideration of any other factors which may be relevant to the age grading determination.

Other products that are intended for use by adults with children, such as diaper bags, diaper pails, wipe warmers, bottle warmers, and baby monitors would not be considered children's products because such products are primarily designed and intended for use by the adult or caregiver.

4. The Age Determination Guidelines (2002)

The final statutory factor, at section 3(a)(2)(D) of the CPSA, is the Age Determination Guidelines ("Guidelines") issued by the CPSC staff in 2002. 15 U.S.C. 2052(a)(2)(D). The Guidelines help answer questions regarding children's interactions with consumer products. The Guidelines can be downloaded in a searchable file format on the CPSC Web site at this link: *http://www.cpsc.gov/businfo/corrective.html.*

The Guidelines address questions such as, "Does the subject product appeal to children?" and "Can a child properly use the subject product?" The Guidelines describe the capabilities and skills that children of various age groups can be reasonably expected to use in interactions with consumer products. We consider those actions that children of certain ages can successfully perform when making determinations about the appropriate user groups for products even if the specific product or type of product is not specifically mentioned by the Guidelines.

i. Appeal of the Product for Different Age Groups

When making an age determination for a given product's intended user group, the Guidelines provide information about the primary goals of play that are seen for different ages throughout childhood. For example, toddlers consistently want to mouth objects because mouthing is a primary strategy for exploration of any object at that age. Early childhood entails lots of exploration and discovery. High levels of detail in their toys are not necessary, and toddlers like bright colors. However, during middle childhood, children become very interested in role-playing, and they desire increasingly more realistic props during their playtime, and more realistic colors become important. After a certain age, children do not consider the simplistic, brightly colored toys intended for toddlers to be intended for them and may find them very unappealing or even insulting. Nine to 12 year old children are interested in developing new motor skills and exercising their increasingly complex problem solving abilities. They consistently want to learn and practice new skills to approximate adult performances in activities like playing sports, working with hand tools and simple machines, and solving complex puzzles. During this age range, children progress from concrete to abstract thinking. Their consumer behaviors are more heavily influenced than younger children by peers and popular mass media celebrities and events. The factors that make various objects appealing to children of different ages are discussed at length in the Guidelines.

ii. Capabilities of Various Age Groups

Whether or not a product appeals to a child is just one consideration because the child also needs to be able to manipulate and operate a product in the manner that takes advantage of most, if not all, of that product's features to be appropriate for a child that age. The physical, social and cognitive milestones that contribute to a child's ability to play with various types of products are described in detail in the Guidelines to help match a product with the user group of the proper age. For example, a magnifying glass is very attractive to a toddler because it is novel, visually intriguing, and has an easily grasped handle with easily mouthed edges, but toddlers are usually unable to position a magnifying glass in the proper manner to magnify objects to their eyes. A toddler's hand-eye coordination and his or her visual attention are usually not developed enough for a toddler to find the focal point needed to see something magnified in the glass. Despite this, a toddler might want to hold and mouth a magnifying glass. This appeal does not make the magnifying glass appropriate for toddlers. Magnifying glasses are suitable for older children and individuals older than 12 years of age who have the necessary hand-eye coordination to use the product for magnification without the risk of breaking it. Because a magnifying glass is generally marketed to the adult population, it would not be considered a children's product.

III. Examples (Proposed § 1500.92(d)(1) through (d)(9))

To help manufacturers and other interested parties understand the concepts discussed above (in part II of this document) for evaluating what is a children's product under the CPSA, we provide the following additional examples.

(A) Furnishings and Fixtures

General home furnishings and fixtures, such as rocking chairs, shelving units, televisions, digital music players, ceiling fans, humidifiers, air purifiers, window curtains, tissue boxes, clothing hooks and racks, often are found in children's rooms or schools. The Commission will generally consider such furnishings and fixtures to be intended for adult use even if they happen to be used in a children's room or classroom, as they would be considered general use products. A humidifier may be used in a children's room, but this does not make it for children to use; instead, adult caregivers use the humidifier to modify the air in a child's room. Similarly, a hook used to hang coats is a general use item, even if a child's coat is occasionally hung on the hook at home or at school. However, if a manufacturer attaches the hook to a children's product, such as a child-sized desk, or embellishes the hook with a child's theme (thereby making it clear that the hook is intended to be used primarily by a child), then that hook would be considered a children's product.

Some home or school furnishings, such as infant tubs, bath seats, small beanbag chairs with childish decorations, bunk beds with children's themes, child-sized desks, and child-sized chairs, are primarily intended for use by children 12 years of age or younger and would need to comply with all applicable children's product safety rules.

Other products may have a childish theme incorporated into the product. For example, a lamp featuring a fire station that has posable figurines of firefighters has play value and would likely be considered a children's product. If a lamp has no features that add play value, or any other features that would invite physical interaction with the lamp beyond turning the lamp on or off, it would likely be considered a general use product, since it would be indistinguishable from a lamp for consumers older than 12 years of age. Decorative items, such as holiday decorations and household seasonal items that are intended only for display, with which children are not likely to interact, are generally not considered children's products, since they are intended to be used by adults.

(B) Collectibles

Certain products that were originally intended for children may become collector's items and find an adult market. However, many collectibles are interesting to children, and children 12 years of age or younger often have collections. Adult collectibles are intended solely for use by adults as display items and are often labeled in such a manner that conveys this intention. They may be (but are not always) distinguishable from collectibles intended for children by themes that are inappropriate for children 12 years of age or younger. Adult collectibles also have features that preclude use by children during play, such as high costs, limited production, and display features like hooks or pedestals, and are not marketed alongside children's products. For example, collectible plush bears have highly detailed and fragile accessories, display cases, platforms to pose and hold the bear, and very high costs. Plush bears intended for children are more affordable and have more simple accessories that children can handle without damaging the product or the accessory.

(C) Jewelry

Jewelry intended for children is sized, themed, and marketed to children. Many features of adult jewelry may be attractive to children 12 years old or younger, but potential attractiveness to children, alone, does not make a piece of jewelry into a product intended for children. One or more of the following characteristics of jewelry could cause an item to be considered primarily a children's product:

- Size;

- Cost—it would be unusual for an adult to wear jewelry that is available at very low cost;
- Marketing in conjunction with other children's products, such as a child's dress, children's book, or toy;
- Play value;
- Sale at an entertainment or educational event (such as a circus) attended primarily by children;
- Use of childish themes, such as animals, vehicles, or toys;
- Sale at a store containing mostly children's products; and
- Sale in a vending machine.

In addition, many aspects of an item's design and marketing are considered when determining the age of consumers for whom the product is intended and will be purchased. These aspects include:

- Marketing, advertising, and promotional materials;
- Packaging graphics and text;
- Size;
- Dexterity requirements for wearing;
- Appearance (coloring, textures, materials, design themes, licensing, level of realism); and
- Cost.

These aspects or characteristics will help inform jewelry manufacturers and consumers whether a particular piece of jewelry is designed or intended primarily for children 12 years of age or younger, or whether it more frequently appeals to consumers older than 12 years of age.

(D) DVDs, Video Games, and Computers

Most computer products and electronic media devices, such as CDs, DVDs, and DVD players, are considered general use products. However, some CDs and DVDs may have encoded content that is intended for and marketed to children, such as children's movies, games or educational software. CPSC staff may consider ratings given by entertainment industries and software rating systems when making an age determination. However, we note that among the CDs and DVDs that have content embedded that is intended for children, certain CDs and DVDs that contain content for very young children would not be handled or otherwise touched by children because they do not have the motor skills to operate media players and because such products, by themselves, do not have any appeal to children. These types of DVDs or CDs would not be considered children's products because they are not used "by" children and children do not physically interact with such products. However, DVDs and CDs and other digital media that may be handled by older children could be considered children's products if such movies, video games, or music were specifically aimed at and marketed to children 12 years of age or younger and have no appeal to older audiences.

Video game consoles also are considered general use products because a significant portion of the market for such items consists of teenagers and young adults. However, handheld video games with software intended for children 12 years of age or younger would fall within the scope of a children's product if the products are produced without software available that is appealing to older children and adults. Such products would be more likely to be perceived as intended for children 12 years of age or younger. Also, the controllers for certain console games or other accessories of electronic equipment that are sized for or otherwise intended for only children's games could be a children's product because of their size (or other childish features), even though the game console could be a general use product. Likewise, keyboards, computer input devices, and other peripherals that are sized, decorated, or otherwise marketed for children 12 years of age or younger would be considered children's products, even though the computer itself is a general use item.

(E) Art Materials

Materials sized, decorated, and marketed to children 12 years of age or younger, such as crayons, finger paints and modeling dough, would be considered children's products. Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger would likely be considered products intended for general use. The marketing and labeling of raw materials (such as modeling clay and paint) may often be given high priority in an age determination for these art materials because the appeal and utility of these raw materials has such a wide audience.

(F) Books

The content of a book can determine its intended audience. Children's books have themes, vocabularies, illustrations, and covers that match the interests and cognitive capabilities of children 12 years of age or younger. Librarians, education professionals, and publishers commonly make determinations regarding the expected audiences for books based on vocabulary, grammar, themes, and content. Some children's books have a wide appeal to the general public, and, in those instances, further analysis may be required to assess who the primary intended audience is based on consideration of relevant additional factors such as product design, packaging, marketing and sales data.

(G) Science Equipment

Microscopes, telescopes, and other scientific equipment that would be used by an adult, as well as a child, are considered general use products. Equipment with a marketing strategy that targets schools, such as scientific instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the equipment is leased, rented, or sold. This equipment is intended by the manufacturer for use primarily by adults, although there may be incidental use by children through such programs. In general, scientific equipment that is specifically sized for children and/or has childish themes or decorations intended to attract children is considered a children's product. Toy versions of such items are also considered children's products.

(H) Sporting Goods and Recreational Equipment

Sporting goods that are primarily intended for consumers older than 12 years of age are considered general use items. Regulation-sized sporting equipment, such as basketballs, baseballs, bats, racquets, and hockey pucks, are general use items even though some children 12 years of age or younger will use them. Sporting goods become children's products when they are sized to fit children or are otherwise decorated with childish features that are intended to attract child consumers.

Likewise, recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness equipment, are considered general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish features. For example, scooters have been made for children and for adults. Children's scooters are distinguished by shorter handlebar heights and have lower maximum weight limits than adult scooters. Children's scooters also may have childish decorations with themes that appeal to children.

Wading pools are primarily intended for children and can be distinguished from general use pools by their depth. Children's pools are shallow and have extra play features that promote playful interactions beyond the primary use of holding water for a bather.

Aquatic products primarily intended for children can be distinguished from general use recreational equipment for deep water, such as towables and rafting equipment, by design, cost and intended use. Children's aquatic products are

relatively low cost, small items intended for individual use and generally are decorated with childish themes and colors. Recreational equipment, such as towables and rafting equipment, have durable materials and high-capacity, weight-bearing capabilities.

(I) Musical Instruments

Musical instruments suited for an adult musician as well as a child are general use products. Instruments primarily intended for children can be distinguished from adult instruments by their size and marketing themes. Products with a marketing strategy that targets schools, such as instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the instruments are leased, rented, or sold. These instruments are intended by the manufacturer for use primarily by adults, although there also may be incidental use by children through such programs. However, products that produce music or sounds in a manner that simplifies the process so that children can pretend to play an instrument are considered toys primarily intended for children 12 years of age or younger. In general, instruments that are specifically sized for children and/or have childish themes or decorations intended to attract children are considered children's products.

IV. Request for Comments and Effective Date

We are providing a sixty (60) day opportunity for public comment, although we recognize that, as an interpretative rule, the proposal is exempt from the notice and comment provisions of the Administrative Procedure Act (15 U.S.C. 553). We believe it is important to invite comment from interested parties before issuing a final interpretative rule. The Commission also seeks comments on how manufacturers generally determine the age of the consumers for whom their products are primarily intended. In addition, comments are sought on what other criteria, if any, should be considered in determining whether a consumer product is a children's product. Because this is an interpretative rule, a delayed effective date is not required by the Administrative Procedure Act (5 U.S.C. 553(d)). Therefore, any final rule based on this proposal would become effective upon publication of a final interpretative rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

V. Conclusion

For the reasons stated above, the Commission proposes to amend Chapter II of Title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278, 122 Stat. 3016.

2. Add a new § 1500.92 to read as follows:

§ 1500.92 Definition of children's product.

(a) *Definition of "children's product"*—Under section 3(a)(2) of the Consumer Product Safety Act (CPSA), a children's product means a consumer product designed or intended primarily for children 12 years of age or younger. The term "designed or intended primarily" applies to those consumer products mainly for children 12 years old or younger. Whether a product is a children's product is determined by considering the four specified statutory factors. The examples discussed herein may also be illustrative in making such determinations. The term "for use" by children 12 years or younger generally means that children will physically interact with such products based on the reasonably foreseeable use and misuse of such product.

(b) *Definition of "general use product"*—

(1) A general use product means a consumer product that is not designed or intended primarily for use by children 12 years old or younger. General use products are those consumer products mainly for consumers older than age 12. Some products may be designed or intended for consumers of all ages, including children 12 years old or younger, but are intended mainly for consumers older than 12 years of age. Examples of general use products may include products that a child would not be likely to interact with, or products that consumers older than 12 would be as likely, or more likely to interact with. Products used by children 12 years of age or younger that have a declining appeal for teenagers are likely to be considered children's products.

(2) Other products are specifically not intended for use by children 12 years of age or younger. These products, such as cigarette lighters, candles, and fireworks, which the Commission has traditionally warned adults to keep away from children, are not subject to the CPSIA's lead limits, tracking label requirement, and third-party testing and certification provisions. Similarly, products that incorporate performance requirements for child resistance are not children's products as they are designed specifically to ensure that children cannot access the contents. This would include products such as portable gasoline containers and special packaging under the Poison Prevention Packaging Act.

(c) *Factors considered*—To determine whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors must be considered:

(1) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable. A manufacturer's statement about the product's intended use, including the product's label, should be reasonably consistent with the expected use patterns for a product. A manufacturer's statement that the product is not intended for children does not preclude a product from being regulated as a children's product if the primary appeal of the product is to children 12 years of age or younger. Similarly, a label indicating that a product is for ages 10 and up does not necessarily make it a children's product if it is a general use product. The manufacturer's label, in and of itself, is not considered to be determinative.

(2) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(i) These representations may be express or implied. For example, advertising expressly declaring that the product is intended for children 12 years of age or younger will support a determination that a product is a children's product. Advertising showing children 12 years of age or younger using the product may support a determination that the product is a children's product. These representations may be found in packaging, text, illustrations and/or photographs depicting consumers using the product, instructions, assembly manuals, or advertising media used to market the product.

(ii) The product's physical location near or visual association with

children's products may be a factor in making an age determination, but is not determinative. For example, a product displayed in a children's toy section of a store may support a determination that the product is a children's product. However, where that same product is also sold in department stores and marketed for general use, further evaluation would be necessary. The Commission generally evaluates products based on the entire domestic market as opposed to a shelf-by-shelf or store-by-store analysis.

(iii) The product's association or marketing in conjunction with nonchildren's products may not be determinative as to whether the product is a children's product. For example, packaging and selling a stuffed animal with a candle would not preclude a determination that the stuffed animal is a children's product since stuffed animals are commonly recognized as being primarily intended for children.

(3) Whether the product is commonly recognized by consumers as being intended for use by children 12 years of age or younger. Consumer perception of the product's use by children, including its reasonably foreseeable use and misuse, will be evaluated. Sales data, market analyses, focus group testing, and other marketing studies may help support an analysis regarding this factor.

(i) Features and Characteristics—additional considerations that may help distinguish children's products from nonchildren's products include:

(A) Small sizes that would not be comfortable for the average adult;

(B) Exaggerated features (large buttons, bright indicators) that simplify the product's use;

(C) Safety features that are not found on similar products intended for adults;

(D) Colors commonly associated with childhood (pinks, blues, bright primary colors);

(E) Decorative motifs commonly associated with childhood (such as animals, insects, small vehicles, alphabets, dolls, clowns, and puppets);

(F) Features that do not enhance the product's utility, (such as cartoons), but contribute to its attractiveness to children 12 years of age or younger; and

(G) Play value, *i.e.,* features primarily attractive to children 12 year of age or younger that promote interactive exploration and imagination for fanciful purposes (whimsical activities lacking utility for accomplishing mundane tasks; actions performed for entertainment and amusement).

(ii) Principal use of the product—just because an item could be used as a children's product, such as when a child pretends that a broom is a horse, does not mean the item should be regulated as a children's product where the principal use is for sweeping;

(iii) Cost—the cost of a given product may influence the determination of the age of intended users; and

(iv) Children's interactions, if any, with the product—products for use in a child's environment by the caregiver but not for use by the child would not be considered primarily intended for a child 12 years of age or younger.

(4) The Age Determination Guidelines issued by the Consumer Product Safety Commission staff in September 2002, and any successor to such guidelines. The product's appeal to different age groups and the capabilities of those age groups may be considered when making determinations about the appropriate user groups for products.

(d) *Examples*—To help manufacturers understand what constitutes a children's product under the CPSA, the following additional examples are offered.

(1) *Furnishings and fixtures*—general home furnishings and fixtures (including, but not limited to: rocking chairs, shelving units, televisions, digital music players, ceiling fans, humidifiers, air purifiers, window curtains, tissue boxes, clothing hooks and racks) that often are found in children's rooms or schools would not be considered children's products unless they are decorated or embellished with a childish theme, have play value, and/or are sized for a child. Examples of home or school furnishings that are primarily intended for use by children and considered children's products include infant tubs, bath seats, small bean bag chairs with childish decorations, bunk beds with children's themes, child-sized desks, and child-sized chairs. Decorative items, such as holiday decorations and household seasonal items that are intended only for display, with which children are not likely to interact, are generally not considered children's products, since they are intended to be used by adults.

(2) *Collectibles*—Adult collectibles may be distinguishable from children's collectibles by themes that are inappropriate for children 12 years of age or younger, have features that preclude use by children during play, such as high cost, limited production, display features (such as hooks or pedestals), and are not marketed alongside children's products. For example, collectible plush bears have high cost, are highly detailed, with fragile accessories, display cases, platforms on which to pose and hold the bears. Children's bears have lower costs and simple accessories that can be handled without fear of damage to the product.

(3) *Jewelry*—

(i) Jewelry intended for children is generally sized, themed, and marketed to children. One or more of the following characteristics of jewelry may cause a piece of jewelry to be considered primarily a children's product: size; very low cost; play value; childish themes on the jewelry; sale with children's products (such as a child's dress); sale with a child's book, a toy, or party favors; sale with children's cereal or snacks; sale at an entertainment or educational event attended primarily by children; sale in a store that contains mostly children's products; and sale in a vending machine.

(ii) In addition, many aspects of an item's design and marketing are considered when determining the age of consumers for whom the product is intended and will be purchased: marketing; advertising; promotional materials; packaging graphics and text; size; dexterity requirements for wearing; appearance (coloring, textures, materials, design themes, licensing, level of realism); and cost. These characteristics will help jewelry manufacturers and consumers determine whether a particular piece of jewelry is designed or intended primarily for children 12 years of age or younger, or whether it more frequently appeals to consumers older than 12 years of age.

(4) *DVDs, video games, and computers*—Most computer products and electronic media devices, such as CDs, DVDs, and DVD players, are considered general use products. However, some CDs and DVDs may have encoded content that is intended for and marketed to children, such as children's movies, games or educational software. CPSC staff may consider ratings given by entertainment industries and software rating systems when making an age determination. However, we note that among the CDs and DVDs that have content embedded that is intended for children, certain CDs and DVDs that contain content for very young children would not be handled or otherwise touched by children because they do not have the motor skills to operate media players and because such products, by themselves, do not have any appeal to children. These types of DVDs or CDs would not be considered children's products because they are not used "by" children and children do not physically interact with such products. However, DVDs and CDs and other digital media

that may be handled by older children could be considered children's products if such movies, video games, or music were specifically aimed at and marketed to children 12 years of age or younger and have no appeal to older audiences.

(5) *Art materials*—Materials sized, decorated, and marketed to children 12 years of age or younger, such as crayons, finger paints and modeling dough, would be considered children's products. Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger likely would be considered products intended for general use. The marketing and labeling of raw materials (such as modeling clay, paint and paint brushes) may often be given high priority in an age determination for these art materials because the appeal and utility of these raw materials has such a wide audience.

(6) *Books*—The content of a book can determine its intended audience. Children's books have themes, vocabularies, illustrations, and covers that match the interests and cognitive capabilities of children 12 years of age or younger. The age guidelines provided by librarians, education professionals, and publishers may be dispositive for determining the intended audience. Some children's books have a wide appeal to the general public, and in those instances, further analysis may be necessary to assess who the primary intended audience is based on consideration of relevant additional factors such as product design, packaging, marketing and sales data.

(7) *Science equipment*—Microscopes, telescopes, and other scientific equipment that would be used by an adult, as well as a child, are considered general use products. Equipment with a marketing strategy that targets schools, such as scientific instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the equipment is leased, rented, or sold. This equipment is intended by the manufacturer for use primarily by adults, although there may be incidental use by children through such programs. In general, scientific equipment that is specifically sized for children and/or has childish themes or decorations intended to attract children is considered a children's product. Toy versions of such items are also considered children's products.

(8) *Sporting goods and recreational equipment*—Sporting goods that are primarily intended for consumers older than 12 years of age are considered general use items. Regulation-sized sporting equipment, such as basketballs, baseballs, bats, racquets, and hockey pucks, are general use items even though some children 12 years of age or younger will use them. Sporting goods become children's products when they are sized to fit children or are otherwise decorated with childish features that are intended to attract child consumers. Likewise, recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness equipment, are considered general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish features by the manufacturer.

(9) *Musical instruments*—Musical instruments suited for an adult musician as well as a child are general use products. Instruments primarily intended for children can be distinguished from adult instruments by their size and marketing themes. Products with a marketing strategy that targets schools, such as instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the instruments are leased, rented, or sold. These instruments are intended by the manufacturer for use primarily by adults, although there also may be incidental use by children through such programs. However, products that produce music or sounds in a manner that simplifies the process so that children can pretend to play an instrument are considered toys primarily intended for children 12 years of age or younger. In general, instruments that are specifically sized for children and/or have childish themes or decorations intended to attract children are considered children's products.

Dated: April 7, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 577

[Docket No. FR–5333–P–01]

RIN 2506–AC26

Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Homeless"

AGENCY: Office of the Assistant Secretary for Community Planning and Development.

ACTION: Proposed rule.

SUMMARY: This rule commences HUD's regulatory implementation of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009. The HEARTH Act consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program and creates the Emergency Solutions Grant Program and the Rural Housing Stability Program. The HEARTH Act also codifies in statutory law the Continuum of Care planning process, long a part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs. The HEARTH Act defines the terms "homeless," "homeless individual," "homeless person," and "homeless individual with a disability," but these definitions contain terms that require further elaboration. Since the scope of these terms is essential to the development of an appropriate regulatory structure for the homeless assistance programs as consolidated and amended by the HEARTH Act, HUD is initiating the rulemaking process with this proposed rule, which solely addresses the definition of these terms.

DATES: *Comment Due Date.* June 21, 2010

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the

public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–7000; telephone number 202–708–4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—HEARTH Act

The Helping Families Save Their Homes Act of 2009 was signed into law on May 20, 2009 (Pub. L. 111–22). This new law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this new law is the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The HEARTH Act consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The former Emergency Shelter Grant program is renamed the Emergency Solutions Grant program and revised to broaden existing emergency shelter and homelessness prevention activities and to add rapid re-housing activities. The new Rural Housing Stability program replaces the Rural Homelessness Grant program. The HEARTH Act also codifies in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of homelessness established administratively by HUD in 1995. In addition, this proposed rule may affect the Base Realignment and Closure and Title V property disposition programs. These changes will be considered through separate rulemaking in conjunction with the other Federal agencies that administer these programs—the Department of Health and Human Services and the General Services Administration.

II. This Proposed Rule

As amended by the HEARTH Act, section 103 of the McKinney-Vento Act defines "homeless," "homeless individual," "homeless person," and "homeless individual with a disability," but these definitions contain terms that require explanation or elaboration. With this proposed rule, HUD seeks to provide the necessary clarification and elaboration of these terms in order to satisfy section 1003(b) of the HEARTH Act, which requires HUD to "provide sufficient guidance to recipients of funds under title IV of the McKinney-Vento Homeless Assistance Act to allow uniform and consistent implementation of the requirements of section 103 of such Act." HUD will be publishing proposed rules for the new Emergency Solutions Grant program, the Continuum of Care program, and the Rural Housing Stability program. Each of these programs will include the definition(s) from this proposed rule. This proposed rule, however, sets out regulatory text only for the Emergency Solutions Grants program codified at 24 CFR part 577. HUD is considering repeating this regulatory text in the regulations for the Continuum of Care and Rural Housing Stability programs at the final rule stage, rather than simply cross-referencing to the regulatory text in part 577. HUD believes a complete set of regulations for each program may be more user-friendly. HUD specifically welcomes public comment on this issue.

This proposed rule clarifies key terms in the definitions of "homeless," "homeless individual," "homeless person," and "homeless individual with a disability." First, this proposed rule clarifies that individuals and families may qualify as homeless under four possible categories, corresponding to the broad categories established by the statutory language of the definition in section 103 of the McKinney-Vento Act as amended by the HEARTH Act. The first category (§ 577.2(1)), consisting of an individual or family who lacks a fixed, regular, and adequate nighttime residence, is taken from section 103(a)(1) of the statute, but also incorporates the language from sections 103(a)(2), (a)(3), and (a)(4). HUD has concluded that paragraphs (a)(2) through (a)(4) of section 103 define this first category of homeless (section 103(a)(1)) by providing three subsets of that category. That is, paragraphs (a)(2) through (a)(4) of section 103 are not separate statutory categories of eligibility, but rather specifically define the first category. Second, under a subset of the first category (§ 577.2(1)(iii)), an individual who resided in a shelter or place not meant for human habitation, and who is exiting an institution where he or she temporarily resided, is eligible for homeless assistance. This proposed rule clarifies that the individual must have been homeless immediately before entering the institution, and in order to be consistent with other parts of the regulation, HUD defines "temporarily resided" as a period of 90 days or less. In the past, HUD has used a 30-day standard, but has found that a period of more than 30 days is more realistic for individuals to keep their housing and homeless status. Additionally, in the statute, the definition of "chronically homeless" in section 401(2)(B) uses "fewer than 90 days" as the measure for determining temporarily resided in an institutional care facility or similar facility.

The second category under which an individual or family may qualify as homeless (§ 577.2(2)(i)) is individuals or families who will imminently lose their primary nighttime residence. The statute provides three cases in which the imminent loss of a primary nighttime residence may be evidenced in order to qualify as homeless: the individual or family: (1) Is subject to a court order to vacate, (2) lacks the resources to continue staying in a hotel

or a motel, or (3) is no longer being allowed to stay by the owner or renter of housing with whom the individual or family is staying. In each of these cases, the individual or family may be considered homeless up to 14 days before they are to be displaced from their current housing.

The proposed rule provides, in (§ 577.3(b)(3)(i)), that the service provider must retain whatever evidence is relied upon in determining that an individual or family will imminently lose their housing. For example, the service provider may obtain a copy of the eviction order, or may interview the applicant to document the applicant's resources. Where the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and where an eviction notice or similar documentation evidencing loss of housing is not available, the statute permits, as evidence of this status, any oral statement from an individual or family that is found to be credible to prove that the condition is present. While the statute provides that an oral statement from an individual or family member may establish eligibility as homeless, the statute requires the oral statement to be found credible to be considered credible evidence.

Given the statutory language that the oral statement must be found credible to be considered credible evidence, the proposed rule provides that to be found as credible evidence, any oral statement from an individual or family seeking homeless assistance must be documented and verified. However, the proposed rule provides for the most minimal documentation in order to not conflict with the statutory permissibility of making an oral statement and to meet the corresponding statutory requirement that the statement be credible evidence. The proposed rule provides that the oral statement must be documented by a self-certification; that is, the individual or head of household certifies in writing to the veracity of the oral statement made. After the oral statement is documented, it must be verified by: (a) a statement of the owner or renter of the housing in which the individual or family is currently residing, as recorded by the intake worker, or (b) due diligence undertaken by the intake worker in attempting to obtain a statement from the owner or renter that is documented in writing by the intake worker. (See in (§ 577.3(b)(3)(i)(C).) An example of where the second option may be used is where the intake worker tries to call the owner of the housing and the owner is uncooperative and does not return multiple phone calls. The intake worker can document such unanswered calls as evidence of due diligence to verify the oral statement. As discussed later in this preamble, verification of self-certified statements is not required in cases involving victims of domestic violence.

The proposed rule provides for written documentation of the oral statement by the individual or head of household to address the statutory requirement that the statement be found to be credible. Documentation of the statement is not only important for the issue of credible evidence, as discussed above, but ensures that the individual has had the opportunity to review the oral statement as set forth in writing, to confirm that the written statement accurately reflects the oral statement. The self-certification therefore serves two purposes; it: (1) Meets the statutory requirement for credible evidence; and (2) protects the individual from any failures, not attributable to the individual, with respect to any possible inaccuracies in the written statement that could result in delay in verification of the individual's statement or result in delay or denial of services.

The third category under which an individual or family may qualify as homeless (§ 577.2(3)) consists of unaccompanied youth and homeless families with children and youth who are defined as homeless under other Federal statutes who do not otherwise qualify as homeless under the definition, provided that they meet the following three conditions. The criteria for this category under section 103(a)(6) of the statute are: having experienced a long term period without living independently in permanent housing, having experienced persistent instability as measured by frequent moves over such period, and being expected to continue in such status for an extended period of time. This rule clarifies that a "long term period without living independently in permanent housing" means living for the 91 or more days immediately prior to applying for homeless assistance without a lease or ownership interest in the occupied property in the youth's or head of household's name. In addition, "persistent instability" means three or more moves over the 90-day period immediately prior to applying for homeless assistance. HUD specifically solicits comments on HUD's proposal for determining persistent instability.

In order to prove the condition of a long-term period without living independently in permanent housing and of persistent instability, an oral or written statement by the youth or head of household is accepted as credible evidence when verified by the owners or renters of the previous housing from which the applicant has moved. The evidentiary requirements for this category, like those for imminent loss of housing, include written records of the statements by each of the owners or renters where the individual or family resided or, in cases where these statements are unobtainable, a written record of the due diligence exercised by the intake worker to obtain these statements. A separate § 577.3 describes the documentation requirements to determine whether an individual or family is homeless.

Within the third category is the condition that the unaccompanied youth's or family's persistent instability and inability to live independently in permanent housing are expected to continue due to a variety of factors, including multiple barriers to employment. "Multiple barriers to employment" is proposed to mean two or more of the following barriers: lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration, and a history of unstable employment.

The fourth category under which an individual or family may qualify as homeless is provided under § 577.2(4), which reflects section 103(b) of the statute. HUD will consider as homeless any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions that relate to violence against the individual or a family member that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence, and who has no other residence and lacks the resources or support networks to obtain other permanent housing. The victimized member of the household is not required to be the owner or renter of the unit.

In light of the particular safety concerns surrounding victims of domestic violence, the proposed rule provides that acceptable evidence that an individual or family qualifies under this category of the homeless definition may include an oral statement from the individual or family. This oral statement does not need to be verified, but it must be documented by either self-certification (signed statement by the victim certifying an oral statement's veracity) or a certification by the intake worker (signed statement by the intake

worker certifying the victim's oral statement).

HUD solicits comments on whether the certifications that the proposed rule provides as acceptable evidence would be less of a burden if the statement and certification are made on a HUD-approved form.

The upcoming proposed rule addressing program requirements will include special confidentiality requirements to protect documentation and information concerning individuals and families fleeing domestic violence. These special confidentiality requirements will be similar to those already in place under HUD's existing homeless programs. HUD welcomes comments on confidentiality requirements that HUD should consider in the upcoming proposed rule.

Lastly, for the definition of "homeless individual with a disability," this proposed rule clarifies that any condition arising from the etiologic agency for acquired immunodeficiency syndrome includes infection with the human immunodeficiency virus (HIV).

The Department invites comment on the further elaboration of the terms "homeless," "homeless individual," "homeless person," and "homeless individual with a disability," as presented in this proposed rule. The purpose of this proposed rule is to provide sufficient guidance for the consistent and effective implementation of the new definitions in the HEARTH Act, and public comment on this rule will assist HUD in meeting this purpose.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, "Regulatory Planning and Review." This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
24 CFR 577.3 Reporting requirements	19,500	65	0.25	316,875

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5333–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947; and

Reports Liaison Officer, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7220, Washington, DC 20410–8000.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42. U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the definitions of "homeless," "homeless individual," "homeless person," and "homeless

individual with a disability." The purpose of this rule is to determine the universe of individuals and families who qualify as "homeless" under the HEARTH Act, and are therefore eligible to be served by HUD homeless programs that will be implemented by separate rulemaking. Given the narrow scope of this rule, HUD has determined that it would not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 577

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Homeless, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Supportive services.

Accordingly, for the reasons described in the preamble, HUD proposes to add part 577 to subchapter C of chapter V of subtitle B of 24 CFR to read as follows:

PART 577—EMERGENCY SOLUTIONS GRANTS PROGRAM

Sec.
577.2 Definitions.
577.3 Recordkeeping requirements.

Authority: 42 U.S.C. 11301, 42 U.S.C. 3535(d).

§ 577.2 Definitions.

Developmental disability means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of this definition if the individual, without services and supports, has a high probability of meeting those criteria later in life.

Homeless, homeless individual, and *homeless person* mean:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence and is:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in a shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing;

(3) Unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who do not otherwise qualify as homeless under this definition and:

(i) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 91 days immediately preceding the application for homeless assistance;

(ii) Have experienced persistent instability as measured by three moves or more during the 90-day period immediately before applying for homeless assistance; and

(iii) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration, and a history of unstable employment; and

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks to obtain other permanent housing.

Homeless individual with a disability means an individual who is homeless and has a disability that:

(1)(i) Is expected to be long-continuing or of indefinite duration;

(ii) Substantially impedes the individual's ability to live independently;

(iii) Could be improved by the provision of more suitable housing conditions; and

(iv) Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury;

(2) Is a developmental disability, as defined in this section; or

(3) Is the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agency for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

§ 577.3 Recordkeeping requirements.

(a) *General.*—[Reserved].

(b) *Homeless Status.*—Each recipient of assistance under this part must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 577.2. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status of the individuals and families applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term.

(1) Acceptable evidence under § 577.2, in paragraphs (1)(i) and (ii) of the homeless definition of homeless status, includes certification by the individual or head of household seeking assistance, a written observation by an outreach worker of the conditions where the individual or family was living, or a written referral by another housing or service provider.

(2) Acceptable evidence under § 577.2, in paragraph (1)(iii) of the homeless definition, that a person resided in a shelter or place not meant for human habitation and is exiting an institution where he resided for 90 days or less, includes the evidence described in paragraph (b)(1) of this section, plus a written referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution.

(3)(i) The evidence under § 577.2, in paragraph (2)(i) of the homeless definition, that a person or family will imminently lose their housing, must include one of the following:

(A) A court order resulting from an eviction action notifying the individual or family that they must leave within 14 days of the date of their application for homeless assistance;

(B) For individuals and families leaving hotel or motel rooms not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, evidence that the individual or family lacks the financial resources necessary to reside there for more than 14 days from the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household seeking assistance that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days from the date of application for homeless assistance. This oral statement must be documented and verified. The oral statement must be documented by a self-certification; that is, the individual or head of household certifies in writing to the veracity of the oral statement made. Verification must be received from the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance. The verification may be a written or oral statement of the owner or renter recorded by the intake worker or a written record of the intake worker's due diligence in attempting to obtain a statement from the owner or renter.

(ii) The evidence under § 577.2, in paragraph (2)(i) of the homeless definition, must also include:

(A) Certification by the individual or head of household seeking assistance that no subsequent residence has been identified, and

(B) Self-certification or other written documentation that the individual or family lacks the financial resources and support networks needed to obtain other permanent housing.

(4) Acceptable evidence under § 577.2, in paragraph (3) of the homeless definition, for unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes that do not otherwise qualify as homeless, is—

(i) For § 577.2, in paragraph (3)(i) of the homeless definition, certification by the homeless individual or head of household seeking assistance, written observation by an outreach worker or referral by a housing or service provider;

(ii) For § 577.2, in paragraph (3)(ii) of the homeless definition, certification by the individual or head of household seeking assistance and any available supporting documentation that the individual or family moved three or more times during the 90-day period immediately before applying for homeless assistance, including: Recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records; and

(iii) For § 577.2, in paragraph (3)(iii) of the homeless definition, acceptable evidence includes written diagnosis from an appropriate licensed professional, intake staff-recorded observation of disability confirmed within 45 days of the application for assistance by an appropriate licensed medical professional, employment records, department of corrections records, and literacy, English proficiency, and IQ tests.

(5) Acceptable evidence under § 577.2, in paragraph (4) of the homeless definition, for individuals or families fleeing domestic violence, includes an oral statement by the individual or head of household seeking assistance, written observation by the intake worker, or written referral by a housing or service provider, social worker, the hospital, or the police. If an oral statement is used, it must be documented by either a self-certification or a certification by the intake worker.

Dated: March 22, 2010.

Mercedes Márquez,

Assistant Secretary for Community, Planning and Development.

[FR Doc. 2010–8835 Filed 4–19–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket Number NIOSH–0137]

RIN 0920–AA33

Total Inward Leakage Requirements for Respirators

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

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

SUMMARY: The Centers for Disease Control and Prevention (CDC) is reopening the comment period for the notice of proposed rulemaking by the National Institute for Occupational Safety and Health (NIOSH) of CDC, entitled "Total Inward Leakage Requirements for Respirators," published in the **Federal Register** on October 30, 2009 (74 FR 56141). The comment period on this proposed regulation closed on March 29, 2010 (74 FR 66935) and is being reopened until September 30, 2010.

DATES: All written comments must be received on or before September 30, 2010.

ADDRESSES: You may submit comments, identified by RIN: 0920–AA33, by any of the following methods:

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

• *E-mail: niocindocket@cdc.gov.* Include "RIN: 0920–AA33" and "42 CFR Part 84" in the subject line of the message.

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

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking, RIN: 0920–AA33. All comments received will be posted without change to *http://www.cdc.gov/niosh/docket,* including any personal information provided.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2009, the Department of Health and Human Services proposed a rule to establish total inward leakage (TIL) requirements for half-mask air-purifying particulate respirators approved by NIOSH. The proposed new requirements specify TIL minimum performance requirements and testing to be conducted by NIOSH and respirator manufacturers to demonstrate that these respirators, when selected and used correctly, provide effective respiratory protection to intended users against toxic dusts, mists, fumes, fibers, and biological and infectious aerosols (e.g., influenza A (H5N1), *Bacillus anthracis,* severe acute respiratory syndrome (SARS) coronavirus, and *Mycobacterium tuberculosis*). The agency held a public meeting on December 3, 2009 to take comments on the proposed regulation (74 FR 59501). Based on requests to extend the comment period submitted in writing and made orally at the public meeting, the agency extended the comment period until March 29, 2010 (74 FR 66935).

II. Reopening of Comment Period

Prior to the close of the comment period on March 29, 2010, two commenters requested the comment period be extended for up to one additional year because they are conducting independent research into scientific requirements of the proposed rule and/or its economic impact. The commenters stated that they needed this amount of time to complete this research before they can fully comment.

Due to the fact that the proposed rule contains only one new performance requirement that the commenters need to analyze and that the comment period has already been extended once, the Centers for Disease Control and Prevention (CDC) has determined that an additional reopening of the comment period to September 30, 2010 provides sufficient time to allow for public comment.

III. Public Meeting

NIOSH will conduct a public meeting in June or July 2010 to hear from stakeholders on the preliminary results of their independent research. A formal notice will be published in the **Federal Register** announcing the date and location of that meeting.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2010–9085 Filed 4–19–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2010-0013]
[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; Initiation of Status Review for Sacramento splittail (*Pogonichthys macrolepidotus)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Initiation of status review and solicitation of new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), announce the initiation of a status review for the Sacramento splittail (*Pogonichthy macrolepidotus*). To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12–month finding, which will address whether the listing may be warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before May 20, 2010. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit comments by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2010–0013 and then follow the instructions for submitting comments.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS–R8–ES–2010–0013; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Dan Castleberry, Field Supervisor, San Francisco Bay-Delta Fish and Wildlife Office, 650 Capitol Mall, fifth Floor, Sacramento, CA 95814; by telephone at 916-930-5632; or by facsimile at 916-930-5654. Persons who use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339

SUPPLEMENTARY INFORMATION:

Information Solicited:

To ensure the status review is complete and based on the best available scientific and commercial information, we request information on the Sacramento splittail. We request any additional information from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1)The species' biology, range, and population trends, including:
  (a) Habitat requirements for feeding, breeding, and sheltering;
  (b) Genetics and taxonomy;
  (c) Historical and current range including distribution patterns;
  (d) Historical and current population levels, and current and projected trends; and
  (e) Past and ongoing conservation measures for the species and/or its habitat.

(2) The factors that are the basis for making a listing determination for a

species under section 4(a) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;
(b) Overutilization for commercial, recreational, scientific, or educational purposes;
(c) Disease or predation;
(d) The inadequacy of existing regulatory mechanisms; or
(e) Other natural or manmade factors affecting its continued existence.

(3) The potential effects global climate change may have on the Sacramento splittail or its habitat.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing the Sacramento splittail is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), as per section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request specific comments and information as to what, if any, critical habitat you think should be proposed for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act. Specifically, for areas within the geographical range currently occupied by the species, we request data on:

(1) The amount and distribution of Sacramento splittail habitat;
(2) The physical and biological features of Sacramento splittail habitat that are essential to the conservation of the species;
(3) Special management considerations or protections that the features essential to the conservation of Sacramento splittail my require, including managing for the potential effects of climate change;
(4) Any areas that are essential to the conservation of Sacramento splittail and why;
(5) Land use designations and current or planned activities in Sacramento splittail habitats and their possible impacts on proposed critical habitat;
(6) Conservation programs and plans that protect Sacramento splittail and its habitat; and,
(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species."

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding, 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, Bay Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On September 22, 2003, the Service published a Notice of Remanded Determination of Status for the Sacramento splittail in the **Federal Register** (68 FR 55140) that removed the Sacramento splittail from the endangered species list. Please refer to the September 22, 2003 **Federal Register** notice (68 FR 55140) for previous Federal actions taken on Sacramento splittail prior to September 22, 2003.

On August 13, 2009 the Center for Biological Diversity (CBD) filed a complaint in U.S. District Court for the Northern District of California, challenging the Service on the merits of the 2003 determination and alleging improper political influence of the former Department of Interior, Deputy Assistant Secretary for Fish Wildlife and Parks, Julie MacDonald. In a settlement dated February 1, 2010 (Case4:09-cv-03711-PJH), the Service agreed to open a 30–day public comment period to allow for the submission of additional information by the public. The Service also agreed to submit to the **Federal Register** a new status review and 12–month finding as to whether listing the Sacramento splittail is warranted or not warranted. If warranted, the Service further agreed to publish, concurrently with the 12–month finding, a proposed rule to list the Sacramento splittail and a final determination on or before September 29, 2011. This notice constitutes notification of the opening of the 30–day public comment period.

You may obtain copies of the 2003 remanded determination, and other previous Federal actions relating to the Sacramento splittail by mail from the San Francisco Bay-Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section), or on the Internet at *http://www.fws.gov/sfbaydelta/*, or by visiting the *Federal eRulemaking Portal* at *http://www.regulations.gov*.

Author

The primary authors of this notice are the staff members of the Bay-Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 8, 2010.

Rowan Gould,

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

[FR Doc. 2010–8962 Filed 4–19–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100121040–0178–01]

RIN 0648–AY58

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico and South Atlantic; Revisions to Allowable Bycatch Reduction Devices

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedures for adjusting management measures of the Fishery

Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf FMP) and the Fishery Management Plan for the Shrimp Fishery of the South Atlantic region (South Atlantic FMP) NMFS proposes to provisionally recertify two bycatch reduction devices (BRDs) and revise the construction and installation requirements of one of these BRD designs in the southeastern shrimp fishery. The intended effect of this proposed rule is to improve bycatch reduction in the shrimp fishery, reduce regulatory confusion, and better meet the requirements of National Standard 9.

DATES: Comments must be received no later than 4:30 p.m., eastern time, on May 5, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY58, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov*.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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.

To submit comments through the Federal e-Rulemaking Portal at *http://www.regulations.gov*, enter "NOAA-NMFS–2010–0020" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review and a regulatory flexibility act analysis, are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–824–5305.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the exclusive economic zone (EEZ) of the Gulf is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council. The fishery for shrimp in the EEZ of the South Atlantic is managed under the FMP prepared by the South Atlantic Fishery Management Council. The FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Regulations implementing Amendment 2 to the South Atlantic Shrimp FMP (73 FR 18536, April 16, 1997) established BRD requirements in the South Atlantic EEZ. The rule established a certification criterion, descriptions of BRD designs and configurations allowed for use in the South Atlantic shrimp fishery, as well as procedures to develop and test new BRDs for certification.

Regulations implementing Amendment 9 to the Gulf Shrimp FMP were published April 14, 1998 (63 FR 18139), and established a requirement, with limited exceptions, for the use of certified BRDs in shrimp trawls towed in the Gulf EEZ shoreward of the 100–fm (183–m) depth contour west of 85 30' W. longitude (western Gulf), the approximate longitude of Cape San Blas, FL. The rule established descriptions of BRD designs and configurations allowed for use in the western Gulf shrimp fishery.

To better address the requirements of National Standard 9 of the Magnuson-Stevens Act, regulations implementing Amendment 10 to the Gulf FMP (69 FR 1538, January 9, 2004) required BRDs in shrimp trawls fished in the EEZ east of 85 30' W. longitude (eastern Gulf).

In accordance with the BRD framework procedures of the Gulf FMP, NMFS recently modified the existing BRD certification criterion for the western Gulf (73 FR 8219, February 13, 2008) to be consistent with the criterion for the eastern Gulf and South Atlantic. The new standardized certification criterion for the Gulf of Mexico and the South Atlantic specifies data must demonstrate a BRD achieves a 30–percent reduction in the weight of finfish bycatch to be certified for use in the southeastern shrimp fishery. In addition, this rule established a provisional certification criterion. To be provisionally certified, on a time-limited basis, the data must demonstrate that there is at least a 50–percent probability that the BRD reduces the weight of finfish bycatch by 25 percent.

In accordance with these new criteria, NMFS provisionally certified the Extended Funnel BRD for use in the Gulf of Mexico, and the Composite Panel BRD for use in both the Gulf of Mexico and the South Atlantic. By regulation, the provisional certification of both BRDs automatically expired on February 16, 2010. However, no new information exists regarding the effectiveness of these BRDs as they are used in the fishery that would indicate if the BRDs have been improved, or that they do not continue to meet the provisional certification requirement. Collection of new data and sufficient industry-level evaluation of these BRDs was hindered, in part, because of delays in getting compatible regulations allowing their use in state waters off Texas and state waters off both the Gulf of Mexico and South Atlantic coasts of Florida. Texas developed compatible regulations allowing the use of these two BRDs in November 2008; Florida in December 2009. Thus, fishermen in these states have not had the opportunity to use these new BRDs or to make improvements to them. In addition, net shops that would be manufacturing these BRDs needed to wait on the final regulatory specifications before they could begin producing the BRDs, thus there was an initial shortage of these BRDs.

Because no new information exists to decertify these BRDs, and because of the limited time fishermen in two major shrimping states have had to evaluate these BRDs, the proposed rule would reestablish a new provisional certification for these two BRD types for two additional years from the date of publication of the final rule in the **Federal Register**. This proposed rule would also revise the construction and installation requirements for the Composite Panel BRD in order to provide more flexibility for what material and size mesh may be used to construct this particular BRD design. The intended effect of this proposed rule is to maintain adequate bycatch reduction in the shrimp fishery, reduce regulatory confusion, and better meet the requirements of National Standard 9.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Council for Regulation of the Department of Commerce certified

to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not impose any new requirements on fishing entities in the southeastern shrimp fishery. Shrimp trawlers in the Gulf and South Atlantic EEZ are already required to have a BRD installed in their shrimp nets and fishermen can continue to use their existing BRD. This proposed rule would simply allow fishermen, at their discretion, to use an alternative BRD in their shrimp nets, and provide greater flexibility in the construction and installation requirements for the Composite Panel BRD. Any decision to use this gear would be expected to occur only if it is expected to result in improved performance by the fishing vessel. As a result, any effects would be expected to be positive and no adverse economic impacts on any of the 2,144 vessels (which is the total number of unique vessels with a permit to harvest shrimp in the EEZ of the Gulf and South Atlantic) would be expected to accrue. Providing greater flexibility in the construction and installation requirements for the Composite Panel BRD is also expected to lower costs and result in no additional adverse economic impacts.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

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

Dated: April 15, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

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

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

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

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

2. In § 622.41, paragraphs (g)(3)(ii)(A) and (B) are revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) * * *

(3) * * *

(ii) * * *

(A) Extended funnel—Gulf EEZ only; through [*date 2 years after date of publication of the final rule in the* ***Federal Register***].

(B) Composite Panel—Gulf EEZ and South Atlantic EEZ; through [*date 2 years after date of publication of the final rule in the* ***Federal Register***].

* * * * *

3. In Appendix D to part 622, section G, the first sentence of paragraph 2(a), and paragraph 2(b) are revised to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

* * * * *

G. * * *

2. * * *

(a) * * * The webbing extension must be constructed from a single rectangular piece of 1 ½–inch to 1 ¾–inch (3.8–cm to 4.5–cm) stretch mesh with dimensions of 24 1/2 meshes by 150 to 160 meshes. * * *

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2–ply in design, each with an inner layer of 1 ½–inch to 1 ⅝–inch (3.8–cm to 4.1–cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2–inch (5.1–cm) square mesh webbing (1–inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36–mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1 ½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20–mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20–mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2–inch (5.1–cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18–inch (45.7–cm) leading edge of each square mesh layer must be sewn evenly to the 36–mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20–mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

* * * * *

[FR Doc. 2010–9064 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301205–91207–01]

RIN 0648–AY14

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2010–2012 specifications for the Atlantic herring (herring) fishery. These proposed specifications and management measures promote the utilization and conservation of the herring resource and provide for a sustainable fishery. This proposed rule would also make minor corrections to existing regulations.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on May 20, 2010.

ADDRESSES: Copies of supporting documents used by the New England Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

You may submit comments, identified by 0648–AY14, by any one of the following methods:

–Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*;

–Fax: (978) 281–9135, Attn: Carrie Nordeen;

–Mail to NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2010–2012 Herring Specifications."

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 (e.g., name, address)

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 formats only.

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

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the FMP for herring appear at 50 CFR part 648, subpart K. The regulations at § 648.200 specify that herring specifications, including optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal water processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), reserve, and the amount for research set-aside (RSA) (up to 3 percent of the total allowable catch (TAC) from any management area) for up to 3 years be recommended by the Council, and reviewed and proposed in the **Federal Register** by NMFS. Specifications also establish the TACs and other management measures for the herring management areas.

The proposed 2010–2012 herring specifications are based on the provisions currently in the Herring FMP, and also provide the necessary elements for a transition to the new ACL and AM requirements of the MSA. The ACL and AM process is being developed by the Council in Amendment 4 to the Herring FMP. Amendment 4 will be submitted to NMFS by the Council in Spring 2010, and implemented for the 2011 fishing year, if approved by NMFS.

The Gulf of Maine-Georges Bank herring stock complex is a transboundary stock and is found in both U.S and Canadian waters. As such, the stock complex is assessed jointly by the U.S. and Canada. The 2009 Transboundary Resource Assessment Committee (TRAC) update assessment estimated the 2008 herring biomass at 651,700 mt (biomass supporting maximum sustainable yield (B_{MSY}) = 670,600 mt) and 2008 fishing mortality rate (F) at 0.14 (F_{MSY} (0.27)). Because the herring stock complex is above ½ B_{MSY} and fishing mortality is below F_{MSY}, the stock is not overfished and overfishing is not occurring. The TRAC noted concern with the assessment's retrospective pattern, which results in an overestimation of biomass.

The Council's Scientific and Statistical Committee (SSC) considered recommendations for the 2010–2012 specifications twice. At its September 16, 2009, meeting, the SSC endorsed the 2009 TRAC herring assessment as a basis for setting MSY fishing level and acceptable biological catch (ABC), but recommended that ABC be reduced to address the scientific uncertainty associated with the assessment. At that meeting, the SSC recommended an MSY fishing level of 145,000 mt in 2010, 134,000 mt in 2011, and 127,000 mt in 2012, and made an initial ABC recommendation of 90,000 mt for all 3 years.

The SSC also considered an ABC control rule for herring. Given the magnitude of uncertainty in the assessment, the SSC determined that a herring ABC control rule cannot be derived at this time. Additionally, the SSC recommended that a new herring benchmark stock assessment is needed to address issues related to the 2009 assessment's retrospective pattern and the ABC control rule.

The current herring overfishing definition is contingent on the relationship of current biomass to B_{MSY} and requires a rebuilding program when biomass falls below B_{MSY}. This definition must be revised in the future because, currently, the herring stock could not rebuild to B_{MSY} using long-term projections at F_{MSY}. A new benchmark stock assessment is needed to address the inconsistency between long-term projections and reference points. Because the TRAC's estimate of 2008 herring biomass is substantially greater than the biomass expected from long-term projections at F_{MSY}, the SSC was able to use the overfishing definition (fishing mortality is F_{MSY} when stock size is greater than B_{MSY} and allows for rebuilding in 5 years when biomass is less than B_{MSY}) to recommend maximum catch levels (i.e., 145,000 - 127,000 mt) based on projections at F_{MSY}.

At its September 2009 meeting, the SSC recommended an ABC of 90,000 mt for two reasons: 1) The average retrospective inconsistency in the estimate of exploitable biomass looking back 7 years (2001–2007) is approximately 40 percent, so the ABC recommendation reflected a buffer between the MSY fishing level and ABC of 40 percent; and 2) The stock assessment suggests that recent catches have maintained a relatively abundant stock size (estimates of stock biomass from 1998–2008 have been greater than B_{MSY}) and low fishing mortality (estimates of fishing mortality from1998–2008 have been less than F_{MSY}). Total catch by the U.S. and Canada in 2008 was 90,000 mt.

The Council was uneasy with the SSC's inital catch recommendations. For the 2007–2009 herring specifications, the ABC (comparable to SSC-recommended MSY fishing level) was 194,000 mt and the OY (comparable to SSC-recommended ABC) was 145,000 mt. At its September 22–24, 2009, meeting, the Council requested the SSC to consider whether application of recent years' (2005–2007) retrospective inconsistency (about 17 percent) is a sufficient buffer between MSY fishing level and ABC to account for scientific uncertainty. The SSC considered the Council's request during a conference call on November 12, 2009, and concluded that there is no scientific basis for a 17 percent buffer between MSY and ABC, and that a 17 percent buffer is insufficient to account for scientific uncertainty. After further discussion, however, the SSC also concluded that, while the herring stock is not overfished and not subject to overfishing, it would not be appropriate to allow catches to increase above recent levels because of the scientific uncertainty associated with the assessment's estimates of biomass. Accordingly, the SSC revised its original advice, and recommended that ABC not exceed recent catch. Total catches in the U.S. and Canada averaged 106,000 mt during 2006–2008 and 108,000 mt during 2004–2008.

At its November 17–19, 2009, meeting, the Council recommended 2010–2012 specifications for the herring fishery. During 2010–2012, the Council will annually review these specifications and recommend adjustments if necessary. For 2010–2012, NMFS proposes to implement the herring specifications recommended by the Council, as detailed in the following table.

Proposed Specifications

PROPOSED ATLANTIC HERRING SPECIFICATIONS (MT) FOR 2010–2012

MSY Fishing Level	2010–145,000 2011–134,000 2012–127,000
Allowable Biological Catch	106,000
Optimum Yield	91,200
Domestic Annual Harvest	91,200
Border Transfer	4,000
Domestic Annual Processing	87,200
Joint Venture Processing Total	0
Joint Venture Processing	0
Internal Waters Processing	0
U.S. At-Sea Processing	0
Total Allowable Foreign Fishing	0
Reserve	0
Area 1A Total Allowable Catch (TAC)	26,546*
Area 1B TAC	4,362
Area 2 TAC	22,146
Area 3 TAC	38,146
Fixed Gear Set-Aside	295
Research Set-Aside	0

*If New Brunswick weir fishery landings through October 15 are less than 9,000 mt, then 3,000 mt will be added to the Area 1A TAC in November.

Consistent with the SSC's advice, the Council recommended decreasing the MSY fishing level from 194,000 mt in 2009 to 145,000 mt in 2010, 134,000 mt in 2011, and 127,000 mt in 2012 and decreasing the herring ABC from 145,000 mt in 2009 to 106,000 mt (based on average U.S. and Canadian catch from 2006–2008) for all 3 years. The Council believes that the buffer between MSY and ABC is reflective of scientific uncertainty; therefore, reductions for additional sources of scientific uncertainty (e.g., biomass projections, recruitment, forage/natural mortality) were not recommended. Herring regulations (§ 648.200(b)(1)) specify that OY is less than or equal to ABC minus expected catch in the New Brunswick weir fishery. The Council recommended that the deduction for New Brunswick weir catch be 14,800 mt (based on average catch 1999–2008, minus the highest and lowest values). Because state-only catch and herring discards are included in the OY, the Council did not recommend any additional sources of management uncertainty in the buffer between ABC and OY. NMFS concurs with the Council's recommendations and proposes the following specifications: MSY level fishing at 145,000 mt for 2010, 134,000 mt for 2011, and 127,000 mt for 2012; and 2010–2012 ABC and OY at 106,000 mt and 91,200 mt, respectively.

BT is a processing allocation available to foreign transport vessels and dealers. The MSA provides for the issuance of permits to Canadian vessels transporting herring harvested in the U.S. to Canada for sardine processing. The Council recommended the specification for BT be 4,000 mt. The amount specified for BT has equaled 4,000 mt since 2000. As there continues to be Canadian interest in transporting herring for sardine processing, the specification for BT remains unchanged. For these reasons, NMFS proposes BT be maintained at 4,000 mt for 2010–2012.

Historically, JVPt (including JVP and IWP) was allocated to encourage foreign processing operations with U.S. vessels and TALFF was allocated to ensure fish were available to foreign processing vessels when U.S. vessels could not supply it. The U.S. herring fishery has experienced growth in both harvesting and processing capacity, and since 2005 the Council has allocated neither JVPt or TALFF because of the U.S. fishery's potential to fully utilize DAH and DAP. Amendment 1 to the Herring FMP established a limited access program in 2008 because the Council found that sufficient harvesting capacity exists in the U.S. fishery to harvest more than the available yield. In the absence of any JVPt activity, TALFF allocations to support those operations are no longer necessary. Because the U.S. herring industry is capable of harvesting and processing the entire 2010–2012 proposed OY, and to maximize U.S. economic benefits, the Council recommended, and NMFS is proposing, that JVPt, JVP, IWP, and TALFF be maintained at zero for 2010–2012.

The Herring FMP specifies that DAH will be set less than or equal to OY and be comprised of DAP, JVPt, and BT. Consistent with the proposed specifications for OY, the Council recommended that DAH be 91,200 mt for 20010–2012. DAH should reflect the actual and potential harvesting capacity of the U.S. herring fleet. During 1995–2008, the U.S. herring fishery harvested an average of 103,580 mt herring per year and recently (2004–2008) harvested an average of 91,801 mt of herring per year. While the U.S. herring fishery has not fully utilized the DAH in previous years, the proposed specifications for 2010–2010 set DAH at or below historical catch levels. DAP is the amount of U.S. harvest that is processed domestically, as well as herring that is sold fresh (i.e., bait). DAP is calculated by subtracting BT from DAH. Using this formula, the Council recommended that DAP be 87,200 mt. NMFS concurs that the U.S. herring fishery has the capacity to harvest and process the DAH and DAP recommended by the Council, so it proposes that DAH be set at 91,200 mt and DAP be set at 87,200 mt for 2010–2012.

A portion of DAP may be specified for the at-sea processing of herring in Federal waters. When determining the USAP specification, the Council considers availability of shore-side processing, status of the resource, and opportunities for vessels to participate in the herring fishery. A USAP specification of 20,000 mt for herring management Areas 2 and 3 was in place during 2007–2009. This specification was a cap for USAP activities and not a specific allocation for at-sea processing. During 2007–2009, the catch in management Areas 2 and 3 was lower than the area TACs. The USAP specification was intended to provide additional opportunities for U.S. harvesters better suited to offloading catch at sea than bringing it back to port. Because no at-sea processing vessel participated in the herring fishery during 2007–2009, none of the 20,000 mt USAP specification was utilized. There is currently no known industry interest in operating an at-sea processing vessel in the herring fishery, so the Council recommended, and NMFS is proposing, that USAP be set at zero for 2010–2012.

The Council recommended a reserve specification of zero for 2010–2012. Historically, the reserve was used to buffer against such things as uncertainty in stock size estimates, uncertainty in Canadian catch, excess U.S. capacity entering the herring fishery, and fluctuations in import/export demand. With the implementation of limited access, and the use of buffers between MSY fishing level, ABC, and OY to account for sources of scientific and management uncertainty, the Council concluded that specifying a reserve is not necessary. NMFS concurs with the Council, and proposes that the reserve be set at zero for 2010–2012.

The herring stock complex is assessed as a unit stock, but is comprised of inshore (Gulf of Maine) and offshore (Georges Bank) stock components. These stock components segregate during spawning and mix during feeding and migration. A previous TRAC assessment (2006) estimated that approximately 18 percent of the unit stock's biomass is the inshore stock component and the remaining 82 percent is the offshore stock component. Herring management areas were developed in recognition of these different stock components and provide a method to manage the fishing mortality of each stock component somewhat independently. Because the inshore stock component has substantially less biomass than the offshore stock component, it is likely more vulnerable to overfishing. The inshore stock component is found in 3 of the 4 management areas (i.e., Area 1A, 1B, and 2). These same management areas are of particular economic importance to the industry because of herring availability and proximity of the fishing grounds to shore.

The Council's Herring Plan Development Team (PDT) analyzed the risk of overfishing the stock components by estimating exploitation rates associated with a range of management area TACs. The exploitation rate that corresponds to FMSY for the herring stock is approximately 0.24. Area TAC alternatives with exploitation rates on the inshore stock component similar to the FMSY exploitation rate for the stock had drastic TAC reductions (up to 90 percent) in the inshore areas. PDT analysis indicates that over the past decade (1999–2008) exploitation rates on the inshore stock component have been consistently higher than 0.24. As differences in productivity between the stock components are not know, PDT analysis suggests that the exploitation rate of 0.24 for the stock components should be used as a target, rather than a threshold.

When recommending management area TACs, the Council made TAC recommendations that weighed controlling the exploitation rate on the inshore stock component against providing harvest opportunities in inshore areas. NMFS accepts the Council's recommendations, and is proposing that for 2010–2012 the Area 1A TAC be reduced from 45,000 mt to 26,546 mt, the Area 1B be reduced from 10,000 mt to 4,362 mt, that the Area 2 TAC be reduced from 30,000 mt to 22,146 mt, and the Area 3 TAC be reduced from 60,000 mt to 38,146 mt. The exploitation rates on the inshore stock component associated with the proposed TACs are estimated to be 0.42, 0.46, and 0.50 for 2010, 2011, and 2012, respectively.

Because Canadian catch in the New Brunswick weir fishery is highly variable, the Council recommended a management measure reallocating a portion of the buffer between ABC and OY (the buffer to account for Canadian catch) to Area 1A, provided New Brunswick weir landings are lower that anticipated (14,800 mt). Specifically, the Council recommended that if New Brunswick weir fishery landings are less than 9,000 mt through October 15, then 3,000 mt will be added to the Area 1A TAC in November. NMFS's Northeast Fishery Statistic Office will review New Brunswick weir data biweekly. Consistent with the Council's recommendation, this action proposes that if NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS will allocate an additional 3,000 mt to the Area 1A TAC in November (for a total Area 1A TAC of 29,546 mt). If the reallocation is warranted, NMFS will notify the Council and the adjustment will be published in the **Federal Register**. This measure has the potential to mitigate some of the economic effects associated with the proposed 41 percent reduction in Area 1A TAC.

The Herring FMP provides for up to 3 percent of management area TACs to be set-aside to fund research. Due to the magnitude of the proposed reductions in management area TACs from those in 2009, the Council did not recommend RSA for any management area. NMFS concurs with the Council's recommendation and is proposing that RSA be set at zero for 2010–2012.

Herring regulations (§ 648.201(g)) specify that up to 500 mt of the Area 1A TAC shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67°16.8 W. Long. This set-aside shall be available for harvest by the fixed gear within the specified area until November 1 of each year; any unused portion of the allocation will be restored to the Area 1A TAC after November 1. During 2007–2009, the fixed gear set-aside was specified at 500 mt. Because the proposed Area 1A TAC for 2010–2012 is substantially reduced from the Area 1A TAC in 2009, the Council recommended that the fixed gear set-aside be similarly reduced. Therefore, the Council recommended, and NMFS is proposing, that the fixed gear set-aside be set at 295 mt for 2010–2012.

Corrections

This proposed rule also contains minor corrections to existing regulations. These corrections would not revise the substance of any regulations; they would only clarify the intent of existing regulations by correcting minor errors. In § 648.14(r)(1)(vi)(A), the reference to the Gulf of Maine/Georges Bank Exemption Area would be removed and the reference to limited access herring vessels would be modified. In § 648.14(r)(1)(vii)(B), the reference to a limited access herring vessel would also be revised.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the Atlantic Herring FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows.

Statement of Objective and Need

This action proposes 2010–2012 specifications for the herring fishery. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

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

Based on 2009 permit data, the number of potential fishing vessels in each permit category in the herring fishery are as follows: 41 for Category A (limited access, All Areas), 4 for Category B (limited access, Areas 2 and 3), 54 for Category C (limited access, incidental), and 2,272 for Category D (open access). There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

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

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

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

Because the proposed action will not reduce the OY below 2008 landings levels in any of the years covered by this action, the proposed action may not negatively impact the ability of the fleet to land the same amount of herring as it has in recent years. For the proposed action, with an effective OY of 86,640 mt (fishery closure threshold is 95 percent of 91,200 mt), no loss of revenue is expected since this level is greater than 2008 landings (80,800 mt). However, historical catch data indicate there may be impacts associated with proposed area TAC allocations.

The proposed action reduces the Area 1A TAC by 41 percent from status quo (45,000 mt in 2009). Area 1A has historically been the most important area to the fishery and the TAC has been fully utilized for the past 4 fishing years. The proposed action includes TACs for Areas 2 and 3 that are higher than historical landings in those areas, which could provide additional revenue for the herring fishery if the Area 1A TAC is fully harvested. However, conditions associated with harvesting herring from Areas 2 and 3 may not be ideal. If the Area 1A TAC is attained during the summer, fish may only be available in Areas 1B and 3, since Area 2 is primarily a winter fishing ground. Area 3 is a large offshore area, and it is never certain that fish will aggregate in such a way that they are available to fishing operations. Smaller vessels may not be able to fish safely offshore. For larger vessels that can safely fish in Area 3, increasing the amount of offshore fishing will increase operating costs. Since search time is likely to increase and the length of the trip will increase as fishing grounds are further from shore, fuel costs and other trip expenses will increase. The degree to which fishing costs will change is difficult to predict, so an overall estimate of increased cost can not be made. However, observer data show that each additional day at sea for midwater trawl vessels increases trips costs an average of $2,800.

Though the proposed action reduces TACs in all management areas, resulting in short-term reductions in revenue, the proposed action also reduces the relative exploitation rate on the inshore stock component in comparison to status quo. By reducing fishing mortality in Areas 1A, 1B and 2, the proposed action reduces the risk of overfishing the inshore stock component. In the long-term, maintaining the inshore stock component will provide for sustained participation in the herring fishery.

The proposed action also includes a measure to allocate an additional 3,000 mt of herring to Area 1A in November, if the catch in the New Brunswick weir fishery is lower than anticipated. As described in the preamble, the Council recommended deducting 14,800 mt from the ABC to account for catch in the New Brunswick weir fishery. If, by considering landings through October 15 of each year, NMFS determines that less than 9,000 mt has been taken in the New Brunswick weir fishery, NMFS will allocate an additional 3,000 mt to Area 1A in November. This measure provides additional opportunities for fishing in Area 1A if catch in the weir fishery is substantially less than anticipated (14,800 mt), while still minimizing the likelihood of exceeding ABC.

Alternatives to the Proposed Action

Alternatives to the proposed action include options for setting the ABC, OY, and management area TACs. However, the specification of management area TACs has the greatest potential to economically impact fishery participants, especially the specification of the TAC in Area 1A, therefore this section focuses on the Area 1A TAC alternatives.

Only two alternatives contain Area 1A TACs that are higher than status quo (i.e., 45,000 mt). Alternative 1/option 1 has an Area 1A TAC that is 31,000 mt higher than status quo and alternative 1/option 2A has an Area 1A TAC that is 400 mt higher than status quo. At a $260 per mt (average price in 2008), these alternatives would result in fleet-wide revenue increases of approximately $8 million (alternative 1/option 1) or $104,000 (alternative 1/option 2). Because these alternatives would not have reduced the relative exploitation rate on the inshore stock component in comparison to status quo, they were not selected as the proposed action. All other alternatives have Area 1A TACs that are lower than status quo (10–90 percent less). The economic impacts of reducing the Area 1A TAC and displacing effort into other management areas are discussed in the previous section.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 14, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.14, paragraphs (r)(1)(vi)(A) and (r)(1)(viii)(B) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(vi) * * *

(A) For the purposes of observer deployment, fail to notify NMFS at least 72 hr prior to departing on a trip aboard a vessel with an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing with either midwater trawl or purse seine gear on a declared herring trip.

* * * * *

(viii) * * *

(B) Fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS, if a vessel with an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing with either midwater trawl or purse seine gear, at least 6 hr prior to landing herring at the end of a declared herring trip.

* * * * *

3. In § 648.201, paragraph (h) is added to read as follows:

§ 648.201 Closures and TAC controls.

* * * * *

(h) If NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS will allocate an additional 3,000 mt to the Area 1A TAC in November. NMFS will notify the Council of this adjustment and publish the adjustment in the **Federal Register**.

[FR Doc. 2010–9061 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 75, No. 75

Tuesday, April 20, 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

April 14, 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) 720–8681.

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.

Forest Service

Title: Grey Towers Visitor Comment Card.

OMB Control Number: 0596–NEW.

Summary of Collection: Executive Order 12862, "Setting Customer Service Standards," seeks to "* * * ensure that the Federal government provides the highest quality service possible to the American people." Located in Milford, PA, Grey Towers was originally the summer estate of the James Pinchot family and later the primary home of Gifford Pinchot, America's first forester and founder of the USDA Forest Service (FS). In 1963, Gifford Bryce Pinchot, son of Gifford and Cornelia, donated Grey Towers and 102 acres to the FS which now administers the site. The FS works with numerous partners to carry on the Pinchot legacy by delivering public programs, interpretive tours, and conservation education programs.

Need and Use of the Information: FS will distribute comment cards to guests at the conclusion of tours, programs and events. Grey Towers will also post comment cards on its Web site to allow visitors the option to electronically complete and submit. Participant input is vital to achieving Grey Towers' goal to provide quality-based programs and events. Cards will be collected by Grey Towers Programs and Administrative Staff and feedback will be used to evaluate programs, and in reports to staff and stakeholders. The evaluation will further improve upon or otherwise change programs and events, measure site usage, and generate data on participant's feedback on various programs and events. If the information is not collected, programs and events would continue to have negative aspects of which the staff would be unaware, such as insufficient or unbeneficial delivery or content.

Description of Respondents: Individuals or households.

Number of Respondents: 8,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,360.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–9011 Filed 4–19–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 14, 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) 720–8681.

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Rural Business—Cooperative Service

Title: 7 CFR 1942–G, Rural Business Enterprise Grants and Television Demonstration Grants.

OMB Control Number: 0570–0022.

Summary of Collection: Section 310B of the Consolidated Farm and Rural

Development Act authorizes the Rural Business Enterprise Grants to facilitate the development of small and emerging private businesses, industry and related employment for improving the economy in rural communities. Television Demonstration Grants (TDG) is available to statewide, private nonprofit, public television systems to provide information on agriculture and other issues of importance to farmers and other rural residents. 7 CFR part 1942, subpart G, is a Rural Business-Cooperative Service (RBS) regulation which covers the administration of this program including eligibility requirements and evaluation criteria to make funding selection decisions.

Need and Use of the Information: RBS will use this information to determine (1) Eligibility; (2) the specific purposes for which grant funds will be utilized; (3) time frames or dates by which actions surrounding the use of funds will be accomplished; (4) who will be carrying out the purposes for which the grant is made; (5) project priority; (6) applicants experience in administering a rural economic development program; (7) employment improvement; and (8) mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations. If the information were not collected, RBS would not be able to determine the eligibility of applicant(s) for the authorized purposes. Collecting this information infrequently would have an adverse effect on the Agency's ability to administer the grant program.

Description of Respondents: Business or other for profit; Not-for-profit institutions.

Number of Respondents: 720.

Frequency of Responses: Record-keeping; Reporting: Monthly, On Occasion, Quarterly.

Total Burden Hours: 27,185.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–9012 Filed 4–19–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 14, 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) 720–8681.

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.

Rural Utility Service

Title: Seismic Safety of New Building Construction, 7 CFR 1792, Subpart C.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Pub. L. 95–124, 42 U.S.C. 7701 *et seq.*) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.

Need and Use of the Information: Borrowers and grant recipients must provide to RUS a written acknowledgment from a registered architect or engineer responsible for the design of each applicable building stating that the seismic provisions to 7 CFR part 1792, subpart C will be used in the design of the building. RUS will use this information to: (1) Clarify and inform the applicable borrowers and grant recipients about seismic safety requirements; (2) improve the effectiveness of all RUS programs; and (3) reduce the risk to life and property through the use of approved building codes aimed at providing seismic safety.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 750.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–9013 Filed 4–19–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Sixth and Final Dietary Guidelines Advisory Committee Meeting and Solicitation of Written Comments

AGENCIES: U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services (FNCS) and Research, Education and Economics (REE); and U.S. Department of Health and Human Services (HHS), Office of Public Health and Science (OPHS).

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) (a) provide notice of the sixth and final meeting of the Dietary Guidelines Advisory Committee, and (b) solicit

written comments pertinent to the *Dietary Guidelines for Americans.*

DATES: This Notice is provided to the public on April 20, 2010. (1) The Committee will meet on May 12, 2010, from 8 a.m.–5:30 p.m. E.D.T. (2) Written comments pertinent to the *Dietary Guidelines for Americans* must be received by 5 p.m. E.D.T. on April 29, 2010, to ensure transmission to the Committee prior to this meeting. Written comments on the Committee deliberation process will not be accepted after this deadline.

ADDRESSES: The sixth meeting will be held online, via Webinar format. Details regarding how to assure that your computer and browser are compatible with the Webinar format being used will be provided by e-mail following meeting registration and can also be found on the Dietary Guidelines Web site at *http://www.DietaryGuidelines.gov.* Written comments are encouraged to be submitted electronically at *http://www.DietaryGuidelines.gov.*

FOR FURTHER INFORMATION CONTACT: USDA Co-Executive Secretaries: Carole Davis, Designated Federal Officer to the Dietary Guidelines Advisory Committee (telephone 703–305–7600), Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302; or Shanthy Bowman (telephone 301–504–0619), Agricultural Research Service (ARS), Beltsville Human Nutrition Research Center, 10300 Baltimore Avenue, Building 005, Room 125, BARC–WEST, Beltsville, Maryland 20705. HHS Co-Executive Secretaries: Kathryn McMurry (telephone 240–453–8280) or Holly McPeak (telephone 240–453–8280), Office of Disease Prevention and Health Promotion, Office of Public Health and Science, 1101 Wootton Parkway, Suite LL100, Rockville, Maryland 20852. Additional information is available on the Internet at *www.DietaryGuidelines.gov.*

SUPPLEMENTARY INFORMATION:

Dietary Guidelines Advisory Committee: The thirteen-member Committee appointed by the Secretaries of the two Departments is chaired by Linda V. Van Horn, Ph.D., R.D., L.D., Northwestern University, Chicago, Illinois. The Vice Chair of the Committee is Naomi K. Fukagawa, M.D., Ph.D., University of Vermont, Burlington, Vermont. Other members are: Cheryl Achterberg, Ph.D., The Ohio State University, Columbus, Ohio; Lawrence J. Appel, M.D., M.P.H., Johns Hopkins Medical Institutions, Baltimore, Maryland; Roger A. Clemens, Dr.P.H, The University of Southern California, Los Angeles, California; Miriam E. Nelson, Ph.D., Tufts University, Boston, Massachusetts; Sharon M. Nickols-Richardson, Ph.D., R.D., Pennsylvania State University, University Park, Pennsylvania; Thomas A. Pearson, M.D., Ph.D., M.P.H., University of Rochester, Rochester, New York; Rafael Pérez-Escamilla, Ph.D., Yale University, New Haven, Connecticut; Xavier Pi-Sunyer, M.D., M.P.H., Columbia University College of Physicians and Surgeons, New York, New York; Eric B. Rimm, Sc.D., Harvard University, Boston, Massachusetts; Joanne L. Slavin, Ph.D., R.D., University of Minnesota, St. Paul, Minnesota; and Christine L. Williams, M.D., M.P.H., Columbia University (Retired), Healthy Directions, Inc., New York, New York.

Purpose of the Meeting: Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III) directs the Secretaries of USDA and HHS to publish the *Dietary Guidelines for Americans* at least every five years. After a thorough review of the most current scientific and applied literature and open Committee deliberations, the Committee will provide its recommendations in the form of an advisory report to the Secretaries of both Departments.

Meeting Agenda: The meeting will include a review and discussion of the Committee's draft Report. The topics to be discussed will include Nutrient Adequacy; Energy Balance and Weight Management; Carbohydrates and Protein; Sodium, Potassium and Water; Fatty Acids and Cholesterol; Alcohol; and Food Safety and Technology. A draft agenda of the meeting will be posted to the *http://www.DietaryGuidelines.gov* Web site as soon as it becomes available. Specific times for topic area discussions are subject to change upon the call of the Committee Chair.

Public Participation: Members of the public are invited to attend the online Dietary Guidelines Advisory Committee Webinar meeting. There will be no opportunity for oral public comments during this online meeting. Written comments, however, are welcome throughout the 2010 *Dietary Guidelines for Americans* development process. These can be submitted at *http://www.DietaryGuidelines.gov.* See below for more detailed instructions for submitting written comments. To take part in the on-line Committee meeting, individuals must pre-register at the Dietary Guidelines Web site located at *http://www.DietaryGuidelines.gov.* A link for Meeting Registration will be available to click on. Registration for the meeting is limited. Registrations will be accepted until maximum Webinar capacity is reached. A waiting list will be maintained should registrations exceed Webinar capacity. Individuals on the waiting list will be contacted as additional Webinar space for the meeting becomes available. Registration questions may be directed to the meeting planner, Crystal Tyler, at 202–314–4701. Registration must include name, affiliation, phone number or e-mail, and days attending. Following pre-registration, individuals will receive a confirmation of registration via e-mail with instructions on how to access the Webinar and check for computer compatibility. Please call Crystal Tyler at 202–314–4701 by 5 p.m. E.D.T. on May 5, 2010 should you require assistance or any special accommodations. Members of the public who are unable to access the Internet in order to attend the Webinar may contact Crystal Tyler at 202–314–4701 by 5 p.m. E.D.T. on May 5, 2010 for assistance to the extent reasonably practicable.

Written Comments: By this notice, the Committee is soliciting submission of written comments, views, information and data pertinent to the review of the *Dietary Guidelines for Americans.* Written comments are encouraged to be submitted electronically at *http://www.DietaryGuidelines.gov.* A "submit comments" button is available for access to the public comments database. Lengthy comments (that exceed 2000 characters) or support materials can be uploaded as an attachment. Multiple attachments must be "zip-filed". Comments not submitted electronically can be mailed, faxed, or delivered to: Carole Davis, Co-Executive Secretary of the Dietary Guidelines Advisory Committee, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302, 703–305–7600 (telephone), 703–305–3300 (fax). All comments for this meeting must be received by 5 p.m. E.D.T. on April 29, 2010 and will become part of the public comments database. This comment submission feature will not be available once the comment submission deadline has been reached. The viewing of public comments will however, continue to be available.

Public Documents: Documents pertaining to Committee deliberations for the final meeting, including the draft report, will be available for public viewing from 8:30 a.m. to 4:30 p.m. E.D.T., at the Reference Desk of the National Agricultural Library, USDA/ARS, 10301 Baltimore Avenue, Beltsville, MD 20705, beginning the day

before the meeting and thereafter, each Monday through Friday (except Federal holidays). The Reference Desk telephone phone number is 301–504–5755; however, no advance appointment is necessary. All official documents are available for viewing for the duration of the Committee's term which terminates after delivery of its final report to the Secretaries. Meeting materials (i.e., agenda, meeting minutes, and transcript), once available, can be found at *http://www.DietaryGuidelines.gov.*

Dated: April 5, 2010.

Rajen S. Anand,

Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: April 6, 2010.

Edward B. Knipling,

Administrator, Agricultural Research Service, U.S. Department of Agriculture.

Dated: April 7, 2010.

Penelope Slade-Sawyer,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 2010–9067 Filed 4–19–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0015]

Notice of Request for Extension of Approval of an Information Collection; Plum Pox Compensation

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 that provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox virus.

DATES: We will consider all comments that we receive on or before June 21, 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–2010–0015*) 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–2010–0015, 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–2010–0015.

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 plum pox compensation, contact Dr. S. Anwar Rizvi, Senior Plant Pathologist/National Program Manager, Plant Pathogen and Weed Programs, EDP, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734–4313. 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: Plum Pox Compensation.

OMB Number: 0579–0159.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with the States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as plum pox virus (PPV), that are new to or not widely distributed within the United States.

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. PPV is transmitted under natural conditions by several species of aphids. The long distance spread of PPV occurs by budding and grafting with infected plant material and by farm tools/equipment, and through movement of infected budwood, nursery stock, and other plant parts.

There are no known effective methods for treating trees or other plant material infected with PPV, nor are there any known effective preventive treatments. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other infected plant material.

The regulations in "Subpart–Plum Pox" (7 CFR 301.74–301.74–5) quarantine areas of the United States where PPV has been detected, restrict the interstate movement of host material from quarantined areas, and provide for compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate PPV.

Section 301.74–5 requires applicants for the payment of compensation to complete a form.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity 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 0.5 hours per response.

Respondents: Owners of commercial stone fruit orchards and owners of fruit tree nurseries.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 5 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 14th day of April 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–9053 Filed 4–19–10: 10:29 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0009]

Notice of Request for Extension of Approval of an Information Collection; Communicable Diseases in Horses

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 interstate movement of horses that have tested positive for equine infectious anemia.

DATES: We will consider all comments that we receive on or before **June 21, 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-2010-0009*) 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-2010-0009, 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-2010-0009.

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 interstate movement of horses that have tested positive for equine infectious anemia, contact Dr. Jill Rolland, Assistant Director, Aquaculture, Swine, Equine, and Poultry Programs, VS, 4700 River Road Unit 46, Riverdale, MD 20737; (301) 734-7727. 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: Communicable Diseases in Horses.

OMB Number: 0579-0127.

Type of Request: Extension of approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of our Nation's livestock and poultry.

Equine infectious anemia (EIA) is an infectious and potentially fatal viral disease of equines. There is no vaccine or treatment for the disease. It is often difficult to differentiate from other fever-producing diseases, including anthrax, influenza, and equine encephalitis.

The regulations in 9 CFR 75.4 govern the interstate movement of equines that have tested positive to an official test for EIA (EIA reactors) and provide for the approval of laboratories, diagnostic facilities, and research facilities. The regulations require the use of an official EIA test, a certificate for the interstate movement of an EIA reactor, and proper identification of the reactor, as well as recordkeeping by accredited and State veterinarians; laboratory, diagnostic, and research facility personnel; and stockyard personnel.

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 0.00831674 hours per response.

Respondents: Accredited and State veterinarians; laboratory, diagnostic, and research facility personnel; stockyard personnel; and owners and shippers of horses.

Estimated annual number of respondents: 10,000.

Estimated annual number of responses per respondent: 197,124.

Estimated annual number of responses: 1,971,240.

Estimated total annual burden on respondents: 163,944 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 14th day of April 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–9054 Filed 4–19–10: 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0072]

Syngenta Biotechnology, Inc.; Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a corn line developed by Syngenta Biotechnology, Inc., designated as transformation event MIR162, which has been genetically engineered for insect resistance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Syngenta Biotechnology, Inc., in its petition for a determination of nonregulated status, our analysis of other scientific data, and our response to comments received from the public on the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination of nonregulated status and finding of no significant impact.

EFFECTIVE DATE: April 20, 2010.

ADDRESSES: You may read the documents referenced in this notice and the comments we received 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. Those documents are also available on the Internet at (*http://www.aphis.usda.gov/brs/not_reg.html*) and are posted with the previous notice and the comments we received on the Regulations.gov Web site at (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0072*).

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Subray Hegde, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-0810, email: (*subray.hegde@aphis.usda.gov*). To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 734-0667, email: (*cynthia.a.eck@aphis.usda.gov*).

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe may be plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On September 10, 2007, APHIS received a petition seeking a determination of nonregulated status (APHIS Petition Number 07-253-01p) from Syngenta Biotechnology, Inc., of Research Triangle Park, NC (Syngenta), for corn (*Zea mays* L.) designated as transformation event MIR162, which has been genetically engineered for insect resistance, stating that corn line MIR162 is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice[1] published in the **Federal Register** on January 13, 2010 (75 FR 1749-1751, Docket No. APHIS-2009-0072), APHIS announced the availability of Syngenta's petition and the associated draft environmental assessment (EA) and plant pest risk assessment for public comment. APHIS solicited comments for 60 days ending on March 15, 2010, on whether the genetically engineered corn is or could be a plant pest and on the EA and the risk assessment.

APHIS received 35 comments during the comment period. There were 19 comments from groups or individuals who supported deregulation and 13 from those who opposed deregulation. APHIS has addressed the issues raised during the comment period and has provided responses to these comments as an attachment to the finding of no significant impact.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for Syngenta's MIR162 corn, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, the response to public comments, and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA, i.e., that Syngenta's MIR162 corn line and lines developed from it should not result in any significant impacts once they are granted nonregulated status and are no longer regulated articles under its regulations in 7 CFR part 340.

Determination

Based on APHIS' analysis of field, greenhouse, and laboratory data submitted by Syngenta, references provided in the petition, information analyzed in the EA, the plant pest risk assessment, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Syngenta's MIR162 corn will not pose a plant pest risk and should be granted nonregulated status.

Copies of the signed determination document, as well as copies of the petition, plant pest risk assessment, EA, finding of no significant impact, and response to comments are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

[1] To view the notice, petition, EA, risk assessment, and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0072*).

Done in Washington, DC, this 16th day of April 2010.

Cindy J. Smith

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–9198 Filed 4–16–10; 4:15 pm]

BILLING CODE 3410–34–S

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: State Broadband Data and Development Grant Program.

OMB Control Number: 0660–0032.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved collection).

Number of Respondents: 56 respondents and 2,000 subrespondents.

Average Hours per Response: 3,120 hours for respondents and 50 hours for subrespondents.

Burden Hours: 549,440.

Needs and Uses: The State Broadband Data and Development (SBDD) Grant Program implements the joint goals of the American Recovery and Reinvestment Act of 2009 and the Broadband Data Improvement Act by assisting, through grants, states or their designees in gathering and verifying state-specific data on the availability, speed, location, technology and infrastructure of broadband services. The data will be used to develop publicly available state-wide broadband maps and to help populate the comprehensive and searchable national broadband map that NTIA is required under the Recovery Act to create and make publicly available by February 17, 2011.

Affected Public: States, Territories and the District of Columbia, or their designees. Subrespondents include facilities-based providers of broadband connections, incumbent and competitive local exchange carriers, facilities-based mobile telephony service providers, and wireless Internet service providers.

Frequency: Semi-annually.

Respondent's Obligation: Required to retain benefits.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5806, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: April 15, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–9058 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Term Extension

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 21, 2010.

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

- *E-mail: InformationCollection@uspto.gov.* Include *A0651–0020 comment@* in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by e-mail to *Raul.Tamayo@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Food, Drug, and Cosmetic Act at 35 U.S.C. 156 permits the United States Patent and Trademark Office (USPTO) to restore the patent term lost due to certain types of regulatory review by the Federal Food and Drug Administration or the Department of Agriculture. Only patents for drug products, medical devices, food additives, and color additives are eligible for extension. The maximum length that a patent may be extended in order to restore the lost portion of the patent term is five years.

The USPTO may in some cases extend the term of an original patent due to certain delays in the prosecution of the patent application, including delays caused by interference proceedings, secrecy orders, or appellate review by the Board of Patent Appeals and Interferences or a Federal court in which the patent is issued pursuant to a decision reversing an adverse determination of patentability. The patent term provisions of 35 U.S.C. 154(b), as amended by Title IV, Subtitle D of the Intellectual Property and Communications Omnibus Reform Act of 1999, require the USPTO to notify the applicant of the patent term adjustment in the notice of allowance and give the applicant an opportunity to request reconsideration of the USPTO's patent term adjustment determination.

The USPTO may also reduce the amount of patent term adjustment granted if delays were caused by an applicant's failure to make a reasonable effort to respond within three months of the mailing date of a communication from the USPTO. Applicants may petition for reinstatement of a reduction in patent term adjustment with a showing that, in spite of all due care, the applicant was unable to respond to a communication from the USPTO within the three month period.

The USPTO administers 35 U.S.C. 154 and 156 through 37 CFR 1.701–1.791. These rules permit the public to submit applications to the USPTO to extend the term of a patent past its original expiration date, to request interim extensions and review of final eligibility decisions, and to withdraw an application requesting a patent term extension after it is submitted. Under 35 U.S.C. 156(d), an application for patent term extension must identify the approved product, the patent to be extended, and the claims included in

the patent that cover the approved product, a method of using the approved product, or a method of manufacturing the approved product. In addition, the application for patent term extension must provide a brief description of the activities undertaken by the applicant during the regulatory review period with respect to the approved product and the significant dates of these activities.

The term of a patent which claims a product, a method of using a product, or a method of manufacturing a product shall be extended if the term of the patent has not expired before an application is submitted. The Federal Food, Drug, and Cosmetic Act requires that an application for patent term extension be filed with the USPTO within 60 days of the product receiving regulatory approval from the Federal Food and Drug Administration or the Department of Agriculture. Under 35 U.S.C. 156(e), an interim extension may be granted if the term of an eligible patent for which an application for patent term extension has been submitted would expire before a certificate of extension is issued.

The information in this collection is used by the USPTO to consider whether an applicant is eligible for a patent term extension or reconsideration of a patent term adjustment and, if so, to determine the length of the patent term extension or adjustment.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO. Electronic submissions are made through EFS–Web, the USPTO's online filing system for patent applications and related documents.

III. Data

OMB Number: 0651–0020.
Form Number(s): PTO/SB/131.
Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Estimated Number of Respondents: 13,586 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 10 minutes (0.17 hours) to 25 hours, depending on the complexity of the situation, to gather the necessary information, prepare the appropriate documents, and submit the information in this collection to the USPTO.

Estimated Total Annual Respondent Burden Hours: 7,808 hours.

Estimated Total Annual Respondent Cost Burden: $2,537,600. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $325 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be $2,537,600 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Application to Extend Patent Term under 35 U.S.C. 156	25 hours	40	1,000
Request for Interim Extension under 35 U.S.C. 156(e)(2)	1 hour	1	1
Petition to Review Final Eligibility Decision under 37 CFR 1.750	25 hours	3	75
Initial Application for Interim Extension under 35 U.S.C. 156(d)(5)	20 hours	3	60
Subsequent Application for Interim Extension under 37 CFR 1.790	1 hour	1	1
Response to Requirement to Elect	1 hour	5	5
Response to Request to Identify Holder of Patent Term	2 hours	1	2
Declaration to Withdraw an Application to Extend Patent Term	2 hours	1	2
Petition for Reconsideration of Patent Term Adjustment Determination	3 hours	1,500	4,500
Petition for Reinstatement of Reduced Patent Term Adjustment	4 hours	30	120
Petition to Accord a Filing Date to an Application under 37 CFR 1.740 for Extension of a Patent Term.	2 hours	1	2
Request for Recalculation of Patent Term Adjustment in View of Wyeth (PTO/SB/131)	10 minutes	12,000	2,040
Totals		13,586	7,808

Estimated Total Annual Non-hour Respondent Cost Burden: $360,416. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees, postage costs, and recordkeeping costs.

This collection has filing fees associated with the requirements for patent term extension and patent term adjustment. The USPTO estimates that the total filing fees associated with this collection will be $358,680 per year.

Item	Estimated annual responses	Fee amount	Estimated annual filing fees
Application to Extend Patent Term under 35 U.S.C. 156	40	$1,120.00	$44,800.00
Request for Interim Extension under 35 U.S.C. 156(e)(2)	1	0.00	0.00
Petition to Review Final Eligibility Decision under 37 CFR 1.750	3	0.00	0.00
Initial Application for Interim Extension under 35 U.S.C. 156(d)(5)	3	420.00	1,260.00
Subsequent Application for Interim Extension under 37 CFR 1.790	1	220.00	220.00
Response to Requirement to Elect	5	0.00	0.00
Response to Request to Identify Holder of Patent Term	1	0.00	0.00
Declaration to Withdraw an Application to Extend Patent Term	1	0.00	0.00
Petition for Reconsideration of Patent Term Adjustment Determination	1,500	200.00	300,000.00
Petition for Reinstatement of Reduced Patent Term Adjustment	30	400.00	12,000.00
Petition to Accord a Filing Date to an Application under 37 CFR 1.740 for Extension of a Patent Term	1	400.00	400.00
Request for Recalculation of Patent Term Adjustment in View of Wyeth (PTO/SB/131)	12,000	0.00	0.00

Item	Estimated annual responses	Fee amount	Estimated annual filing fees
Totals	13,586		358,680.00

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO expects that the Application to Extend Patent Term under 35 U.S.C. 156, the Initial Application for Interim Extension under 35 U.S.C. 156(d)(5), and approximately 7% of the other responses for this collection will be submitted by mail. The USPTO estimates that the average first-class postage cost for these 991 mailed submissions will be 44 cents each, for a total estimated postage cost of $436 per year.

When submitting the information in this collection to the USPTO electronically, the customer is strongly urged to retain a copy of the acknowledgment receipt as evidence that the submission was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the acknowledgment receipt and that approximately 12,595 responses per year will be submitted electronically, for a total of approximately 13 hours per year for printing this receipt. Using the paraprofessional rate of $100 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be $1,300 per year.

The total non-hour respondent cost burden for this collection in the form of filing fees, postage costs, and recordkeeping costs is estimated to be $360,416 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 13, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–9048 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the final results of the new shipper review of certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam"). This review covers the period February 1, 2008 through January 31, 2009.

EFFECTIVE DATE: April 20, 2010.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2010, the Department published its notice of preliminary intent to rescind the new shipper review in the antidumping duty order on shrimp from Vietnam for Nhat Duc Co., Ltd. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Intent To Rescind New Shipper Review*, 75 FR 3446 (January 21, 2010) ("Preliminary Rescission"). The final results of this review are currently due no later than April 19, 2010.[1]

Statutory Time Limits

In antidumping duty new shipper reviews, section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(i)(1) requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results are issued. However, the Department may extend the deadline for completion of the final results of a new shipper review to 150 days after the date on which the preliminary results are issued if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2)

Extension of Time Limit for Final Results of Review

The Department has determined that the review is extraordinarily complicated as the Department's *Preliminary Rescission* included analysis of six detailed issues related to the respondent's POR sale. Both respondent and petitioner have provided extensive comments on all these issues, which must be analyzed along with the Department's preliminary determination. Based on the timing of the case and the extensive arguments and detailed issues that must be analyzed, the final results of this new shipper review cannot be completed within the statutory time limit of 90 days.

Therefore, the Department is extending the time limit for completion of the final results of this new shipper review by 30 days from the April 19, 2010 deadline. The final results will now be due no later than May 19, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: April 12, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–9081 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–DS–S

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[1] Due to the extended closure of the Government between February 5 and 11, 2010, all deadlines for active cases were tolled by one calendar week. See Memorandum From Ronald Lorentzen, DAS for Import Administration, Regarding Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm, available at http://ia.ita.doc.gov/download/administrative-deadline-tolling-memo-021210.pdf.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–916]

Laminated Woven Sacks from the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: April 20, 2010

FOR FURTHER INFORMATION CONTACT: Zev Primor, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION: On September 22, 2009, the Department of Commerce ("Department") published a notice of initiation of an administrative review of the antidumping duty order on laminated woven sacks from the People's Republic of China. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 48224 (September 22, 2009). The period of review is January 31, 2008, through July 31, 2009. The preliminary results of the administrative review are currently due no later than May 10, 2010.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 365 days. Completion of the preliminary results of this review within the 245-day period is not practicable because the Department needs additional time to analyze information pertaining to the respondents' sales practices, factors of production, subject merchandise and corporate relationships, to issue and review responses to supplemental questionnaires. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completing the preliminary results of the instant administrative review by 90-days from May 10, 2010, until August 9, 2010, the first business day after the 90-day extended due date of August 8, 2010.[1] The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: April 13, 2010.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–9080 Filed 4–19–04; 8:45 am]

BILLING CODE 3510–DS–S

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. As a result, all deadlines in this segment of the proceeding have been extended by seven days, and the revised deadline for the preliminary results became May 10, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 20, 2010.

FOR FURTHER INFORMATION CONTACT: Shane Subler at (202) 482–0189 or David Neubacher at (202) 482–5823; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2009, the Department of Commerce ("the Department") published a notice of initiation of administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea, covering the period January 1, 2008 through August 10, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 48224 (September 22, 2009).

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

This administrative review is extraordinarily complicated due to the complexity of the countervailable subsidy practices found in the investigation and a new subsidy allegation. Because the Department requires additional time to review, analyze, and possibly verify the information, and to issue supplemental questionnaires, it is not practicable to complete this review within the original time limit (*i.e.*, by May 10, 2010).[1] Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to not later than September 7, 2010, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with section 751(a)(1) of the Act.

Dated: April 14, 2010.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–9077 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–DS–S

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. As a result, all deadlines in this segment of the proceeding have been extended by seven days, and the revised deadline for the preliminary determination became May 10, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV92

Marine Mammals; File No. 14610

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game (ADFG), Division of Wildlife Conservation, Juneau, AK (Principal Investigator: Robert Small, Ph.D.), has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 20, 2009.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14610 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The ADFG requests a five-year permit to conduct studies on cetaceans in waters of the Bering, Chukchi, and Beaufort Seas in Alaska to determine population abundance, stock structure, feeding areas and other important habitats, migration routes, behavior relative to human disturbance, and to genetically identify individuals to determine survival and calving intervals. The target species are beluga whale (*Delphinapterus leucas*), endangered bowhead whale (*Balaena mysticetus*), gray whale (*Eschrictius robustus*), and endangered humpback whale (*Megaptera novaeangliae*). Research activities for beluga whales include aerial survey (up to 1,000 animals per each of four stocks annually), capture for tagging and sample collection (up to 35 animals per each of four stocks annually), and remote biopsy (up to 350 animals per each of four stocks annually). Research activities for bowhead whales include tagging (105 animals annually) and remote biopsy (up to 50 animals annually). Research activities for gray whales include tagging (up to 50 animals annually) and biopsy (up to 50 animals annually). Research activities for humpback whales include tagging (up to 20 animals annually) and remote biopsy (up to 20 animals annually). Up to 10 each of harbor seals (*Phoca vitulina*), bearded seals (*Erignathus barbatus*), ringed seals (*P. hispida*), and spotted seals (*P. largha*) would be harassed annually incidental to the cetacean research. Tissue samples collected from whales would be imported and exported to collaborators for genetic, health, and dietary studies.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 14, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–8971 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV90

Marine Mammals; File No. 14636

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Daniel P. Costa, Ph.D., University of California at Santa Cruz, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA, has applied in due form for a permit to conduct research on northern elephant seals (*Mirounga angustirostris*).

DATES: Written, telefaxed, or e-mail comments must be received on or before May 20, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14636 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed

above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The purpose of the proposed research is to continue long-term studies on northern elephant seals in California, including population growth and status, reproductive strategies, behavioral and physiological adaptations for diving and fasting, general physiology and metabolism, and sensory capacities. Northern elephant seals, totaling a maximum of 3,930 animals per year over 5 years, would be taken by harassment during some or all of the following: behavioral observations, marking, flipper tagging, capture and biological sampling, attachment of instrumentation for tracking, translocation studies, short-term capture for laboratory studies, use of standard clinical tracer techniques, and acoustic studies (recordings, playbacks of natural calls, and tagging devices). The applicant requests unintentional mortality of up to 5 elephant seals per year; and euthanasia of up to 10 moribund pups per year. Incidental harassment of northern elephant seals and California sea lions is also requested.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 14, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–9062 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV88

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI) groundfish plan teams will meet via teleconference May 6, 2010, 12:30 p.m. Alaska Standard Time (AST) to review proposals for models to be considered for inclusion in the GOA and BSAI Pacific cod assessments.

DATES: The teleconference will be held on May 6, 2010; telephone: (907) 271–2896.

ADDRESSES: Listening sites - North Pacific Fishery Management Council, 605 W 4th Avenue, Anchorage, AK; and Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 4, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo; North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Agenda: Review proposals for models Pacific cod stock assessments. The agenda is posted on the Council website at: *http://www.alaskafisheries.noaa.gov/npfmc/*

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: April 14, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–9003 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV85

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Mackerel, Squid, and Butterfish Monitoring Committee will hold a public meeting via webinar.

DATES: The meeting will be held on Thursday, May 13, 2010, from 9 a.m. to 4 p.m.

ADDRESSES: The webinar will be held at the Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Details concerning participation on the webinar will be posted on the Council's website at www.mafmc.org. Interested members of the public may observe remotely via computer and/or phone access or may attend the meeting in person at the Mid-Atlantic Council offices located at 800 North State Street, Suite 201, Dover, DE 19901.

Topics to be discussed include 2011 annual quota recommendations and associated management measures for Atlantic mackerel, Loligo and Illex squid and butterfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: April 14, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–9002 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV84

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Scientific and Statistical Committee (SSC) will hold a public meeting.

DATES: The meeting will be held Tuesday, May 11, 2010, from 9 a.m. to 5 p.m. and Wednesday, May12, 2010, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Four Points, 7032 Elm Road, Baltimore, MD 21240; telephone: (410) 859–3300.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The terms of reference for this meeting include:

(1) Review stock assessment information and specify overfishing level and acceptable biological (ABC) for Atlantic mackerel and butterfish for 2011; review and comment on proposed 2011 quota specifications and management measures for Atlantic mackerel, butterfish, Loligo and Illex; and (2) review stock assessment information and specify overfishing level and ABC for Atlantic surfclams and ocean quahogs for 2011–13. In addition, the SSC will discuss the status of the management strategy evaluation study being conducted by the University of Maryland.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: April 14, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–9001 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV95

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Herring Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, May 17, 2010 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:Review and discuss available information regarding river herring bycatch in the Atlantic herring fishery provided by the Herring Plan Development Team (PDT); develop management measures and alternatives to address river herring bycatch for consideration in Amendment 5 to the Herring Fishery Management Plan (FMP); discuss elements of Amendment 5 catch monitoring alternatives that relate to documenting and monitoring river herring bycatch; address other elements of Amendment 5 catch monitoring alternatives; address other elements of Amendment 5 as time permits, address other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action 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 Fishery Conservation and Management Act, provided the public has been notified of the Council(s intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: April 14, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–8975 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On April 14, 2010, the binational panel issued its decision in the review of the final results of the 2004/2005 antidumping administrative review made by the International Trade

Administration, respecting Stainless Steel Sheet and Strip in Coils from Mexico, NAFTA Secretariat File Number USA–MEX–2007–1904–01. The binational panel affirmed in part and remanded in part the International Trade Administration's determination, with one dissenting opinion. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Marsha Ann Y. Iyomasa, Acting United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: The panel affirmed in part and remanded in part the International Trade Administration's determination respecting Stainless Steel Sheet and Strip in Coils from Mexico with one dissenting opinion. The panel remanded on the following issues:

1. On the issue of the permissibility of zeroing, the Panel remands this matter back to Commerce to re-calculate Mexinox's dumping margins without zeroing;

2. On the issue of whether Commerce's adjustments to the U.S. indirect selling expense ratio are not in accordance with law, the Panel remands this matter back to Commerce to re-calculate the indirect selling expense ratio in a manner not inconsistent with the panel's opinion; and

3. Commerce is further directed to issue its Final Re-Determination on Remand within forty-five days from the date of this Panel Decision.

The Department's decision in the final results of the 2004/2005 antidumping review was, in all other respects upheld.

Dated: April 14, 2010.

Marsha Ann Y. Iyomasa,

Acting U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2010–9015 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of solicitation for nominations for potential National Sea Grant Advisory Board members and notice of public meeting.

SUMMARY: This notice responds to Section 209 of the Sea Grant Program Improvement Act of 1976 (Pub. L. 94–461, 33 U.S.C. 1128), which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the National Sea Grant Advisory Board, an advisory committee that provides advice on the implementation of the National Sea Grant College Program.

DATES: Solicitation of nominations is open ended: resumes may be sent to the address specified at any time.

ADDRESSES: Nominations should be sent to Dr. James D. Murray; Designated Federal Official, National Sea Grant Advisory Board; Deputy Director, National Sea Grant College Program; 1315 East-West Highway, Room 11841; Silver Spring, Maryland 20910.

SUPPLEMENTARY INFORMATION: Established by Section 209 of the Act and as amended the National Sea Grant College Program Amendments Act of 2008 (Pub. L. 110–394), the duties of the Board are as follows:

(1) In general—The Board shall advise the Secretary and the Director concerning—

(A) Strategies for utilizing the sea grant college program to address the Nation's highest priorities regarding the understanding, assessment, development, management, utilization, and conservation of ocean, coastal, and Great Lakes resources;

(B) The designation of sea grant colleges and sea grant institutes; and

(C) Such other matters as the Secretary refers to the Board for review and advice.

(2) Biennial Report—The Board shall report to the Congress every two years on the state of the national sea grant college program. The Board shall indicate in each such report the progress made toward meeting the priorities identified in the strategic plan in effect under section 204(c). The Secretary shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties under this title.

The Board shall consist of 15 voting members who shall be appointed by the Secretary. The Director and a director of a sea grant program who is elected by the various directors of sea grant programs shall serve as nonvoting members of the Board. Not less than 8 of the voting members of the Board shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, marine affairs and resource management, coastal management, extension services, State government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, management, utilization, or conservation of ocean, coastal, and Great Lakes resources. No individual is eligible to be a voting member of the Board if the individual is (A) the director of a sea grant college or sea grant institute; (B) an applicant for, or beneficiary (as determined by the Secretary) of, any grant or contract under section 205 [33 USCS § 1124]; or (C) a full-time officer or employee of the United States.

The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Board members are appointed for a 4-year term.

Dated: April 14, 2010.

Mark E. Brown,

Chief Financial Officer/Chief Administrator Officer, Office of Oceanic and Atmospheric Research.

[FR Doc. 2010–9100 Filed 4–19–10; 8:45 am]

BILLING CODE 3510–KA–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before May 20, 2010.

FOR FURTHER INFORMATION OR A COPY CONTACT: Andrea Musalem at CFTC, (202) 418–5167; FAX: (202) 418–5547; e-mail: *amusalem@cftc.gov* and refer to OMB Control No. 3038–0023.

SUPPLEMENTARY INFORMATION:

Title: Proposed Questionnaire to Regulation 30.10 Relief Recipients (OMB Control No. 3038–0023). This is a request for approval of a new information collection.

Abstract

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 our 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.

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

[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.

control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on February 10, 2010 (75 FR 6637).

Burden statement: The respondent burden for this collection is estimated to average one hour per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 13.

Estimated number of responses: 13.

Estimated total annual burden on respondents: 169 hours.

Frequency of collection: Annually.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0023 in any correspondence.

Andrea Musalem, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: April 14, 2010.

David Stawick,

Secretary of the Commission.

[FR Doc. 2010–9014 Filed 4–19–10; 8:45 am]

BILLING CODE P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the Community Stakeholder Assessment of Senior Corps RSVP Grantees to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Katharine Delo Gregg at (202) 606–6965. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, *e.g.,* permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on January 12, 2010. This comment period ended March 15, 2010. A total of 12 commenters submitted 33 comments.

Comment 1. The Corporation is urged to take a step back and consider other ways in which "true stakeholder support" can be obtained.

Response—Corporation disagrees and believes that the proposed collection is at least one valid method assessing stakeholder support.

Comment 2. The federal registry explains the purpose of the survey is to help provide TTA to existing projects. The purpose statement on the survey does not talk about TTA.

Response—Instrument instructions will be edited per comment.

Comment 3. Two commenters suggested that the language needs to be simplified.

Response—Instrument instructions and questions edited per comment.

Comment 4. The tool asks assessments that I believe may be well beyond the reach of our stakeholders to properly assess.

Response—The instructions for the instrument have been edited to clarify why the intended recipients should be able to adequately respond.

Comment 5. The burden of administrative demand far exceeds any perceived benefit from my perspective.

Response The instructions for the instrument have been edited to clarify that the benefit of the survey depends on its use by the grantee.

Comment 6. Speaking more generally, this assessment should reflect how successfully respondents feel their respective RSVP's are doing to fulfill their missions and provide volunteers and services that have a meaningful and significant impact on the needs of the communities they operate in.

Response—Instrument instructions and questions edited per comment.

Comment 7. Questions should better address the processes and guidelines applied to RSVP projects.

Response—Instrument instructions and questions edited per comment.

Comment 8. Three commenters suggested that there should be fewer questions about how projects are perceived by the community and a few more about the operations of the project.

Response—The instructions for the instrument have been edited to clarify that the purpose of the instrument is to measure community impact of RSVP grantees.

Comment 9. Three commenters suggested that there are some similarities of the current questions.

Response—Instrument instructions and questions edited per comment.

Comment 10. I would also like to have the issue of a project that does not have a formal advisory council addressed.

Response—Instrument instructions have been edited per comment.

Comment 11. Advisory Council members should answer the questions only with a "yes" or "no."

Response—Several of the instrument questions were simplified as suggested.

Comment 12. Not all methodology and assumptions are valid.

Response—We have reviewed the methodology and assumptions as you suggest to ensure accuracy.

Comment 13. In order to enhance the quality, utility, and clarity of the information collected, certain terms used in the questions should be better defined.

Response—We clarified general terms as defined by Senior Corps. We cannot enhance the definition of most terms used beyond what is stated in the tool as they will be interpreted from each respondent's perspective and that is okay for this assessment.

Comment 14. To minimize the burden of the collection of information tool should be shortened; be user friendly; and be filled out by project director not Advisory Council.

Response—We have adjusted the length of the instrument and have expanded deployment via electronic survey and email attachment. The purpose tool is to assess how the project is interacting with its community partners and impacting the community from the community partners' perspective so it is not appropriate for the project director to fill out the survey.

Comment 15. Two commenters suggested that an Assessment Tool is not needed for the performance of the projects that already have a high rating, but only for those that are weak or satisfactory.

Response—Corporation disagrees because an assessment of all programs is needed to properly evaluate RSVP.

Comment 16. We believe that one way to enhance the quality of information to be collected is to ask questions that require community partners to provide the Corporation with information it currently lacks.

Response—The instructions for the instrument have been edited to clarify that the purpose of the instrument is to measure community impact of RSVP grantees and to clarify that the benefit of the survey depends on its use by the grantee not the Corporation for National and Community Service.

Comment 17. The assessment misses the substance of what RSVP is all about.

Response—A team of RSVP projects have been consulted and the instructions for the instrument have been edited to clarify that the purpose of the instrument is to measure community impact of RSVP grantees.

Comment 18. One way to minimize the burden of information collection on all concerned is to collect it only once.

Response—We concur.

Comment 19. Assume that community partners who are disappointed in their experience with RSVP "will walk with their feet" and that those community partners who remain affiliated with RSVP are, by definition, satisfied and not have to fill out the assessment.

Response—The instructions for the instrument have been edited to clarify that the purpose of the instrument is to measure community impact of RSVP grantees.

Comment 20. To minimize the burden of collecting this information would be to design a survey instrument that would sample the universe rather than distribute it to the Community Advisory Councils.

Response—The instrument is required to be completed by all grantees.

Comment 21. Concerned with the level of knowledge that advisory council members would need to complete this assessment.

Response—Program regulations require that grantee advisory councils be knowledgeable in the areas covered by the instrument.

Comment 22. For continuity, it would also be helpful if the format was a response to a statement versus a response to a question—there's a mix in this document.

Response—In order to procure the most useful responses the tool best lends itself to a variety of query and response formats.

Comment 23. The [respondents] will be partial to their RSVP program and answer the question to support their program and the RSVP Director needs to help explain and give advice to the [respondents] to be able to answer the questions.

Response—The instructions for the instrument have been edited to clarify that the benefit of the survey depends on its use by the grantee. Program regulations require that grantee advisory councils be knowledgeable in the areas covered by the instrument.

Description

The Corporation is seeking approval of Community Stakeholder Assessment of Senior Corps RSVP Grantees. The information collection is intended to be completed by the Community Participation Groups of current RSVP grantees. The information collection will be used to collect data to assist grantees in self-improvement and to enhance technical assistance for current grantees. The Corporation will not use the results of this information collection for decision-making purposes regarding grant awards.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Community Stakeholder Assessment of Senior Corps RSVP Grantees.

OMB Number: None.

Agency Number: None.

Affected Public: Community Participation Groups of current recipients of Senior Corps RSVP Grants.

Total Respondents: 700.

Frequency: Annual.

Average Time per Response: 2.5 hours.

Estimated Total Burden Hours: 1750 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: April 14, 2010.

Angela Roberts,

Acting Director, Senior Corps.

[FR Doc. 2010–9059 Filed 4–19–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–04 and 10–14]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of two section 36(b)(1) arms sales notifications to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following are copies of letters to the Speaker of the House of Representatives, Transmittals 10–04 and 10–14 with associated attachments.

Dated: April 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 02 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-04, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to France for defense articles and services estimated to cost $69 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 10-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
Of the Arms Export Control Act, as amended

(i) Prospective Purchaser: France

(ii) Total Estimated Value:

Major Defense Equipment*	$ 55 million
Other	$ 14 million
TOTAL	$ 69 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 260 JAVELIN Anti-Tank Guided Missiles, 76 Command Launch Units with Integrated Day/Thermal Sight, containers, missile simulation rounds, Enhanced Basic Skills Trainer , JAVELIN Weapon Effects Simulator Trainers, two-level maintenance, batteries, battery dischargers and chargers, battery coolant units, spare and repair parts, test and tool sets, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

(iv) Military Department: US Army (WAE)

(v) Prior Related Cases: None

(vi) Sales Commission, Fee, etc., Paid, offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress: 2 April 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

France – JAVELIN Anti-Tank Guided Missiles

The Government of France has requested a possible sale of 260 JAVELIN Anti-Tank Guided Missiles, 76 Command Launch Units with Integrated Day/Thermal Sight, containers, missile simulation rounds, Enhanced Basic Skills Trainer, JAVELIN Weapon Effects Simulator Trainers, two-level maintenance, batteries, battery dischargers and chargers, battery coolant units, spare and repair parts, test and tool sets, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $69 million.

France is one of the major political and economic powers in Europe and NATO and an ally of the United States in ensuring peace and stability. It is vital to the U.S. national interest to assist France to develop and maintain a strong and ready self-defense capability.

The proposed sale will improve France's capability to meet current and future threats of enemy tanks and ground forces. France will use the enhanced capability to deter regional threats, to strengthen its homeland defense, and to contribute to overseas contingencies and NATO operations. France will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Javelin Joint Venture of Raytheon in Tucson, Arizona, and Lockheed Martin in Orlando, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to France.

There will be no adverse impact on the U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
Of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Javelin Weapon System hardware and the documentation provided with the sale thereof are Unclassified. However, sensitive technology is contained within the system itself. This sensitivity is primarily in the software programs which instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with Read Out memory maps being available, which do not provide the software program itself. The overall hardware is also considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure development. The benefits to be derived from the sale, as outlined in the policy justification of the notification, outweigh the potential damage that could result if sensitive technology was revealed to unauthorized persons.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 10–04

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–04 with attached transmittal, and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 8 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-14, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Canada for defense articles and services estimated to cost $71 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeanne Farmer

Jeanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 10-14

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Canada

(ii) Total Estimated Value:

Major Defense Equipment*	$ 36 million
Other	$ 35 million
TOTAL	$ 71 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 36 T55-GA-714A engines, spare and repairs parts, support and test equipment, personnel training and training equipment, publications and technical data, engine qualification review, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) Military Department: Army (ZYM)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 8 April 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada – T55-GA-714A Engines

The Government of Canada has requested a possible sale of 36 T55-GA-714A engines, spare and repairs parts, support and test equipment, personnel training and training equipment, publications and technical data, engine qualification review, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $71 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the military capabilities of Canada and the Canadian military's interoperability with U.S. forces. Canadian deployments in support of peacekeeping and humanitarian operations have enhanced global political and economic stability and have served U.S. national security interests.

This proposed sale will allow Canada to strengthen its homeland defense, deter regional threats, and improve humanitarian and disaster mobilization and response. The proposed sale would improve Canada's ability to meet current and future requirements for troop movement, medical evacuations, aircraft recovery, parachute drops, search and rescue, disaster relief, fire-fighting, and heavy construction. Canada will have no difficulty absorbing these helicopter engines into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Honeywell International in Phoenix, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Canada.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–9005 Filed 4–19–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the Fiscal Year 2008 Defense Threat Reduction Agency Services Contracts Inventory

AGENCY: Defense Threat Reduction Agency (DTRA), DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with section 2330a of title 10 United States Code as amended by the National Defense Authorization Act for Fiscal Year 2008 (NDAA 08) section 807, the Director of DTRA and the Office of the Director, Defense Procurement and Acquisition Policy, Office of Strategic Sourcing (DPAP/SS) will make available to the public the first inventory of activities performed pursuant to contracts for services.

The inventory will be published to the DTRA Web site at the following location: *http://www.dtra.mil/Business/DoingBusiness/CurrentSolicitations.aspx.*

DATES: Inventory to be made publically available within 60 days after publication of this notice.

ADDRESSES: Send written comments and suggestions concerning this inventory to David Braxton, Senior Procurement Analyst, Defense Threat Reduction Agency/BC–BCP, 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: David Braxton at (703) 767–4603 or e-mail at *David.Braxton@Dtra.Mil.*

Dated: April 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8999 Filed 4–19–10; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB); Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, DoD announces a meeting of the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces will meet on May 11, 2010. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held on May 11, 2010, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT,** e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

FOR FURTHER INFORMATION CONTACT: Col. JoAnne McPherson, Executive Secretary, Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces, One Skyline Place, 5205 Leesburg Pike, Suite

810, Falls Church, Virginia 22041–3206, (703) 681–3279, ext 162, Fax: (703) 681–3317, *JoAnne.Mcpherson@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: The Task Force is a subcommittee of the Defense Health Board (DHB).

Purpose of the Meeting

The purpose of the meeting is to gather information pertaining to suicide and suicide prevention programs for members of the Armed Services.

Agenda

On May 11, 2010, the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces will receive briefings from various speakers addressing multiple aspects of suicide prevention in the United States and the relevance of that information on suicide prevention efforts within the Armed Forces.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces meeting April 12, 2010, is open to the public. The public is encouraged to register for the meeting.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board website, *http://www.ha.osd.mil/dhb.*

Written Statements

Any member of the public wishing to provide input to the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces 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, and the procedures described in this notice. Written statement should address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**) at any point. However, if the written statement is not received prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces until the next open meeting.

The DFO will review all timely submissions with the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, and ensure they are provided to members of the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces before the meeting that is subject to this notice. After reviewing the written comments, the Co-Chairpersons and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The DFO, in consultation with the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Department of Defense Task Force on the Prevention of Suicide by Member of the Armed Forces.

Dated: April 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–9063 Filed 4–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0050]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete two systems of records.

SUMMARY: The Defense Logistics Agency proposes to delete two systems of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 20, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number 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: Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The Agency proposes to delete two system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

S900.10

SYSTEM NAME:

Personnel Roster/Locator Files (December 26, 2002; 67 FR 78780).

REASON:

Records are now being maintained under a DoD-wide system of records identified as DPR 39 DoD, entitled "DoD Personnel Accountability and Assessment System.

Deletion:

S340.20 CAHS

SYSTEM NAME:

Official Records for Host Enrollee Programs (November 16, 2004; 69 FR 67112).

REASON:

System notice is no longer needed. The program has been discontinued and records have been destroyed.

[FR Doc. 2010–9004 Filed 4–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0051]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 20, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: April 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S690.10 DLSC

SYSTEM NAME:

Individual Vehicle Operators File (September 21, 1999; 64 FR 51110).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S523.25."

SYSTEM NAME:

Delete entry and replace with "DLA Vehicle/Equipment Operator Files."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "File contains name, Social Security Number, date of birth, address, State and number of currently valid license; list of arrests or summonses for violation of motor vehicle laws (excluding parking violations) and convictions, if any; suspensions or revocations of his/her State license or identification card within the past five years and any motor vehicle accidents within the past five years, training and performance record, and other related papers."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "23 U.S.C. Chapter 4, Highway Safety; DoD Instruction 6055.4, DoD Traffic Safety Program; DoD Directive 5134.01, Under Secretary of Defense for Acquisition, Technology, and Logistics; and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" apply to this system of records."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name or Social Security Number (SSN)."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed 3 years after separation of employee or 3 years after rescission of authorization to operate Government-owned vehicles, whichever is sooner."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commanders of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), and mailing address."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), and mailing address."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S523.25

SYSTEM NAME:

DLA Vehicle/Equipment Operator Files.

SYSTEM LOCATION:

Commanders of the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) which issue vehicle operator's Identification Cards. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons for whom Defense Logistics Agency has issued permits to operate motor vehicles or equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, date of birth, address, State and number of currently valid license; list of arrests or summonses for violation of motor vehicle laws (excluding parking violations) and convictions, if any; suspensions or revocations of his/her State license or identification card within the past five years and any motor vehicle accidents within the past five years, training and performance record, and other related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

23 U.S.C. Chapter 4, Highway Safety; DoD Instruction 6055.4, DoD Traffic Safety Program; DoD Directive 5134.01, Under Secretary of Defense for Acquisition, Technology, and Logistics; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Records are maintained and used by DLA officials to determine an individual's qualifications and fitness to operate government vehicles and/or equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maybe maintained on paper and electronic storage media.

RETRIEVABILITY:

Retrieved by name or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after separation of employee or 3 years after rescission of authorization to operate Government-owned vehicles, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Commanders of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), and mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), and mailing address.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject, court records, supervisor notes/comments and related documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–9000 Filed 4–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 20, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, D.C. 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 15, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Evaluation of Response to Intervention Practices for Elementary School Reading (Site Recruitment).

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 515.
Burden Hours: 333.

Abstract: The Evaluation of Response to Intervention (RtI) Practices for Elementary School Reading will inform the National Assessment of IDEA 2004, and the choices of districts and schools, by studying the implementation and impact of practices to identify and intervene early with struggling readers and, when needed, determine students' eligibility for special education. The Department seeks clearance for the site recruitment materials. A subsequent OMB package will seek approval for instruments to collect data for an in-depth study of RtI design, implementation, and impact in sites operating mature RtI programs.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4223. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–9070 Filed 4–19–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 20, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 15, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: Extension.
Title: Study of School-Level Expenditures.
Frequency: Once.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:

Responses: 13,158.
Burden Hours: 562,136.

Abstract: The purpose of this data collection is to meet the American Recovery and Reinvestment Act of 2009 requirement for states and school districts to submit a school-by-school listing of school-level expenditures from state and local funds for the 2008–09 school year. These data will be used to examine the extent to which school-level education resources are distributed equitably within and across school districts.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4280. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–9071 Filed 4–19–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision: Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center

AGENCY: U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) is issuing this Record of Decision (ROD), based on information and analyses contained in the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center (Decommissioning and/or Long-Term Stewardship EIS)* (DOE/EIS–0226) issued on January 29, 2010, comments received on the Final EIS, and other factors including cost and environmental stewardship considerations. The *Decommissioning and/or Long-Term Stewardship EIS* was prepared by DOE and the New York State Energy Research and Development Authority (NYSERDA) to examine the

potential environmental impacts of the range of reasonable alternatives to meet DOE's responsibilities under the West Valley Demonstration Project (WVDP) Act and NYSERDA's responsibilities for management of the Western New York Nuclear Services Center (WNYNSC). This ROD addresses DOE decisions for actions at WNYNSC necessary to complete WVDP. NYSERDA will publish its decisions regarding actions at WNYNSC in a Findings Statement in the *New York State Environmental Notice Bulletin.*

The Proposed Action is the completion of WVDP and the decommissioning and/or long-term management or stewardship of WNYNSC. This includes the decontamination and decommissioning of the waste storage tanks and facilities used in the solidification of high-level radioactive waste, and any material and hardware used in connection with the WVDP. DOE needs to determine what, if any, material or structures for which it is responsible would remain on site, and what, if any, institutional controls, engineered barriers, or stewardship provisions would be needed. NYSERDA needs to determine what, if any, material or structures for which it is responsible would remain on site and what, if any, institutional controls, engineered barriers, or stewardship provisions would be needed.

DOE and NYSERDA evaluated four alternatives in the Final EIS: Sitewide Removal, Sitewide Close-In-Place, Phased Decisionmaking (the Preferred Alternative), and No Action.

DOE has decided to implement the Preferred Alternative, Phased Decisionmaking. Under this alternative, decommissioning will be completed in two phases. Phase 1 involves near-term decommissioning and removal actions for certain facilities and areas and undertakes characterization work and studies that could facilitate future decisionmaking for the remaining facilities or areas on the property.

DOE intends to complete any remaining WVDP decommissioning decisionmaking with its Phase 2 decision (to be made within 10 years of this ROD) and expects to select either removal or in-place closure, or a combination of the two for those portions of the site for which it has decommissioning responsibility.

FOR FURTHER INFORMATION CONTACT: For information regarding WVDP or this ROD, or to receive a copy of the *Decommissioning and/or Long-term Stewardship EIS* or this ROD, contact: Catherine Bohan, EIS Document Manager, West Valley Demonstration Project, U.S. Department of Energy, Ashford Office Complex, 9030 Route 219, West Valley, NY 14171. Requests for information may also be submitted via e-mail at *http://www.westvalleyeis.com* or by faxing toll-free to 866–306–9094.

The West Valley Web site (*http://www.wv.doe.gov*) may also be accessed for the *Decommissioning and/or Long-term Stewardship EIS* (DOE/EIS–0226), this ROD, and additional information related to the West Valley site.

For general information on DOE's NEPA process contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mail *AskNEPA@hq.doe.gov;* telephone 202–586–4600; or leave a message at 800–472–2756. Additional information regarding DOE NEPA activities and access to many DOE NEPA documents, including the *Decommissioning and/or Long-term Stewardship EIS,* are available through the DOE NEPA Web site at: *http://www.gc.energy.gov/nepa.*

SUPPLEMENTARY INFORMATION:

Background

DOE has prepared this ROD pursuant to the regulations of the Council on Environmental Quality (CEQ) for implementing the *National Environmental Policy Act* (NEPA) (40 CFR parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR part 1021). This ROD is based on information and analyses contained in the *Final Decommissioning and/or Long-Term Stewardship EIS* (DOE/EIS–0226) issued on January 29, 2010 (75 FR 4803); comments received on the Final EIS; and other factors, including cost and environmental stewardship considerations.

WNYNSC is a 1,351-hectare (3,338-acre) site located 48 kilometers (30 miles) south of Buffalo, New York, and owned by NYSERDA. WNYNSC was established in 1961 as the site of a nuclear center consisting of commercial spent nuclear fuel reprocessing and waste disposal facilities. Nuclear Fuel Services, Incorporated (NFS), a private company, built and operated the fuel reprocessing plant and burial grounds, processing 640 metric tons of spent nuclear fuel at WNYNSC from 1966 to 1972 under an Atomic Energy Commission license. Fuel reprocessing ended in 1972, when the plant was shut down for modifications to increase its capacity, reduce occupational radiation exposure, and reduce radioactive effluents. However, between 1972 and 1976, there were major changes in regulatory requirements, including more stringent seismic and tornado siting criteria for nuclear facilities and more extensive regulations for radioactive waste management, radiation protection, and nuclear material safeguards.

As a result, NFS announced its decision to withdraw from the nuclear fuel reprocessing business and to exercise its contractual right to yield responsibility for WNYNSC to NYSERDA, the site owner. NFS withdrew from WNYNSC in 1976 without removing any of the in-process nuclear wastes. NYSERDA now holds title to and manages WNYNSC.

In 1980, Congress passed the WVDP Act (Pub. L. 96–368, 42 U.S.C. 2021a). The WVDP Act requires DOE to demonstrate that the liquid high-level radioactive waste from reprocessing could be safely managed by solidifying it at WNYNSC, and transporting it to a repository for permanent disposal. Specifically, Section 2(a) of the Act directs DOE to take the following actions:

1. Solidify high-level radioactive waste by vitrification or such other technology that the DOE deems effective;
2. Develop containers suitable for the permanent disposal of the solidified high-level radioactive waste;
3. Transport the solidified high-level radioactive waste to an appropriate Federal repository for permanent disposal;
4. Dispose of the low-level radioactive waste and transuranic waste produced by the high-level radioactive waste solidification program; and
5. Decontaminate and decommission the waste storage tanks and facilities used to store the high-level radioactive waste, the facilities used for solidification of the high-level radioactive waste, and any material and hardware used in connection with the project in accordance with such requirements as the U.S. Nuclear Regulatory Commission (NRC) may prescribe.

In 1982, DOE assumed control but not ownership of the 68-hectare (167-acre) Project Premises portion of WNYNSC to conduct the WVDP, as required under the aforementioned WVDP Act.

As part of the WVDP Act, NRC was charged with developing decommissioning criteria. In the "Decommissioning Criteria for the WVDP at the West Valley Site; Final Policy Statement" (NRC Policy Statement) (67 FR 5003), NRC prescribes the requirements for decommissioning WVDP. The decommissioning criteria define the conditions that would allow WVDP to be used with specified

restrictions or without restrictions on future use. If those conditions cannot be met, the NRC Policy Statement also defines the circumstances under which portions of the site could remain under long-term management or stewardship.

A 1987 Stipulation of Compromise between the Coalition on West Valley Nuclear Wastes and DOE specified that a closure EIS be prepared that also addresses the disposal of those Class B and C low-level radioactive wastes generated as a result of DOE's activities at WVDP. In 1990, DOE and NYSERDA entered into a supplemental agreement to prepare an EIS to address both the completion of WVDP and closure or long-term management of WNYNSC.

EIS Process

On December 30, 1988, DOE published a Notice of Intent (NOI) in the **Federal Register** to prepare an EIS for WVDP completion. In 1990, DOE and NYSERDA entered into a supplemental agreement to prepare a joint EIS to address both the completion of WVDP and closure or long-term management of WNYNSC. A Draft EIS was issued for public comment in 1996: the *Draft Environmental Impact Statement for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center,* also referred to as the 1996 *Cleanup and Closure Draft EIS* (DOE/EIS–0226D), January 1996. The 1996 Draft EIS did not identify a preferred alternative.

On March 26, 2001, DOE and NYSERDA announced (66 FR 15447) their intent to revise their strategy for completing the EIS process. On November 6, 2001, DOE issued an Advance NOI (66 FR 56090) to provide an early opportunity for interested parties to comment on the proposed scope of the EIS, and on March 13, 2003, DOE and NYSERDA issued an NOI (68 FR 12044) for the Decommissioning and/or Long-Term Stewardship EIS. After considering all public scoping comments and based on decommissioning criteria for WVDP issued by NRC since the publication of the 1996 *Cleanup and Closure Draft EIS* and public comments on that EIS, DOE and NYSERDA (as co-lead preparers) issued the Revised Draft EIS known as the *Decommissioning and/or Long-Term Stewardship EIS* for public comment in December 2008. The public comment period, originally scheduled to end June 8, 2009, was extended through September 8, 2009, in response to requests from the public. Following consideration of all public comments, the Final EIS was issued in January 2010. The NRC, U.S. Environmental Protection Agency (EPA), and the New York State Department of Environmental Conservation (NYSDEC) participated as cooperating agencies in preparing the EIS. The New York State Department of Health and NYSDEC are involved agencies under the New York State Environmental Quality Review Act (SEQR).

The Proposed Action is the completion of WVDP and the decommissioning and/or long-term management or stewardship of WNYNSC. This includes the decontamination and decommissioning of the waste storage tanks and facilities used in the solidification of high-level radioactive waste, and any material and hardware used in connection with the WVDP. DOE needs to determine what, if any, material or structures for which it is responsible would remain on site, and what, if any, institutional controls, engineered barriers, or stewardship provisions would be needed. NYSERDA needs to determine what, if any, material or structures for which it is responsible would remain on site and what, if any, institutional controls, engineered barriers, or stewardship provisions would be needed as a result.

Alternatives Considered

The *Decommissioning and/or Long-Term Stewardship EIS* analyzes the potential environmental impacts of the range of reasonable alternatives to decommission and/or maintain long-term stewardship at WNYNSC. The alternatives analyzed in the EIS include Sitewide Removal, Sitewide Close-In-Place, Phased Decisionmaking (the Preferred Alternative), and No Action.

Sitewide Removal. Under this alternative, site facilities would be removed; contaminated soil, sediment, and groundwater would be removed to meet criteria that would allow unrestricted release of WNYNSC; and radioactive, hazardous, and mixed waste would be characterized, packaged as necessary, and eventually shipped off site for disposal. Immediate implementation of this alternative would generate waste for which there is currently no offsite disposal location (e.g., potential non-defense transuranic waste, commercial Class B and C low-level radioactive waste, and Greater-Than-Class C waste). Any such "orphan waste" would be stored on site until an appropriate offsite facility is available. Completion of these activities would allow unrestricted use of the site (i.e., the site could be made available for any public or private use).

Sitewide Close-In-Place. Under this alternative, most facilities would be closed in place. Major facilities and sources of contamination such as the Waste Tank Farm, U.S. Nuclear Regulatory Commission-Licensed Disposal Area (NDA), and State-Licensed Disposal Area (SDA) would be managed at their current locations.

Residual radioactivity in facilities with larger inventories of long-lived radionuclides would be isolated by specially designed closure structures and engineered barriers. These structures would be designed to meet regulatory requirements both to retain hazardous and radioactive constituents and to ensure they would be resistant to long-term degradation. This approach would allow large areas of the site to be released for unrestricted use. The NRC license for remaining portions of WNYNSC could be terminated under restricted conditions, or could be converted to a long-term license. Facilities that are closed in place, and any buffer areas around them, would require long-term stewardship.

Phased Decisionmaking (the Preferred Alternative). Under this alternative, decommissioning would be completed in two phases. This alternative involves substantial removal actions in the first phase and also provides for additional site characterization and scientific studies to facilitate decisionmaking for the remaining facilities or areas.

Phase 1 decommissioning actions would include removal of the Main Plant Process Building, the Vitrification Facility, and the source area for the North Plateau Groundwater Plume. In addition, the lagoons and all facilities in Waste Management Area (WMA) 2 (except the permeable treatment wall) would be removed. The Remote Handled Waste Facility and a number of facilities in WMAs 5, 6, 9, and 10 would also be removed. Foundations, slabs, or pads from these facilities, as well as those from previously demolished facilities would also be removed. During Phase 1, several facilities would continue under active management. These facilities include the Waste Tank Farm and its support facilities, the Construction and Demolition Debris Landfill, the nonsource area of the North Plateau Groundwater Plume, the NDA, and the SDA. Phase 1 activities would make use of proven technologies and available waste disposal sites to reduce the potential short-term health and safety risks from residual radioactivity and hazardous contaminants at the site.

Phase 1 activities are expected to take 8 to 10 years to complete. During this time, a number of activities would be conducted to evaluate the best technical approach to complete decommissioning

of the remaining facilities and to facilitate interagency decisionmaking. These activities would include further characterization of site contamination and additional scientific studies. These additional studies may reduce technical uncertainties related to the decision on final decommissioning and long-term management of the balance of WNYNSC. In particular, these studies may address uncertainties associated with the long-term performance models, the viability and cost of exhuming buried waste and tanks, the availability of waste disposal sites, and technologies for in-place containment. While the Phase 1 activities are being conducted, DOE and NYSERDA would assess the results of site specific studies as they become available, along with other emerging information such as applicable technology development.

In consultation with NYSERDA and cooperating and involved agencies on this EIS, DOE would determine whether new information or circumstances would warrant preparation of a Supplemental EIS prior to proceeding with Phase 2.

The Phase 2 decision would be made within 10 years of this ROD and the initial NYSERDA Findings Statement. The timeframe associated with this decision in the Revised Draft EIS was 30 years. This timeframe was modified for the Final EIS in response to public comments. For DOE, WVDP Phase 2 actions would complete decommissioning or long-term management decisionmaking for each remaining facility according to the approach determined most appropriate. Phase 2 alternatives that would be considered by NYSERDA for the SDA include at least: complete exhumation, close-in-place, and continued active management consistent with SDA permit and license requirements.

No Action. Under the No Action Alternative, no actions toward decommissioning would be taken. The No Action Alternative would involve the continued management and oversight of all facilities located on WNYNSC property. The No Action Alternative does not meet the purpose and need for agency action, but analysis of the No Action Alternative is required under NEPA and SEQR as a basis for comparison.

Environmental Impacts of Alternatives

The *Decommissioning and/or Long-Term Stewardship EIS* presents the potential impacts on land resources, air quality, noise, water resources, soils, biological resources, cultural resources, socioeconomics, and human health for the four alternatives, including those from potential facility accidents and transportation of radioactive materials. DOE considered the impacts of activities for each alternative, the irreversible or irretrievable commitments of resources, and the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity. Comparisons of the alternatives were based on both short- and long-term impacts. Five resource areas where meaningful impact differences could occur were used to compare short term impacts: land use (land available for reuse), socioeconomics (employment), human health and safety, waste management, and transportation. For comparative analyses of long-term impacts, the projected radiation dose to future hypothetical individuals and populations is identified as a meaningful difference among the alternatives; that is, long-term risks are dominated by radiological rather than chemically hazardous constituents.

The Sitewide Removal Alternative would result in the most land available for release for unrestricted use (the entire WNYNSC); long-term stewardship at WNYNSC would not be required, although institutional controls would be needed for any temporary management of orphan waste. This alternative would result in the highest decommissioning impacts at the site, on site workers, and on the public in the vicinity of WNYNSC and along the transportation routes over a period of about 60 years. This alternative would incur the highest short-term collective radiological dose to the public and workers from both onsite and transportation activities. These activities could result in up to 2 latent cancer fatalities among workers. No latent cancer fatalities would be expected for the public. Nonradiological consequences of transporting the waste off site for disposal are estimated to be as many as 10 to 15 fatalities from truck and rail accidents, respectively. Potential long-term radiological dose to the general population in the vicinity of WNYNSC would be negligible.

The Sitewide Close-In-Place Alternative would result in fewer decommissioning impacts at the site, require the least amount of time to accomplish, and generate the least amount of waste (other than the No Action Alternative) that would need to be disposed of elsewhere. This alternative would result in less land available for release for unrestricted use than the Sitewide Removal Alternative. No latent cancer fatalities would be expected among the public, onsite workers, or transportation workers. Transporting the waste off site for disposal is estimated to result in 1 fatality from transportation accidents. However, implementing this alternative would require long-term stewardship at WNYNSC, including institutional controls. The reasonably foreseeable long-term peak annual dose to an average Lake Erie water user (assumed to be consuming water from the Sturgeon Point water intake with unmitigated erosion at the West Valley site) would be about 0.4 millirem, which would be indistinguishable from the dose associated with background radiation.

The Phased Decisionmaking Alternative (Phase 1) would not result in more land available for release than the No Action Alternative, but would have positive long-term impacts because contaminated facilities and the source area of the North Plateau Groundwater Plume would be removed during decommissioning activities. No latent cancer fatalities would be expected among the public, onsite workers, or transportation workers as a result of Phase 1 activities. Transporting waste off site is estimated to result in 1 to 2 fatalities from nonradiological transportation accidents.

If the Phase 2 decision is removal of remaining waste and contamination, total impacts from the Phased Decisionmaking Alternative would be similar to those for the Sitewide Removal Alternative.

If the Phase 2 decision is in-place closure of the remaining waste and contamination, total waste generation and transportation impacts (including nonradiological fatalities from traffic accidents) for the alternative would be only slightly more than those for Phase 1 alone because of the limited amount of waste that would be generated by in-place closure activities. The total worker exposure would be about 50 percent higher than that for Phase 1 alone because of the additional occupational exposure that would occur from in-place closure of the facilities not removed during Phase 1. Long-term impacts would be less than those for the Sitewide Close-In-Place Alternative. Because of removal actions during Phase 1, the time-integrated (cumulative) population dose over 1,000 years would be about 85 percent of the 4,000 person-rem dose projected for the Sitewide Close-In-Place Alternative. However, because of the long-lived radionuclides that would remain in the waste disposal areas, the time-integrated population dose over 10,000 years would be about 97 percent of the 34,000 person-rem dose projected for the Sitewide Close-In-Place Alternative.

If the Phase 2 decision for the SDA is continued active management, short-term Phase 2 impacts for some resource areas are expected to be bounded by those for the No Action Alternative. There would also be less transportation, so the associated impacts, including nonradiological fatalities from traffic accidents, would be lower. The long-term human health impacts for continued active management of the SDA would be the same as those identified for the SDA under the No Action Alternative.

Making the Phase 2 decision at 10 years instead of 30 years, as was cited in the Revised Draft EIS, would result in a small reduction in the total impact of decommissioning because most of the Phase 1 impacts are the result of the removal actions that occur in the first 8 years of Phase 1. The most important change in impacts associated with the shorter duration of Phase 1 would be the reduced socioeconomic impact. A shorter Phase 1 would eliminate the approximately 20-year period of reduced site employment following completion of the Phase 1 decommissioning actions followed by an increase in site employment when Phase 2 implementation begins.

The No Action Alternative would not involve decommissioning. Waste and contamination would not be removed, and there would be no change in site operations. Long-term impacts would be higher than those for the Sitewide Close-In-Place Alternative because there would be fewer engineered barriers to retard the migration of radionuclides from their original locations and to act as intrusion barriers in the event of loss of institutional controls, although the associated health risks would be small. For example, the long-term peak annual dose to an average Lake Erie water user (assumed to be consuming water from the Sturgeon Point water intake with unmitigated erosion at the West Valley site) would be about 3 millirem, which is unlikely to result in a cancer fatality.

Environmentally Preferable Alternative

As required by 40 CFR 1505.2(b), DOE has identified the environmentally preferable alternative for completion of WVDP and decommissioning of WNYNSC. DOE has compared the impacts of implementing each of the four alternatives evaluated in the EIS and considers the Sitewide Close-In-Place Alternative to be the environmentally preferable alternative. DOE considered the short-term impacts associated with removing waste and contamination from WNYNSC and the estimated long-term impacts of leaving those materials on site and concluded that the long-term benefits of removing the waste and contamination do not outweigh the short-term impacts of the removal activities. DOE considers impacts on human health and safety to be important aspects of the human environment, and in this case, the principal discriminator for both short- and long-term impacts.

In the EIS, five resource areas for which meaningful short-term impact differences could occur were identified: land use (land available for reuse), socioeconomics (employment), human health and safety, waste management, and transportation. In its identification of the environmentally preferable alternative, however, DOE narrowed its consideration (based on the differences in impacts between alternatives) to the amount of waste generated and the human health impacts of its removal and transportation for disposal. From an environmental stewardship perspective, DOE qualitatively considered overall land disturbance, resources consumed, and the need for long-term stewardship at any location that would receive the West Valley waste for disposal, not just at WNYNSC.

If only short-term impacts were considered, the No Action Alternative, would be the environmentally preferable alternative because the short-term adverse impacts would be the least of all the alternatives.

The short-term adverse impacts would be greatest for the Sitewide Removal Alternative, although the local long-term benefits would also be greatest. After decommissioning actions are completed, the entire WNYNSC would be available for release; without waste or contamination remaining onsite, there would not be any long-term human health impacts nor would there be a need for long-term stewardship. The short-term impacts would result primarily from removal of waste and contamination which would involve construction; waste and contamination removal, packaging, and transportation to offsite locations; followed by site restoration with geologic materials (e.g., soil and gravel) from offsite locations. These short-term impacts would occur in the vicinity of WNYNSC and along the transportation corridors, and affect both the natural environment and human health. The Sitewide Removal Alternative would involve the disturbance and restoration of approximately 20 hectares (50 acres) over 60 years, the generation and shipment of about 1.6 million cubic meters (57 million cubic feet) of waste, result in an estimated 10 to 15 nonradiological fatalities from offsite transportation of waste, and result in a total radiological exposure to the public and workers (including from waste transportation) from about 1,300 to 3,600 person-rem (the lower end of this range assumes all waste is transported by rail; the upper end, all by truck). The lower population dose would result in less than 1 latent cancer fatality while the higher population dose would result in up to 2 latent cancer fatalities.

The short-term impacts would be less for the Sitewide Close-In-Place Alternative, as this alternative would involve less material movement (materials would be needed primarily for the construction of waste isolation barriers), less worker exposure, and less transportation of waste. Under this alternative, approximately 12 hectares (30 acres) at WNYNSC would be disturbed over a 7-year period, and 26,000 cubic meters (920,000 cubic feet) of waste (mostly non-hazardous) would be generated. No latent cancer fatalities are expected to result from the estimated 160 to 220 person-rem total radiological exposure to workers and the public (the lower end of this range assumes all waste is transported by rail; the upper end, all by truck), nor would any nonradiological fatalities be expected to result from transportation activities under this alternative. However, less land would be available for release than under the Sitewide Removal Alternative and long-term stewardship would be required.

For comparison of long-term impacts, the projected radiation dose to future hypothetical populations and individuals was identified in the EIS and considered in DOE's identification of the environmentally preferable alternative as a meaningful difference among the alternatives. DOE also considered the long-term stability of the WNYNSC site. The long-term erosion analysis performed to support the EIS suggests that the site can be managed in a way that prevents erosion of waste-containing areas for 10,000 years or longer.

Long-term impacts were evaluated for offsite water users from the release of contaminants (primarily radionuclides) into the environment and for intruders who were postulated to enter WNYNSC in the event that institutional controls failed. The greatest impacts to offsite water users would occur under the No Action Alternative, for which the peak annual individual dose is estimated to be less than 1 millirem per year if site maintenance activities continue and up to 34 millirem per year if site maintenance activities cease. Under the Sitewide Close-In-Place Alternative, the peak annual dose to offsite water users is estimated to be less than 1 millirem

per year if site maintenance activities continue and up to 4 millirem per year if site maintenance activities cease. For both of these alternatives, the time-integrated population dose to offsite water users over thousands of years could be many thousands of person-rem. These values are composite doses that result from small individual doses that would be received by hundreds of thousands of people over thousands of years. The average annual individual dose over this time frame is about a factor of 10 or more lower than the estimated peak annual doses, with no latent cancer fatalities expected.

Potential long-term impacts to intruders would occur if institutional controls failed and there were human intrusion into onsite areas where waste or contamination would be present. The magnitude of the long-term human health impacts is sensitive to the timing of human intrusion, the location of the intrusion, and the specific nature of actions taken by the intruder. The range of potential peak annual doses to intruders is highest for the No Action Alternative (less than 1 millirem, which would be indistinguishable from background radiation, to 400 rem, a potentially fatal dose), less for the Sitewide Close-In-Place Alternative (less than 1 millirem to 160 millirem, with no cancer fatalities expected), and negligible for individuals who might occupy WNYNSC under the Sitewide Removal Alternative because essentially all of the contamination would have been removed.

Environmental stewardship considerations include land disturbance activities at WNYNSC and other affected sites. In addition to the temporary disturbance of the natural environment at WNYNSC during removal of the waste and contamination, offsite locations would be permanently impacted. These locations would be those from which large quantities of fill materials would be removed, and others at which the wastes from WNYNSC would be disposed. At these offsite locations, land would be permanently altered and possibly removed from future beneficial uses in support of remediating and releasing land at WNYNSC. In addition, moving waste from WNYNSC to other locations for disposal would transfer the long-term risk and the need for long-term institutional control (stewardship) to the sites receiving materials for disposal.

On balance, the overall environmental impacts of the Sitewide Removal Alternative, which include the short-term impacts in and around WNYNSC and along representative transportation routes, and the environmental stewardship considerations at other locations are considered to be greater than the corresponding overall impacts of the Sitewide Close-In-Place Alternative. Short-term impacts from implementing Phase 1 of the Phased Decisionmaking Alternative, in which certain removal actions would occur, are identified in the *Decommissioning and/or Long-Term Stewardship EIS.* Phase 2 decommissioning actions have not yet been decided, but the impacts are expected to range between those identified for the Sitewide Removal and Sitewide Close-In-Place Alternatives. If the Phase 2 decision is removal of the remaining waste and contamination, the impacts from implementing the Phased Decisionmaking Alternative would be expected to be similar to those of the Sitewide Removal Alternative. If the Phase 2 decision is in-place closure of the remaining waste and contamination, the short-term impacts would be expected to be greater than the Sitewide Close-In-Place Alternative because the Phased Decisionmaking Alternative would include both the Phase 1 removal actions and the Phase 2 closure actions. The long-term impacts would be only slightly less than those for the Sitewide Close-In-Place Alternative because only the long-lived radionuclides in the Process Building and source area for the North Plateau Groundwater Plume would be removed under this alternative (during Phase 1).

Public Comments on the *Decommissioning and/or Long-Term Stewardship Final EIS*

DOE received seven comment letters on the Final EIS. These letters included one cosigned by New York's Senators and 15 Congressional Representatives; one each from the U.S. Environmental Protection Agency (U.S. EPA), Raymond C. Vaughan, The Coalition on West Valley Nuclear Wastes, and Citizens' Environmental Coalition; as well as two cosigned by multiple organizations including The Coalition on West Valley Nuclear Wastes; Sierra Club; Zoar Valley Nature Society; Great Lakes Sport Fishing Council; Catholic Care for Creation Committee of Buffalo; Center for Health, Environment and Justice; International Institute of Concern for Public Health; WNY Council on Occupational Safety & Health; Niagara Health-Science Report; Downstream Denizens; Citizens Campaign for the Environment; Coalition for a Nuclear Free Great Lakes; Don't Waste Michigan; Beyond Nuclear; Citizens Awareness Network; and Nuclear Information and Resource Service.

These letters raised a number of issues ranging from questioning the adequacy of the Final EIS, including its comment response document, to providing opinions on whether certain decisions can or should be made. Other comments related to activities that would be expected to occur after the ROD if the Phased Decisionmaking Alternative is selected including identifying the studies that would be conducted during Phase 1, public participation during decommissioning actions and for Phase 2 decisionmaking, and the need for future NEPA analysis.

In addition to addressing the major comments in this ROD, DOE will prepare individual responses to all commentors who submitted letters on the Final EIS. Where appropriate, these letters will refer commentors to the relevant sections of the Final EIS for the requested data.

Adequacy of the EIS

Several of the comment letters expressed the opinion that the Final EIS is unscientific, incomplete and unacceptable for all options that leave waste on site and that the EIS was never intended to be a realistic look at various cleanup options. These concerns identify what the commentors consider to be inadequate information, inadequate analysis, and inadequate response to public comments on the Revised Draft EIS. DOE has considered these comments, and finds the Final EIS to be fully compliant with the requirements of NEPA. DOE further believes that the document is adequate to support DOE decommissioning decisionmaking for WNYNSC. The Final EIS uses all reasonably available data to support its analyses comparing the potential environmental consequences of all of the alternatives. DOE acknowledges in the Final EIS that for the long-term performance assessment there is some incomplete or unavailable information, but the analysis has been conducted consistent with the requirements of NEPA as identified in 40 CFR 1502.22. In addition, wherever practical, DOE accommodated recommendations of the co-lead and cooperating agencies and the public.

Several comments expressed the opinion that responses to specific comments on the Revised Draft EIS provided in the Comment Response Document (Volume 3 of the Final EIS) are inadequate. DOE has reviewed the original comments and the responses in the Comment Response Document, and finds that it has adequately considered and responded to all comments received on the Revised Draft EIS.

One comment cited what were thought to be five new references dated December 2009, questioned how

information received at such a late date could have been incorporated into the Final EIS, and expressed dismay at not having had an opportunity to review the referenced documents. These references are final versions of Technical Reports prepared by the WNYNSC site contractor and used throughout the EIS process. The Final Technical Reports referenced in the Final EIS contain minor revisions to the information presented in the 2008 versions of these reports that were referenced in the 2008 Revised Draft EIS. There were no fundamental changes in the engineering approach for the alternatives. The Technical Reports are available along with all other Final EIS references in the reading rooms identified in the Notice of Availability (75 FR 4803).

Several comments are requests for additional information about the methods or details of specific analyses (e.g., erosion model capability, input parameters to erosion analysis, injury and fatality estimates for specific activities, time step for specific long-term performance assessment).

Support of Sitewide Removal Alternative

The New York Senators and Representatives expressed concern about delays in site cleanup and strong support for the full Sitewide Removal alternative. They stated that, regardless of the alternative selected, a formal NEPA process with meaningful public participation is essential in the continued decisionmaking process. As noted in the decision below, DOE acknowledges the importance of public participation in the NEPA process and will provide robust opportunities to involve the public in the Phase 2 environmental review and decisionmaking process.

Several comment letters stated that the Sitewide Removal Alternative is the only acceptable decommissioning alternative for WNYNSC, or is the only decision that could be scientifically supported by the EIS. These letters identify what the commentors consider to be a flawed long-term performance analysis and minimal cost differences between removal and in-place closure alternatives, and cite these issues and a potential higher level of public protection as the bases for their conclusions. DOE acknowledges that these commentors prefer the Sitewide Removal Alternative. DOE's decisionmaking is based on its consideration of all the potential environmental impact information presented in the EIS: short-term and long-term, at the site and along potential transportation routes, as well as environmental stewardship considerations. DOE also notes that Phase 1 of the Phased Decisionmaking Alternative involves substantial removal actions, and does not preclude the ability to select removal of the remaining waste and contamination as the Phase 2 decision.

Phase 1 Studies

Regarding commentors' concerns about activities that would be expected to occur after the ROD is issued, the Final EIS identifies possible types of studies that could be conducted during Phase 1 of the Phased Decisionmaking Alternative. These include studies that may address uncertainties associated with the long-term performance models, the viability and cost of exhuming buried waste and tanks, the availability of waste disposal sites, and technologies for in-place containment.

The U.S. EPA expressed its concern with shortening the maximum duration of Phase 1 of the Phased Decisionmaking Alternative from 30 years to 10 years because of a lack of disposal capacity for high-level radioactive waste, spent nuclear fuel, and Greater-Than-Class C waste. As a result, the U.S. EPA requested that Phase 1 studies be designed to assure that storage of these wastes is in compliance with EPA's Standards for the Storage and Disposal of High-Level Radioactive Waste at 40 CFR part 191. The 40 CFR part 191, subpart A, dose standard applies to the storage of the WVDP high-level waste form and transuranic waste or spent nuclear fuel that may require continued storage at the WVDP. Specifically, section 191.03 defines the annual dose equivalent to any member of the public from the storage to not exceed 25 mrem whole body and 75 mrem to any critical organ. DOE Order 5400.5, Radiation Protection of the Public and the Environment, chapter II.1c, imposes the dose standard from 40 CFR part 191 with no changes. Compliance with DOE Order 5400.5 would be required in applicable contracts at the WVDP. Therefore, full compliance with 40 CFR part 191, subpart A, would be met through full compliance with DOE Order 5400.5. The EPA also requested clarification relative to the impact of the Sitewide Removal Alternative on the available disposal capacity at the Energy Solutions disposal facility in Utah under the Commercial Disposal Option. DOE notes that, if Sitewide Removal were selected, the potential volume of low-level and low specific activity waste generated could require approximately 35% of the remaining available capacity, or 10% of the total licensable capacity of the Energy Solutions facility.

Public Involvement

The Final EIS explicitly states DOE's commitment to continue public involvement as site decommissioning progresses. As indicated earlier in this ROD, DOE has committed to having robust and meaningful opportunities for public participation during decommissioning. DOE is committed to working with NYSERDA to identify and initiate appropriate studies as soon as practicable and to continued public involvement as Phase 1 studies are defined and as results become available. DOE is further committed to meeting with the public on at least a quarterly basis to discuss the status of decommissioning actions and studies and will schedule additional meetings as necessary to assure timely communication with the public. One commentor suggested DOE conduct workshops as a potential mechanism for transmitting technical information. DOE will consider this request as it develops its public participation effort.

Future NEPA Analyses

DOE's commitment to the NEPA process is also described in the Final EIS. During Phase 1, DOE and NYSERDA will assess the results of site-specific studies and other emerging information such as applicable technology development. In consultation with NYSERDA and cooperating and involved agencies, DOE will determine whether new information or circumstances would warrant preparation of a Supplemental EIS. If it is unclear whether a Supplemental EIS is required, DOE will prepare a Supplement Analysis in accordance with 10 CFR 1021.314(c) and make this analysis available to the public prior to making a determination.

Decision

To continue to meet its obligations under the WVDP Act to complete WVDP, DOE has decided to implement the Phased Decisionmaking Alternative as identified in the Final EIS. In implementing this alternative, DOE will provide robust and meaningful opportunities for public participation prior to making its Phase 2 decision.

Basis for Decision

DOE has determined that the Phased Decisionmaking Alternative provides the best path forward for completing its obligations under the WVDP Act.

Phase 1 of the Phased Decisionmaking Alternative would remove major facilities (such as the Main Plant

Process Building and lagoons), thereby reducing or eliminating potential human health impacts associated with these facilities while introducing minimal potential for generation of new orphan waste.

Phase 1 would remove the source area for the North Plateau Groundwater Plume, thereby reducing a source of radionuclides that is a potential contributor to human health impacts.

Phase 1 would allow up to 10 years for collection and analysis of data and information on major facilities or areas (such as the Waste Tank Farm, NDA, and SDA), with the goal of reducing technical risks associated with implementation of the Sitewide Removal and Sitewide Close-In-Place Alternatives, because one of these alternatives, or a combination that could include continued active management of the SDA by NYSERDA, could be selected for Phase 2.

The anticipated result of Phase 1 information gathering and analysis is to provide additional information that may inform decisionmaking for both the removal and in-place closure options for remaining facilities. It is also anticipated that, during Phase 1, progress would be made in identifying and developing disposal facilities for any orphan wastes, thereby facilitating removal actions if they are selected as part of Phase 2 decisionmaking. Establishment of improved close-in-place designs or improved analytical methods for long-term performance assessment would facilitate close-in-place actions if they are selected as part of Phase 2 decisionmaking.

Mitigation Measures

DOE will use all practicable means to avoid or minimize environmental harm when implementing the actions described in this ROD. These measures include employing engineering design features to meet regulatory requirements, maintaining a rigorous health and safety program to protect workers from radiological and chemical contaminants, monitoring worker exposure and environmental releases, and continuing efforts to reduce the generation of wastes. More detailed examples of such practicable measures, including those applicable to implementation of the Phased Decisionmaking Alternative, are documented in the text and table of Chapter 6 (Potential Mitigation Measures) of the EIS. The measures applicable to Phase I are integral elements of the alternative and, therefore, a separate Mitigation Action Plan is not required to ensure that the measures are implemented effectively. The need for a Mitigation Action Plan for Phase 2 will be dependent on the nature of the Phase 2 decommissioning decision. DOE will implement Phase 1 of the Phased Decisionmaking Alternative in compliance with DOE orders as well as the comprehensive lists of standards and requirements to protect workers, the public, and the environment specified in Chapter 5 of the Final EIS, as appropriate.

Signed in Washington, DC, this 14th day of April 2010.

Inés R. Triay,

Assistant Secretary for Environmental Management.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13687–000; Project No. 13688–000]

City of Oberlin, OH; Free Flow Power Missouri 1, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 12, 2010.

On March 24, 2010, the City of Oberlin, Ohio (Oberlin) and Free Flow Power Missouri 1, LLC (Free Flow Power) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Pike Island Hydroelectric Project, to be located at the U.S. Army Corps of Engineers' Pike Island Locks and Dam (Lock and Dam) on the Ohio River in Ohio County, West Virginia, and Belmont County, Ohio. The Lock and Dam consists of a gated dam and two lock chambers.

Oberlin's proposed project would consist of: (1) A new 155-foot-wide, 71-foot-tall water intake structure; (2) a new 155-foot-wide, 189-foot-long powerhouse containing three turbine generating units with a total capacity of 49.5 megawatts (MW); (3) a new 350-foot-long, 160-foot-wide tailrace channel; (4) a new 8.5-mile-long, 138 kilovolt (kV) transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 256 gigawatt-hours (GWh).

Oberlin Contact: Phillip E. Meier, Assistant Vice President, Hydro Development, American Municipal Power, Inc., 1111 Schrock Road, Suite 100, Columbus, OH 43229, (614) 540–9130.

Free Flow Power's proposed project would consist of: (1) A new 225-foot-wide, 50-foot-long water intake structure equipped with trashracks, sluice gates, and intake gates; (2) a new 160-foot-wide, 140-foot-long powerhouse containing three turbine generating units with a total capacity of 45.0 MW; (3) a new 500-foot-long, 200-foot-wide tailrace channel; (4) a new 1.5-mile-long, 138 kV transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 225 GWh.

Free Flow Power Contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, (978) 283–2822.

FERC Contact: John Ramer, (202) 502–8969 or *john.ramer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about the projects can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13687–000 or P–13688–000) in the docket number field to access the document.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8997 Filed 4–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 13, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–3240–018; ER01–1633–015; ER96–780–028.
Applicants: Oleander Power Project, L.P.; Southern Company—Florida LLC; Southern Company Services, Inc.
Description: Report of Non-Material Change in Status of Southern Company Services, Inc.
Filed Date: 04/12/2010.
Accession Number: 20100412–5280.
Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: ER09–1196–001.
Applicants: Lost Creek Wind, LLC.
Description: Quarterly Report of Lost Creek Wind, LLC.
Filed Date: 04/13/2010.
Accession Number: 20100413–5061.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 4, 2010.

Docket Numbers: ER10–352–002.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool submits letter requesting Commission to accept the amendments to their Open Access Transmission Tariff.
Filed Date: 04/12/2010.
Accession Number: 20100413–0202.
Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: ER10–616–001.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits a compliance filing to correct a typographical error in Article 18 of the cost-based power sales agreement with Reedy Creek Improvement District.
Filed Date: 04/12/2010.
Accession Number: 20100413–0203.
Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: ER10–1038–000.
Applicants: LANXESS Energy LLC.
Description: Lanxess Energy, LLC submits Notice of Cancellation of Market-Based Rate Tariff, FERC Electric Tariff, Original Volume 1.
Filed Date: 04/12/2010.
Accession Number: 20100412–0205.
Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: ER10–1039–000.
Applicants: LANXESS Corporation.
Description: Lanxess Corporation submits Notice of Cancellation of Lanxess market-based rate tariff, FERC Electric Tariff, Original Volume 1.
Filed Date: 04/12/2010.
Accession Number: 20100412–0206.
Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: ER10–1040–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits amended Large Generator Interconnection Agreement with Blythe Energy, LLC etc.
Filed Date: 04/12/2010.
Accession Number: 20100412–0207.
Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: ER10–1041–000.
Applicants: Horsehead Corporation.
Description: Horsehead Corporation submits tariff filing per 35.12: Horsehead Corporation Baseline Tariff to be effective 4/13/2010.
Filed Date: 04/12/2010.
Accession Number: 20100412–5165.
Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: ER10–1042–000.
Applicants: Northern Indiana Public Service Company.
Description: Northern Indiana Public Service Company submits tariff sheets re Interconnection Agreement with Wabash Valley Power Association, Inc designed as FERC Electric Rate Schedule 14, effective 5/1/10.
Filed Date: 04/12/2010.
Accession Number: 20100413–0201.
Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR10–6–000.
Applicants: North American Electric Reliability Corporation.
Description: North American Electric Reliability Corporation Supplemental Information Regarding Texas Reliability Entity, Inc.
Filed Date: 04/12/2010.
Accession Number: 20100412–5124.
Comment Date: 5 p.m. Eastern Time on Monday, April 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–9040 Filed 4–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–60–000]

PJM Interconnection, L.L.C., Complainant, v. Midwest Independent Transmission, System Operator, Inc., Respondent; Notice of Complaint

April 13, 2010.

Take notice that on April 12, 2010, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2009), and sections 206, 306 and 309 of the Federal Power Act, 16

U.S.C. 824(e), 825(e) and 825(h), PJM Interconnection, L.L.C. (PJM or Complainant) filed a formal complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO or Respondent) alleging that the Midwest ISO violated their, Midwest ISO and PJM, Joint Operating Agreement (JOA), through its practice of initiating the JOA market-to-market process for "substitute" or "proxy" flowgates.

The Complainant states that a copy of the complaint has been served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 03, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8996 Filed 4–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–62–000 and CP07–63–000]

AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC; Notice of Final General Conformity Determination for Pennsylvania for the Proposed Sparrows Point LNG Terminal and Pipeline Project

April 13, 2010.

On March 1, 2010, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a revised draft Final General Conformity Determination (GCD) for Pennsylvania to assess the potential air quality impacts associated with the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline proposed by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC, in the above-referenced dockets. In accordance with the General Conformity Regulations under the Code of Federal Regulations chapter 40 section 51.856 the draft Final GCD was issued for a 30-day public comment period. No comments were received on the draft Final GCD for Pennsylvania; therefore, the Commission staff is issuing this notice to announce the draft Final GCD is now the Final GCD for Pennsylvania.

The GCD was prepared to satisfy the requirements of the Clean Air Act. The FERC staff concludes that the Project will achieve conformity in Pennsylvania. On December 29, 2009, a separate Final General Conformity Determination was issued for Maryland concluding that the Project will achieve conformity in Maryland as well.

Copies of the revised draft Final GCD were previously mailed to the U.S. Environmental Protection Agency, Region III, the Maryland Department of Natural Resources, the Maryland Department of Environment, the Pennsylvania Department of Environmental Protection, and the Virginia Department of Environmental Quality.

The GCD for Pennsylvania addresses the potential air quality impacts from the construction and operation of the following LNG terminal and natural gas pipeline facilities:

- A ship unloading facility, with two berths, capable of receiving LNG ships with capacities up to 217,000 m^3;
- Three 160,000 m^3 (net capacity) full-containment LNG storage tanks;
- A closed-loop shell and tube heat exchanger vaporization system;
- Various ancillary facilities including administrative offices, warehouse, main control room, security building, and a platform control room;
- Meter and regulation (M&R) station within the LNG Terminal site; and
- Approximately 88 miles of 30-inch-diameter natural gas pipeline (48 miles in Maryland and 40 miles in Pennsylvania), a pig launcher and receiver facility at the beginning and ending of the pipeline, 10 mainline valves, and three M&R stations, one at each of three interconnection sites at the end of the pipeline.

The Final GCD is the revised draft Final GCD which was placed in the public files of the FERC on March 1, 2010 and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the revised draft Final GCD are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208–FERC. The administrative public record for this proceeding to date is on the FERC Web site *http://www.ferc.gov.* Go to Documents & Filings and choose the eLibrary link. Under eLibrary, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (e.g., CP07–62). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at: *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY call (202) 502–8659. The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8998 Filed 4–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–15–000]

Bay Gas Storage Company, Ltd.; Notice of Petition for Rate Approval

April 13, 2010.

Take notice that on April 8, 2010, Bay Gas Storage Company, Ltd. (Bay Gas)

filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. In addition to proposing increases to its firm and interruptible transportation rates on its Mainline and Whistler Spur facilities, Bay Gas proposes firm and interruptible transportation rates on its newly constructed Transco Lateral.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time April 26, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8995 Filed 4–19–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9139–4]

Notice of Availability of Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Residually Designated Discharges in Milford, Bellingham and Franklin, MA; and Notice of Availability of Proposed Amendments to the Preliminary Residual Designation Issued by EPA on November 12, 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of draft NPDES general permit.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1 (EPA), is issuing this Notice of Availability of a draft NPDES general permit for storm water discharges in the Charles River watershed within Milford, Bellingham, and Franklin, Massachusetts, from sites that are proposed for final designation for NPDES permitting pursuant to EPA's residual designation authority, so called, provided by Section 402(p)(2)(E) and (6) of the Clean Water Act (CWA) as implemented through regulatory provisions at 40 CFR 122.26(a)(9)(i)(C) and (D).

Those sections provide that in states where there is no approved state program, the EPA Regional Administrator may designate a storm water discharge as requiring an NPDES permit where he determines that: "* * * (C) storm water controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads that address the pollutants of concern, or (D) the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." The storm water discharges subject to the draft permit are proposed for final designation for NPDES permitting because their control is necessary based on wasteload allocations in the Lower Charles River Phosphorus TMDL ("the TMDL") and because they are contributing to water quality standards violations.

On November 12, 2008, the Regional Administrator for EPA Region 1 made a preliminary determination that designated discharges, as defined in that preliminary designation determination and as described below, warranted NPDES permit coverage. That determination is documented in the EPA Region 1 Record of Decision (ROD) dated November 12, 2008, that can be found on EPA Region 1's Web site at: *http://www.epa.gov/region1/npdes/stormwater*.

At the time of the preliminary determination, EPA invited comment on its decision until the close of the comment period on the permit discussed in this notice.

EPA is today proposing amendments, discussed below, to that Preliminary Residual Designation. EPA is also publishing a draft general permit that will cover those designated discharges. This draft NPDES general permit establishes Notice of Intent (NOI) requirements, prohibitions, and storm water management practices for storm water discharges from designated discharge sites. The draft general permit, appendices, and fact sheet are available at: *http://www.epa.gov/region1/npdes/stormwater*.

DATES: The public comment period is from April 20, 2010 to June 30, 2010. Interested persons may submit comments on the draft general permit to EPA–Region 1, at the address given below, no later than midnight June 30, 2010. Those comments will be placed in the administrative record for the designation and permit. The general permit shall be effective on the date specified in the **Federal Register** publication of the Notice of Availability of the final general permit. The final general permit will expire five years from its effective date.

ADDRESSES: Submit comments identified by Docket ID No. EPA–R01–OW–2010–0292 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: Voorhees.mark@epa.gov*.
- *Mail:* Mark Voorhees, US EPA—Region 1, 5 Post Office Square—Suite 100, Mail Code—OEP 06–4, Boston, MA 02109–3912.

No facsimiles (faxes) will be accepted.

The draft permit is based on an administrative record available for public review at EPA–Region 1, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, Boston, Massachusetts 02109–3912. The following **SUPPLEMENTARY INFORMATION** section sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the draft permit. A reasonable fee may be charged for copying requests.

Public Meeting Information: EPA—Region 1 will hold a public meeting to provide information on the draft general permit and its requirements. The public

meeting will include a brief presentation on the draft general permit and a brief question and answer session. Written, but not oral, comments will be accepted at the public meeting and will be placed into the administrative record. The public meeting will be held at the following time and location:

Tuesday, June 22, 2010

Tri-County Regional Vocational School Auditorium, 147 Pond Street, Franklin, MA 02038.
Time: 6 p.m.–7 p.m.

Public Hearing Information: Following the public meeting, a public hearing will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official draft permit record. The public hearing will be held at the following time and location:

Tuesday, June 22, 2010

Tri-County Regional Vocational School Auditorium, 147 Pond Street, Franklin, MA 02038.
Time: 7:30 p.m.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Mark Voorhees, Office of Ecosystem Protection, Environmental Protection Agency, 5 Post Office Square—Suite 100, Boston, MA 02109–3912; telephone: 617–918–1537; e-mail: *Voorhees.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background of Proposed Permit

As stated previously, the Director of the Office of Ecosystem Protection, EPA–Region 1, is proposing to issue a National Pollutant Discharge Elimination System ("NPDES") general permit for residually designated discharges in the upper portions of the Charles River watershed. The permit is:

MARRD0000—General Permit for Designated Discharges in the Charles River Watershed within the Municipalities of Milford, Bellingham, and Franklin, Massachusetts.

For purposes of the fact sheet and draft permit, a designated discharge is defined as follows:

A Designated Discharge is two or more acres of impervious surfaces located: (1) In the Charles River watershed; (2) in part or in whole in the municipalities of Milford, Bellingham, or Franklin, Massachusetts; and (3) on a single lot or two or more contiguous lots aggregated as follows: when measuring the impervious surfaces to determine if they meet the two acre threshold, the following impervious surfaces shall not be included:

Any impervious surfaces associated solely with any of the following land uses:

a. Sporting and recreational camps;

b. Recreational vehicle parks and campsites;

c. Manufactured housing communities;

d. Detached single-family homes located on individual lots; and

e. Stand-alone multi-family houses with four or fewer units; and

f. Any property owned by a local, state or federal government unit where the property discharges wholly into an MS4 system operated by that local, state or federal government unit that has a valid NPDES permit.

For the purpose of defining "designated discharge," a stand-alone multi-family house with four or fewer units does not include any multi-family house that is part of a condominium, cooperative, apartment complex, townhouse, or other residential or mixed-use development with more than four dwelling units, or any multi-family houses that share private access roads, driveways or parking areas with contiguous lots containing additional dwelling units where the total number of units served by the shared access road, driveway or parking area is more than four.

When measuring impervious surfaces to determine if they meet the two acre threshold for a designated discharge, the impervious surfaces on contiguous lots shall be included provided that:

(1) The contiguous lots are owned by the same person; or

(2) The footprint of the same building, structure, low impact development techniques or structural storm water best management practice spans the contiguous lots owned by different persons.

EPA may require that impervious surfaces on contiguous lots that do not meet the requirements above be included for purposes of determining whether they meet the two acre threshold for a designated discharge if it finds that ownership of the contiguous lots asserted to be in separate ownership was arranged to circumvent the requirements of the permit, including evidence that on or after the publication date of this notice, two or more owners of contiguous lots have acted in concert to acquire or dispose of contiguous lots to avoid the requirements of the permit.

For purposes of the draft permit, the Charles River watershed includes all areas that discharge directly to the Charles River or its tributaries or indirectly to the Charles River or its tributaries through a municipal separate storm sewer system (MS4) or other private or public conveyance systems, including structural storm water best management practices.

On November 12, 2008, EPA issued for public comment a document entitled "Preliminary Residual Designation." The definition of "designated discharge" in the preliminary residual designation is being amended in the proposed final residual designation of today in three ways:

1. The preliminary residual designation stated that a designated discharge is a storm water discharge from two or more acres of impervious surfaces that are located on a single lot or two or more contiguous lots aggregated in accordance with 314 CMR 21.05. This element of the definition was based on draft Massachusetts regulations that were under development at the time the preliminary residual designation was made.

The proposed final designation issued today changes the aggregation rules to combine impervious surfaces where they are on contiguous lots owned by the same person; or where the footprint of the same building, structure, low impact development techniques or structural storm water best management practice spans the contiguous lots owned by different persons.

2. The preliminary residual designation stated that in aggregating impervious surfaces to determine if they constitute a designated discharge, impervious surfaces owned or operated by a local government unit, the Commonwealth of Massachusetts or the federal government should not be included. The definition of designated discharge in today's proposed final designation does not contain that exclusion. The proposed final designation does, however, exclude any property owned by a local, state or federal government unit where the property discharges wholly into an MS4 system operated by that local, state or federal government unit and that unit holds a valid NPDES permit.

3. The original designation stated that where a property containing a designated discharge is owned by one person but is operated by another person, the operator of the property is required to obtain the NPDES permit. The proposed final designation requires any owner of part or all of a designated discharge to file an NOI within 180 days of the effective date of the permit and to obtain authorization to discharge under the permit. (A different filing schedule applies to designated discharges that come into existence after

the effective date of the permit.) EPA expects that in some instances, the owner of a designated discharge may not control or have the right to control all of the activities whose control are necessary to assure compliance with the permit. In such an instance, the owner must identify in its NOI what activities it does not control or have the right to control, the specific provisions of the permit that require their control and the identity of each person who has the control or the right to control such activity. EPA may request that such a person submit an NOI or an application for an individual permit. EPA may subsequently authorize that person to discharge subject to its compliance with the applicable provisions of the relevant permit. Once authorized under this permit, that person would be a co-permittee.

The preliminary residual designation stated that the comment period on it would remain open until the close of the comment period on this draft permit. EPA is inviting additional comment on the proposed final designation it is issuing today. The agency will respond to all significant comments on the designation and the draft permit at the close of the comment period on this permit.

EPA's NPDES Permitting Authority

Section 301(a) of the CWA prohibits the discharge of pollutants into waters of the United States except in compliance with certain sections of the Act, including Section 402 of the Act. Section 402 of the Act provides that the Administrator of EPA may issue National Pollutant Discharge Elimination (NPDES) permits for discharges of any pollutant into waters of the United States according to such specific terms and conditions as the Administrator may require. EPA's regulations provide for the issuance of general permits to authorize one or more categories or subcategories of discharges, including storm water point source discharges within a geographic area, pursuant to 40 CFR 122.28(a)(1) and (2)(i). Section 402 of the CWA also authorizes EPA to issue NPDES permits allowing discharges that will meet certain specified requirements. The conditions in the draft permit are established pursuant to the CWA and 40 CFR Parts 122 and 124.

The draft permit establishes a series of storm water control requirements, mostly in the form of Best Management Practices (BMPs), to assure that storm water from a permittee's designated discharge do not cause or contribute to violations of Massachusetts water quality standards. Due to the variability of pollutant loads from different sources associated with storm water, EPA believes the use of BMPs is the most appropriate method to regulate discharges of storm water authorized by this permit. Pursuant to 40 CFR 122.44(k), the permit requires the use of BMPs, including the development and implementation of a comprehensive storm water management plan and a phosphorus reduction plan, as the mechanisms to achieve the required pollutant reductions.

Summary of Permit Conditions

Obtaining Authorization

In order to obtain authorization to discharge, owners of property on which designated discharges are located are required to submit a complete and accurate NOI to EPA—Region 1. The contents of the NOI and the specific provisions governing by when and by whom an NOI must be filed, including in circumstances where a designated discharge has more than one owner, are provided in Appendix A to the draft permit and should be consulted by any person having an ownership interest in a designated discharge.

The NOI must be submitted within 180 days of the effective date of the final permit. The effective date of the final permit will be specified in the **Federal Register** publication of the Notice of Availability of the final permit. An owner of a designated discharge must meet the eligibility requirements of the draft permit prior to submission of its NOI. The owner of a designated discharge will be authorized to discharge under the permit upon written notice from EPA.

EPA—Region 1 will provide an opportunity for the public to comment on each NOI that is submitted. Following public comment, EPA—Region 1 will authorize the discharge, request additional information, or require the discharge owner to apply for an alternative permit or an individual permit.

Technology Based Effluent Limitations

All NPDES permits are required to contain technology-based limitations. When EPA has not promulgated effluent limitation guidelines for an industry, or if an operator is discharging a pollutant not covered by an effluent guideline, permit limitations may be based on the best professional judgment ("BPJ") of the permit writer, pursuant to CWA Section 402 (a)(1) and 40 CFR 125.3(c). For this permit, the technology-based limits are based on BPJ because no effluent limitation guideline applies.

The BPJ limits in this permit are in the form of non-numeric control measures, also referred to as best management practices ("BMPs"). Non-numeric limits are employed under certain circumstances as provided in 40 CFR 122.44(k).

Section III of the permit requires the permittee to undertake activities to meet baseline performance standards. These include non-structural best management practices such as street sweeping; management of snow and deicing chemicals; management of solid waste and hazardous waste; management of landscaped areas and other good housekeeping measures.

Water Quality Based Effluent Limitations

Consistent with the wasteload allocation of the Lower Charles River Phosphorus TMDL, Part IV and Appendix D of the permit establish requirements to assure a phosphorus load reduction of 65% from each designated discharge. The reduction can be achieved by any one or combination of three methods: (1) Enhanced non-structural BMPs; (2) structural BMPs; and (3) participation in a Certified Municipal Phosphorus Program ("CMPP"). A CMPP is an entity that may be established by a government unit to organize the activities of the permittees covered by this permit, with the goal of achieving environmental and economic efficiencies. The fact sheet discusses criteria that EPA may consider in approving a CMPP under the permit. Appendix D of the permit and its attachments provide methods to calculate phosphorus loads from a designated discharge and the load reductions that can be achieved through the implementation of structural and non-structural BMPs.

Finally, the permit contains provisions requiring the proper operation and maintenance of BMPs, the submission of Annual Certifications of Compliance, and additional water quality based requirements, including those relating to attainment of Massachusetts water quality standards, new dischargers, and anti-degradation.

Dated: April 6, 2010.

H. Curtis Spalding,

Regional Administrator, Region 1.

[FR Doc. 2010–9133 Filed 4–19–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1145; FRL–9139–6]

Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for a draft assessment document titled, *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First External Review Draft* (75 FR 11877; March 12, 2010). The comment period was originally scheduled to end on April 29, 2010. The extended comment period will close on May 13, 2010. The Agency is extending the comment period by two weeks to provide the public with adequate time to conduct appropriate analysis and prepare meaningful comments.

Although EPA is extending the comment period for the first draft policy assessment by two weeks, EPA is committed to issuing a proposal addressing the nitrogen oxides (NO_X) and sulfur oxides (SO_X) secondary National Ambient Air Quality Standards (NAAQS) by July 12, 2011. The extension also will not alter EPA's internal schedule for providing a second draft policy assessment for review by the Clean Air Scientific Advisory Committee (CASAC) by the end of July 2010.

The public is encouraged to submit comments by the end of the original comment period to ensure that EPA has adequate time to evaluate and respond to those comments. However, all comments received by May 13, 2010, will be considered in developing the second draft policy assessment.

DATES: Comments should be submitted on or before May 13, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1145, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–1145.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–1145. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Hubbell, Office of Air Quality Planning and Standards (Mail code C504–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *hubbell.bryan@epa.gov;* telephone: 919–541–0621; fax: 919–541–0804.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

• Make sure to submit your comments by the comment period deadline identified.

Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes NAAQS for each listed pollutant, based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. Section 109 (d) also requires EPA to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

The EPA is currently conducting a joint review of the existing secondary (welfare-based) NAAQS for NO_X and SO_X. Because NO_X, SO_X, and their associated transformation products are linked from an atmospheric chemistry perspective as well as from an environmental effects perspective, and because of the National Research Council's 2004 recommendations to consider multiple pollutants in forming the scientific basis for the NAAQS, EPA has decided to jointly assess the science, risks, and policies relevant to protecting the public welfare associated with NO_X and SO_X. This is the first time since NAAQS were established in 1971 that a joint review of these two pollutants has been conducted.

As part of this review of the current secondary (welfare-based) NAAQS for NO_X and SO_X, EPA's Office of Air Quality Planning and Standards staff have prepared a first draft Policy Assessment. The objective of this assessment is to evaluate the policy implications of the key scientific information contained in the document *Integrated Science Assessment for Oxides of Nitrogen and Sulfur-Ecological Criteria* (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201485*), prepared by EPA's National Center for Environmental Assessment (NCEA) and the results from the analyses contained in the *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur* (*http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_rea.html*). The first draft Policy Assessment is available online at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html.* The first draft Policy Assessment was reviewed by the CASAC during a public meeting held on April 1 and 2, 2010. Information about this public meeting is available at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC.*

At the April 1 and 2, 2010, CASAC meeting, the Committee reviewed the first draft Policy Assessment, heard public comments, and prepared a draft letter to the Agency with their advice regarding the first draft Policy Assessment.

The original comment period for the first draft Policy Assessment was 60 days, from March 1, 2010, through April 29, 2010. In a letter dated April 8, 2010, the Utility Air Regulatory Group requested an extension of the comment period through May 13, 2010. As of April 12, 2010, EPA has received comments from one public commenter presented at the CASAC meeting on April 1, 2010. Based on our consideration of the request from the Utility Air Regulatory Group, EPA is granting the extension of the public comment period through May 13, 2010.

Dated: April 13, 2010.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–9069 Filed 4–19–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 10–520]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission ("Commission") debars Mr. LaDuron from the schools and libraries universal service support mechanism for a period of three years.

DATES: Debarment commences on the date Mr. Leonard Douglas LaDuron receives the debarment letter or April 20, 2010, whichever date come first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission debarred Mr. LaDuron from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 521 and 47 CFR 0.111(a)(14). Attached is the debarment letter, DA 10–520, which was mailed to Mr. LaDuron and released on March 30, 2010. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The debarment letter follows:

March 30, 2010

DA 10–520

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

AND E-MAIL (jmorris@bowse-law.com) AND FACSIMILE (913) 649–9399

Mr. Leonard Douglas LaDuron
c/o Jeffrey D. Morris
Berkowitz Oliver Williams Shaw & Eisenbrandt, LLP
4200 Somerset, Suite #150
Prairie Village, KS 66208–5213

Re: Notice of Debarment

File No. EB–10–IH–0108

Dear Mr. LaDuron:

Pursuant to section 54.8 of the rules of the Federal Communications Commission ("Commission"), by this Notice of Debarment you are debarred

from the schools and libraries universal service support mechanism ("E-Rate program") for a period of three years.[1]

On January 12, 2010, the Enforcement Bureau ("Bureau") sent you a Notice of Suspension and Initiation of Debarment Proceedings ("Notice of Suspension").[2] That Notice of Suspension was published in the **Federal Register** on January 22, 2010.[3] The Notice of Suspension suspended you from participating in activities associated with or relating to the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register.**[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pleaded guilty to and were sentenced to serve fifty-seven months in federal prison, to be followed by thirty-six months of supervised release for federal crimes in connection with your participation in a scheme to defraud the E-Rate program.[6] You held yourself out as an E-Rate consultant and salesperson and admitted that you and others devised a scheme to defraud school districts and the E-Rate program by steering contracts to various companies that directly benefited you, your conspirators, and your companies.[7] You were also ordered to pay $238,609 in restitution for your role in the scheme.[8] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.[9] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, *i.e.,* the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[10]

Debarment excludes you, for the debarment period, from activities associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[11]

Sincerely,
Hillary S. DeNigro
Chief
Investigations and Hearings
Division Enforcement Bureau

cc: Marietta Parker, United States Attorney's Office, Department of Justice (via e-mail) Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. 2010–9099 Filed 4–19–10; 8:45 am]

BILLING CODE 6712–01–P

[1] 47 CFR § 54.8(g) (2008). See also 47 CFR § 0.111(a)(14).

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Leonard Douglas LaDuron, Notice of Suspension and Initiation of Debarment Proceedings, 25 FCC Rcd 142 (Inv. & Hearings Div., Enf. Bur. 2010) (Attachment 1) ("Notice of Suspension").

[3] 75 Fed. Reg. 3732 (Jan. 22, 2010).

[4] *See* Notice of Suspension, 25 FCC Rcd at 143–45.

[5] *See* 47 CFR § 54.8 (e)(3),(4). That date occurred no later than Feb. 21, 2009. See supra note 3.

[6] *See* Notice of Suspension, 25 FCC Rcd at 143. *See also United States v. Leonard Douglas LaDuron,* Criminal Docket No. 2:08CR20055–001–KHV, Petition to Enter Plea (D. Kan. filed June 29, 2009 and entered June 30, 2009) *("Leonard LaDuron Plea"); United States v. Leonard Douglas LaDuron,* Criminal Docket No. 2:08CR20055–001–KHV, Judgment (D. Kan. filed and entered Dec. 23, 2009) *("Leonard LaDuron Judgment"); United States v. Leonard Douglas "Doug" LaDuron,* Criminal Docket No. 2:08CR20055–001–KHV, Indictment, 1–10, 11–14 (D. Kan. filed Apr. 24, 2009 and entered Apr. 25, 2009) (Counts 1 and 3) *("LaDuron Indictment").*

[7] *See* Notice of Suspension, 25 FCC Rcd at 143.

[8] *See* Notice of Suspension, 25 FCC Rcd at 143.

[9] 47 CFR § 54.8(c). See also § 54.8(a)(4),(b)–(e).

[10] See 47 CFR § 54.8(e)(5),(g). See also Notice of Suspension, 25 FCC Rcd at 145.

[11] See 47 CFR § 54.8(a)(1),(a)(5),(d),(g); Notice of Suspension, 24 FCC Rcd at 9101.

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: COCHISE BROADCASTING LLC, Station KZXQ, Facility ID 78273, BPH–20071025ACM, From RESERVE, NM, To CONCHO, AZ; DAILEY CORPORATION, Station WETZ–FM, Facility ID 18534, BPH–20100329AFI, From NEW MARTINSVILLE, WV, To VIENNA, WV; LOUT, JAMES M, Station NEW, Facility ID 170971, BMPH–20100301ABS, From PINELAND, TX, To BROWNDELL, TX; MIRIAM MEDIA, INC., Station KTTQ, Facility ID 170986, BMPH–20100330ABQ, From TURKEY, TX, To MCLEAN, TX; MUNBILLA BROADCASTING PROPERTIES, LTD., Station KYRT, Facility ID 165378, BPH–20100312AAQ, From MASON, TX, To HUNT, TX; RINCON BROADCASTING LS LLC, Station KIST–FM, Facility ID 31434, BPH–20100301ADV, From SANTA BARBARA, CA, To CARPINTERIA, CA; RINCON BROADCASTING LS LLC, Station KSBL, Facility ID 35592, BPH–20100301ADX, From CARPINTERIA, CA, To ISLA VISTA, CA; WEST JACKSONVILLE BAPTIST CHURCH, INC., Station WJBC–FM, Facility ID 47425, BMPED–20100310AAK, From FERNANDINA BEACH, FL, To ORANGE PARK, FL; WOMAN'S WORLD BROADCASTING, INC., Station WTSH–FM, Facility ID 7043, BPH–20091113ACH, From ARAGON, GA, To ROCKMART, GA; WORLD RADIO LINK, INCORPORATED, Station KMVV, Facility ID 164296, BPH–20100310ACL, From STERLING, AK, To MEADOW LAKES, AK.

DATES: Comments may be filed through June 21, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

Rodolfo F. Bonacci,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–9094 Filed 4–19–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 5, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Stacey Seibel, Hays, Kansas, as trustee of the Alan E. States 2010 Irrevocable Trust and the Carolyn Lea States 2010 Irrevocable Trust; to acquire control of Kansas Pacific Investments, LLC, and thereby indirectly acquire control of First National Bank, both in Hays, Kansas.

Board of Governors of the Federal Reserve System, April 15, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–9060 Filed 4–19–10; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[Wildlife Order 188; 9–I–CA–1674]

Public Buildings Service; Prospect Island, Sacramento Delta, Solano County, CA; Transfer of Property

Pursuant to section 2 of Public Law 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. The General Services Administration transferred 1253 acres of land identified as Prospect Island, Sacramento Delta, Solano County, California to the State of California, Department of Water Resources by deed dated December 16, 2009.

2. The above property was conveyed for wildlife conservation in accordance with the provisions of section 1 of Public Law 80–537 (16 U.S.C. 667b), as amended by Public Law 92–432.

FOR FURTHER INFORMATION CONTACT: Mr. Clark Van Epps, Director of the Real Property Disposal Division (9PZ), by phone on (415) 522–3420.

Dated: April 6, 2010.

Gordon S. Creed,

Acting Deputy Assistant Commissioner, Office of Real Property Utilization & Disposal.

[FR Doc. 2010–8990 Filed 4–19–10; 8:45 am]

BILLING CODE 6820–96–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Activities to Assess the Feasibility of Creating and Maintaining a National Registry of Child Abuse and Neglect Perpetrators—OMB No. 0990—NEW—Office of the Assistant Secretary for Planning and Evaluation.

Abstract: This study will assess the feasibility of implementing a national registry of child maltreatment perpetrators. The study has two components: A Prevalence Study, and a Key Informant Survey. The Prevalence Study will provide national estimates of the number of persons who have been found to be substantiated perpetrators of child maltreatment in more than one State. The data for this component of the study will come primarily from records from the National Child Abuse and Neglect Data System. These data will be supplemented with encoded names and dates of birth of all substantiated child maltreatment perpetrators over a five year period in order to facilitate inter-state record matching, and will be collected from the States.

The Key Informant Survey will collect information in several areas including: The structure and content of State repositories of data on child maltreatment perpetrators; current legal mandates and policies concerning the sharing of information on substantiated perpetrators; existing practices for sharing information on child maltreatment perpetrators with other states; and perceived benefits and costs to participation in a national registry that may affect States' future participation.

This is a one-time data collection effort. The affected public consists of the 50 States, the District of Columbia, and Puerto Rico. Respondents will include staff designated by state child welfare directors including IT staff, department attorneys, and state child welfare administrators. The length of the request is for two years.

ESTIMATED ANNUALIZED BURDEN TABLE

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Prevalence Study	State IT Staff	52	1	30	1,560

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Key Informant Survey: Legal/Policy Questionnaire.	Attorney from Child Welfare Agency	52	1	3	156
Key Informant Survey: Practices Questionnaire.	State Administrator	52	1	3	156
Key Informant Survey: Technical Information on Data Repositories Questionnaire.	State administrator	52	1	2	104
Total					1,976

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–8717 Filed 4–19–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0237]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES)—(0920–0237 exp. 12/31/2011)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States. This three-year clearance request includes the data collection in 2011 and 2012 and data planning and testing activities for 2013–2014 data collection.

The National Health and Nutrition Examination Survey (NHANES) was conducted periodically between 1970 and 1994, and continuously since 1999 by the National Center for Health Statistics, CDC. Almost 19,000 persons are screened, with about 5,000 participants interviewed and examined annually. Participation in NHANES is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as arthritis, asthma, osteoporosis, infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, physical activity, environmental exposures, and diet. NHANES data are used to produce national reference data on height, weight, and nutrient levels in the blood. Results from more recent NHANES can be compared to findings reported from previous surveys to monitor changes in the health of the U.S. population over time. NHANES continues to collect genetic material on a national probability sample for future genetic research aimed at understanding disease susceptibility in the U.S. population. NCHS collects personal identification information from survey respondents to facilitate linkage of survey data with health related administrative records. For the 2011–2012 survey, NHANES will add an Asian oversample to the survey design.

NHANES data users include the U.S. Congress; the World Health Organization; numerous Federal agencies such as the National Institutes of Health, the Environmental Protection Agency, and the United States Department of Agriculture; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and/or evaluate recommended dietary allowances, food fortification policies, environmental exposures, immunization guidelines and health education and disease prevention programs. This submission requests approval for three years.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
NHANES Respondents	18,813	1	2	37,626
Special study/pretest participants	4,000	1	3	12,000
Total				49,626

Dated: April 13, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–9082 Filed 4–19–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10CM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

HIV/AIDS Risk Reduction Interventions for African-American Heterosexual Men—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

African Americans continue to be disproportionately affected by HIV/AIDS. Although they account for approximately 13 percent of the U.S. population, surveillance data indicate that in 2007, African Americans accounted for the majority (51 percent) of HIV/AIDS diagnoses in 34 states (CDC, 2009). When compared to other racial and ethnic groups, rates of heterosexually transmitted HIV are substantially higher among African Americans.

Presently, there is insufficient knowledge regarding African American heterosexual men's sexual risk behaviors and the context in which they occur. Increasing the number of evidence-based prevention interventions is a necessary requisite to decreasing HIV/AIDS among this target population. Thorough examinations of sexual risk behaviors and the context in which they occur is essential for developing effective HIV/AIDS prevention interventions and for informing policies and programs that will more effectively protect African American men and their partners from infection.

This research is being conducted by three sites to pilot test three unique HIV risk reduction interventions for feasibility, acceptability, and to provide preliminary evidence of intervention efficacy in reducing HIV risk behaviors. Findings from this research will also contribute knowledge on how to design culturally appropriate interventions for this target population.

The intervention evaluations are a pre-post test design (*i.e.*, baseline assessment and 3-month follow-up assessment) with three convenience samples of African American heterosexual men, ages 18 to 45, living in New York and North Carolina.

Three sites will participate in this project. Each site will use a screener form to determine participant eligibility for inclusion in the study. Additionally, each site will use a locator form to collect contact information from participants so that staff can follow up to schedule future appointments. A baseline and three-month follow-up assessment will also be administered to participants enrolled at each site. The baseline and follow-up assessments will contain questions about the participants' socio-demographic background, sexual health, substance use, history of incarceration, HIV testing history, self-efficacy, perceptions of sex roles, HIV communication, access to healthcare, and intervention acceptability and feasibility. The pilot intervention evaluation will be conducted with 50 to 80 African American heterosexual men at each site. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Types of data collection	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Screener—Site A	200	1	10/60	33
Locator—Site A	80	1	5/60	7
Baseline Assessment—Site A	80	1	20/60	27
Follow-up Assessment—Site A	80	1	20/60	27

ESTIMATE OF ANNUALIZED BURDEN TABLE—Continued

Types of data collection	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Screener—Site B	214	1	10/60	36
Locator—Site B	80	1	5/60	7
Baseline Assessment—Site B	80	1	45/60	60
Follow-up Assessment—Site B	80	1	45/60	60
Screener—Site C	200	1	5/60	17
Locator—Site C	80	1	5/60	7
Baseline Assessment—Site C	80	1	20/60	27
Follow-up Assessment—Site C	80	1	20/60	27
Total				335

Dated: April 14, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–9087 Filed 4–19–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09CK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *OMB@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Asthma Information Reporting System (AIRS)—New—Air Pollution and Respiratory Health Branch (APRHB), National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1999, the CDC began developing its National Asthma Control Program, a population-based, public health approach to addressing the burden of asthma. The program supports the goals and objectives of "Healthy People 2010" for asthma and is based on the public health principles of surveillance, partnerships, and interventions. This data collection request will provide NCEH with routine information, through a semi-annual Management Information System, AIRS, about the activities and performance of the State and territorial grantees funded under the National Asthma Control Program.

The primary purpose of the National Asthma Control Program is to develop program capacity to address asthma from a public health perspective to bring about: (1) A focus on asthma-related activity within States; (2) an increased understanding of asthma-related data and its application to program planning and evaluation through the development and maintenance of an ongoing asthma surveillance system; (3) an increased recognition, within the public health structure of States, of the potential to use a public health approach to reduce the burden of asthma; (4) linkages of State health agencies to other agencies and organizations addressing asthma in the population; and (5) implementation of interventions to achieve positive health impacts, such as reducing the number of deaths, hospitalizations, emergency department visits, school or work days missed, and limitations on activity due to asthma.

The proposed AIRS management information system will be comprised of multiple components that enable the electronic reporting of three types of data/information from State asthma control programs: (1) Information that is currently collected as part of interim (semi-annual) and end-of-year progress reporting, (2) Aggregate level reports of surveillance data on long-term program outcomes, and (3) Specific data indicative of progress made on: Partnerships, surveillance, interventions, and evaluation.

Currently, data is collected on an interim (semi-annual) basis from State asthma control programs as part of regular reporting of cooperative agreement activities. Programs report information such as progress to date on accomplishing intended objectives, programmatic changes, changes to staffing or management, and budgetary information. Regular reporting of this information is a requirement of the co-operative agreement mechanism utilized to fund State asthma control programs. Information in this section will be consistent with previous reporting by States through Grants.gov. States will be required to submit interim (semi-annual) and year-end progress report information into AIRS, thus this type of programmatic information on activities and objectives will be collected twice per year (interim report and end-of-year report).

The National Asthma Control Program at CDC has access to and analyzes national-level asthma surveillance data (*http://www.cdc.gov/asthma/asthmadata.htm*). With the exception of data from the Behavioral Risk Factor Surveillance System (BRFSS), analyses cannot be conducted at the level of the State. Therefore, as part of AIRS, State asthma control programs will be asked to submit aggregate surveillance data to allow calculation of State asthma surveillance indicators across all funded States (where data is available) in a standardized manner. Data likely to be requested through this system include: Hospital discharges (with asthma as first listed diagnosis), and emergency department visits (with asthma as first listed diagnosis). States will be required to submit this information into AIRS once per year, in conjunction with the end of year reporting of activities and objectives described above.

National and State asthma surveillance data provide information useful to examining progress on long-term outcomes of State asthma programs. To identify appropriate indicators of program implementation and short-term outcomes, CDC convened and facilitated workgroups

comprised of State asthma control program representatives over the course of two years. In collaboration with these workgroups, the CDC generated specific questions (qualitative and quantitative in nature) intended to collect data on key features of State asthma control programs:

Partnerships, surveillance, interventions, and evaluation. States will be asked to provide answers to these questions once per year in conjunction with the end of year reporting of activities and objectives, described above. These data will be used to foster a continuous learning environment about what is working in State asthma programs and to identify potential areas for improvement. There are no costs to respondents, other than their time. The total estimated annual burden hours are 288.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Forms	Number of respondents	Number of response per respondent	Burden per response (in hours)
State Health Departments	Interim and end of year reports on activities and objectives.	36	2	4

Dated: April 14, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–9086 Filed 4–19–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Stem Cell Therapeutic Outcomes Database (OMB No. 0915–0310)—Extension

The Stem Cell Therapeutic and Research Act of 2005 provides for the collection and maintenance of human cord blood stem cells for the treatment of patients and research. The Health Resources and Services Administration's (HRSA) Healthcare Systems Bureau (HSB) has established the Stem Cell Therapeutic Outcomes Database. Operation of this database necessitates certain recordkeeping and reporting requirements in order to perform the functions related to hematopoietic stem cell transplantation under contract to HHS. The Act requires the Secretary to contract for the establishment and maintenance of information related to patients who have received stem cell therapeutic products and to do so using a standardized, electronic format. Data is collected from transplant centers in a manner similar to the data collection activities conducted by the Center for International Blood and Marrow Transplant Research (CIBMTR) and is used for ongoing analysis of transplant outcomes. HRSA uses the information in order to carry out its statutory responsibilities. Information is needed to monitor the clinical status of transplantation and to provide the Secretary with an annual report of transplant center-specific survival data.

The estimate of burden is as follows:

Reporting	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Baseline Patient/Day of Transplant Data	250	40	8,000	2.25	18,000
Product Receipt/Analysis/Preparation Data	250	40	8,000	1	8,000
100-Day Post-Transplant Data	250	40	8,000	2.25	18,000
6-Month Post-Transplant Data	250	28	5,538	2.25	12,460.5
12-Month Post-Transplant Data	250	22	4,308	2.25	9,693
Annual Post-Transplant Data (year two and beyond)	250	40	8,000	2.25	18,000
Death Information	250	25	4,923	0.5	2,461.5
Total	250		46,769		86,615

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 14, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–9066 Filed 4–19–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care Development Fund (CCDF)—Reporting Improper Payments—Instructions for States.

OMB No.: 0970–0323.

Description: The Improper Payments Information Act of 2002 requires Federal agencies to annually report error rate measures. Section 2 of the Improper Payments Information Act provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR part 98 requires preparation and submission of a report of errors occurring in the administration of Child Care Development Fund (CCDF) grant funds once every three years. The information collected will be used to prepare the annual Agency Financial Report (AFR) and will provide information necessary to offer technical assistance to grantees.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OMB #0970–0323 Record Review Worksheet	17	276.38	15.43	72,497.24
OMB #0970–0323 Data Entry Form	17	276.38	0.18	845.72
OMB #0970–0323 State Improper Authorizations for Payment Report	17	1	639	10,863

Estimated Total Annual Burden Hours: 84,205.96.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: April 15, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–9050 Filed 4–19–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0185]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tobacco Health Document Submission

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of an existing collection of information pertaining to the submission of tobacco health documents under the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act).

DATES: Submit written or electronic comments on the collection of information by June 21, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50 Rockville, MD 20850, 301–796–3794, Email: *Jonnalynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Tobacco Health Document Submission (OMB Control Number 0910–0654)—Extension

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act granted FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Among its many provisions, the Tobacco Control Act added section 904(a)(4) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 387d(a)(4)), requiring submission of documents related to certain effects of tobacco products.

Section 904(a)(4) of the act requires each tobacco product manufacturer or importer, or agent thereof, to submit all documents developed after June 22, 2009 "that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives." Information required under section 904(a)(4) of the act must be submitted to FDA beginning December 22, 2009.

FDA issued a draft guidance document entitled, "Tobacco Health Document Submission" on December 28, 2009 (74 FR 68629) to assist persons making certain document submissions to FDA under section 904(a)(4) of the act. While electronic submission of tobacco health documents is not required, FDA designed the eSubmitter application as an alternative for mailing documents. This electronic tool allows for importation of large quantities of structured data, attachments of files (e.g., in portable document format (PDFs) and certain media files), and automatic acknowledgement of FDA's receipt of submissions. FDA also is developing a paper form (FDA Form 3743) as an alternative submission tool. Both the eSubmitter application and the paper form can be accessed at *http://www.fda.gov/tobacco* once they are complete.

On September 1, 2009 (74 FR 45219), FDA published notice in the **Federal Register** announcing that a proposed collection of information had been submitted to OMB for emergency processing under the Paperwork Reduction Act of 1995. On September 15, 2009 (74 FR 47257), FDA published a notice correcting the length of the comment period, keeping it open until October 1, 2009. On October 13, 2009 (74 FR 52495), FDA published a notice reopening the comment period until October 26, 2009. On January 7, 2010, FDA received emergency approval for this information collection. Based on comments indicating that the burden estimate was too low, FDA has adjusted its original burden estimate from 1.0 hour per response to 200 hours per response. FDA also increased the annual frequency per response from 1 to 4 (quarterly). FDA is maintaining the original estimate of the number of respondents at 10. FDA is basing its estimates on the total number of tobacco firms it is aware of, its experience with document production, and comments received in response to the draft guidance document published on December 28, 2009.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Tobacco Health Document Submission	10	4	40	200	8,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 14, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8976 Filed 4–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0033]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Postmarket Surveillance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by May 20, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@eop.gov*. All comments should be identified with the OMB control number 0910–0449. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, email: *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Postmarket Surveillance—21 CFR Part 822 (OMB Control Number 0910–0449)—Extension

Section 522(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance (PS) of any device that meets the criteria set forth in the statute. The PS regulation establishes procedures that FDA uses to approve and disapprove PS plans. The regulation provides instructions to manufacturers so they know what information is required in a PS plan submission. FDA reviews PS plan submissions in accordance with part 822 (21 CFR part 822) in §§ 822.15 to 822.19 of the regulation, which describe the grounds for approving or disapproving a PS plan. In addition, the PS regulation provides instructions to manufacturers to submit interim and final reports in accordance with § 822.38. Respondents to this collection of information are those manufacturers who require postmarket surveillance of their products.

Explanation of Reporting Burden Estimate

The burden captured in table 1 of this document for each of these responses is based on the data available in FDA's internal tracking system for 2009. There was not an internal tracking system prior to 2009. Sections 822.26, 822.27, and 822.34 do not constitute information collection subject to review under the PRA because "it entails no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument." (5 CFR 1320.3(h)(1)).

Explanation of Recordkeeping Burden Estimate

FDA expects that at least some of the manufacturers will be able to satisfy the PS requirement using information or data they already have. For purposes of calculating burden, however, FDA has assumed that each PS order can only be satisfied by a 3-year clinically-based surveillance plan, using three investigators. These estimates are based on FDA's knowledge and experience with limited implementation of section 522 under the Safe Medical Devices Act. Therefore, FDA would expect that the recordkeeping requirements would apply to a maximum of 21 manufacturers (3 to 4 added each year) and 30 investigators (3 per surveillance plan). After 3 years, FDA would expect these numbers to remain level as the surveillance plans conducted under the earliest orders reach completion and new orders are issued.

In the **Federal Register** of February 5, 2010 (75 FR 6036), FDA published a 60–day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
822.9 and 822.10	21	1	21	120	2,520
822.21	5	1	5	40	200
822.28	5	1	5	8	40
822.29	1	1	1	40	40
822.30	1	1	1	40	40
822.38	40	1	40	40	1,600
Total					4,440

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Record	Hours per Records	Total Hours
822.31	21	1	21	20	420
822.32	63	1	63	5	315
Total					735

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 14, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8977 Filed 4–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Disease Among Men and Women in Agriculture (NCI); Correction Notice

The **Federal Register** notice published on March 3, 2010 (75 FR 9902) announcing the proposed collection and comment request for the project titled, "The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Disease Among Men and Women in Agriculture (NCI)" was submitted with errors. The burden table did not take into account the time related to complete the Phase III CATI as well as several telephone calls to schedule appointments and to follow up with instructions regarding the biospecimens collection. The corrected annual reporting burden is as follows:

TABLE A.12–1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondent	Instrument	Estimated annual number of respondents	Frequency of response	Average time per response minutes/hour	Annual burden hours
Private Applicators, Spouses, Commercial Applicators.	Phase III Telephone Interview & Buccal Cell Scripts.	150	1	5/60 (0.083)	12.50
Private Applicators, Spouses, Commercial Applicators.	Phase III CATI	150	1	35/60 (0.583)	87.50
Private Applicators, Spouses, Commercial Applicators.	Phase III Buccal Cell Reminder, Missing or Damaged Scripts.	150	1	5/60 (0.083)	12.50
Private Applicators	BEEA CATI Screener	960	1	20/60 (0.33)	320.00
Private Applicators	BEEA Home Visit CAPI, Blood, & Urine x 1.	310	1	20/60 (0.33)	5.17
Private Applicators	BEEA Schedule Home Visit Script.	10	3	5/60 (0.33)	2.50
Private Applicators	BEEA Home Visit CAPI, Blood, & Urine x 3.	10	3	≤ 20/60 (0.33)	10.00
Total		1740			450.17

Dated: April 14, 2010.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–9098 Filed 4–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0600]

Guidance for Industry on Tobacco Health Document Submission; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Tobacco Health Document Submission." The guidance document is intended to assist persons making certain document submissions to FDA under the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Tobacco Health Document Submission" to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Beth Buckler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 1–877–287–1373, *Beth.Buckler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 28, 2009 (74 FR 68629), FDA announced the availability of a draft guidance entitled "Tobacco Health Document Submission." The agency considered received comments as it finalized this guidance. The guidance document is intended to assist persons making certain document submissions to FDA under the Tobacco Control Act (Public Law 111–31).

The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 904(a)(4) of the act, as amended by the Tobacco Control Act, requires each tobacco product manufacturer or importer, or agent thereof, to submit all documents developed after June 22, 2009 "that relate to health, toxicological,

behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives." Information required under section 904(a)(4) of the act must be submitted to FDA beginning December 22, 2009. FDA recognizes the challenges associated with the collection, review, organization, and production of documents. We also recognize that additional time may be necessary for the production of documents in a digital format, which FDA strongly encourages in order to improve the management and accessibility of submitted documents. Therefore, FDA does not intend to enforce the December 22, 2009, deadline provided you submit by April 30, 2010, all documents described in section 904(a)(4) of the act developed between June 22, 2009 and December 31, 2009.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on "Tobacco Health Document Submission." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection(s) of information in this guidance was approved under OMB control number 0910–0654.

V. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: April 15, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–9134 Filed 4–16–10; 11:15 am]

BILLING CODE 4160–01–S

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: Sensory.
Date: May 4–5, 2010.
Time: 7 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: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–BST Consolidated: Member Conflict.
Date: May 6, 2010.
Time: 11 a.m. to 1 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: Ping Fan, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Bioengineering Sciences and Technologies.
Date: May 7, 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: Ping Fan, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Clinical and Health Services Research.
Date: May 18, 2010.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Sand Key Resort, 1160 Gulf Boulevard, Clearwater Beach, FL 33767.
Contact Person: Jacinta Bronte-Tinkew, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *brontetinkewjm@csr.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.
Date: May 24–25, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 1960–A Chain Bridge Road, Mclean, VA 22102.
Contact Person: Martha Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Learning and Memory Study Section.
Date: May 26, 2010.
Time: 8:30 .a.m to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.
Date: May 27–28, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 13, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–9095 Filed 4–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Risk Communication Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Risk Communication Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 6, 2010, from 8 a.m. to 5 p.m. and May 7, 2010, from 8 a.m. to 2 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Conference Center (rm. 1503), Silver Spring, MD 20993. Please note that all visitors must park in the visitors' parking lot near Building 22 (for a campus map, see *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/default.htm*). The Campus is also served by several bus lines connecting to metro rail (see *http://www.wmata.com/*).

Contact Person: Lee L. Zwanziger, Office of the Commissioner, Office of Policy, Planning and Preparedness, Office of Planning, Food and Drug Administration, 5600 Fishers Lane, rm. 14–90, Rockville, MD 20857, 301–827–2895, FAX: 301–827–4050, e-mail: *RCAC@fda.hhs.gov* , or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732112560. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 6 and 7, 2010, the Committee will review the state of current research in a range of fields relevant to improving risk communication at FDA, and discuss applications or gaps for strategic planning of risk communication at FDA. For more specific agenda information, please visit the following Web site and scroll down to the appropriate advisory committee link (*http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*), or call FDA Advisory Committee Information Line as listed above in the *Contact Person* section of the notice. FDA intends to make agenda information available at both these locations no later than 15 days before the meeting.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Visitors to the White Oak Campus must have a valid driver's license or other picture ID, and must enter through Building 1. In order to help speed entrance through security, we request that attendees send an email giving their full names to *RCAC@fda.hhs.gov* with the word "registration" in the subject line, or telephone Lee Zwanziger (see *Contact Person*), by April 27, 2010.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 3, 2010. Oral presentations from the public will be scheduled between approximately 3:15 p.m. and 4:15 p.m. on May 6, 2010, and between 1 p.m. and 1:30 p.m. on May 7, 2010. Those desiring to make formal oral presentations should notify Lee Zwanziger and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 27, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 28, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lee Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 14, 2010.

Jill H. Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–9056 Filed 4–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Re-Designation of the Service Delivery Area for the Cowlitz Indian Tribe

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) proposes to expand the geographic boundaries of the Service Delivery Area

(SDA) for the Cowlitz Indian Tribe. The Cowlitz SDA currently is comprised of Clark, Cowlitz, King, Lewis, Pierce, Skamania, and Thurston in the State of Washington. These counties were designated as the Tribe's SDA in 67 FR 46329. It is proposed that Columbia County, Oregon, and Wahkiakum and Kittitas Counties, Washington be added to the existing SDA.

DATES: This notice is effective 30 days after date of publication in the **Federal Register.**

ADDRESSES: Comments may be mailed to Betty Gould, Regulations Officer, Indian Health Service, Suite 450, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Comments will be made available for public inspection at this address from 8:30 a.m. to 5 p.m. Monday–Friday beginning approximately 2 weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Carl Harper, Director, Office of Resource Access and Partnerships, Indian Health Service, Suite 360, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Telephone 301/443–2694 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The IHS currently provides services under regulations in effect on September 15, 1987 and IHS republished at 42 CFR part 136, subparts A–C. Subpart C defines a Contract Health Service Delivery Area (CHSDA) as the geographic area within which CHS will be made available by the IHS to members of an identified Indian community who reside in the area. Residence with a CHSDA or SDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to contract health services but only potential eligibility for services. Services needed but not available at a IHS/Tribal facility are provided under the CHS program depending on the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

As applicable to the Tribes, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22(a)(6) (2007). The regulations also provide that after consultation with the Tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, re-designate areas within the United States for inclusion in or exclusion from a CHDSA. The regulations require that certain criteria must be considered before any re-designation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribes;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any re-designation of a CHSDA must be made in accordance with the Administrative Procedures Act (5 U.S.C. 553). In compliance with this requirement, we are publishing this proposal and requesting public comment.

The purpose of this FR notice is to notify the public of the request of the Cowlitz Indian Tribe to expand their SDA as presented in their 08–3 Tribal resolution dated January 5, 2008, and 08–56 Tribal resolution, dated December 06, 2008. The Tribe's request will expand their current SDA which incorporates Cowlitz, Clark, Skamania, King, Pierce, Thurston and Lewis Counties in the State of Washington, to include Columbia County in the State of Oregon, and Kittitas and Wahkiakum Counties in the State of Washington.

Under 42 CFR 136.23 those otherwise eligible Indians who do not reside on a reservation but reside within a CHSDA must be either members of the Tribe or maintain close economic and social ties with the Tribe. In this case, the Tribe estimates the current eligible population will be increased by 35 individuals' enrolled Cowlitz members who are actively involved with the Tribe, but not eligible for health services.

In applying the aforementioned CHSDA re-designation criteria required by operative regulations (43 FR 35654), the following findings are made:

1. Columbia County, Oregon is contiguous with Clark County in the state of Washington. Kittitas County is contiguous to King County and Wahkiakum County is contiguous to Lewis in the State of Washington.

2. These three counties are not part of any other Tribes CHSDA.

3. It is important for the Cowlitz Indian Tribe to be able to deliver health care services to enrolled members residing in these three counties. The Tribe believes eligible Tribal members living in the counties proposed for expansion should also be eligible for CHS.

4. Most of the 35 Tribal members use the Cowlitz Clinic in Longview, Washington for their health care needs. It is estimated that members have a 40 minute drive to receive their health care. These Tribal members do not currently receive care under the CHS program.

5. The financial resources required to meet the immediate needs of the Tribal members residing in the three counties will not be substantial as the Tribe will use existing Federal allocations for contract health funds.

Since CHS is a critical component of the Tribes' overall health care system for its members, the Tribe feels that the members residing in the three counties should be included within the SDA for the Tribe.

Accordingly, after considering the Tribes' request in light of the criteria specified in the regulations, the IHS is proposing to re-designate the SDA for the Tribe to consist of Columbia County in the State of Oregon and Kittitas and Wahkiakum Counties in the State of Washington.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS

Tribe/reservation	County/state
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona.	Pinal, AZ.
Alabama-Coushatta Tribes of Texas	Polk, TX.[1]
Alaska	Entire State.[2]
Arapaho Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Aroostook Band of Micmac Indians of Maine	Aroostook, ME.[3]

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.	Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT.
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.	Ashland, WI, Iron, WI.
Bay Mills Indian Community, Michigan	Chippewa, MI.
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Glacier, MT, Pondera, MT.
Minnesota Chippewa Tribe, Minnesota Bois Forte Band (Nett Lake)	Itasca, MN, Koochiching, MN, St. Louis, MN.
Brigham City Intermountain School Health Center, Utah	[4]
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	Harney, OR.
California	Entire State, except for the counties listed in the footnote.[5]
Catawba Indian Nation of South Carolina	All Counties in SC,[6] Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC.
Cayuga Nation of New York	Allegany, NY,[7] Cattaraugus, NY, Chautaugua, NY, Erie, NY, Warren, PA.
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.	Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD.
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana	Chouteau, MT, Hill, MT, Liberty, MT.
Chitimacha Tribe of Louisiana	St. Mary Parish, LA.
Cocopah Tribe of Arizona	Yuma, AZ, Imperial, CA.
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho	Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA.
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.	La Paz, AZ, Riverside, CA, San Bernardino, CA, Yuma, AZ.
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.	Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT.
Confederated Tribes of the Chehalis Reservation, Washington	Grays Harbor, WA, Lewis, WA, Thurston, WA.
Confederated Tribes of the Colville Reservation, Washington	Chelan, WA,[8] Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA.
Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians of Oregon.	Coos, OR,[9] Curry, OR, Douglas, OR, Lane, OR, Lincoln, OR.
Confederated Tribes of the Goshute Reservation, Nevada and Utah	Nevada, Juab, UT, Toole, UT.
Confederated Tribes of Grand Ronde Community of Oregon	Polk, OR,[10] Washington, OR, Marion, OR, Yamhill, OR, Tillamook, OR, Multnomah, OR.
Confederated Tribes of the Siletz Reservation, Oregon	Benton, OR,[11] Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yam Hill, OR.
Confederated Tribes of the Umatilla Reservation, Oregon	Umatilla, OR, Union, OR.
Confederated Tribes of the Warm Springs Reservation of Oregon	Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR.
Confederated Tribes & Bands of the Yakama Nation, Washington	Klickitat, WA, Lewis, WA, Skamania, WA,[12] Yakima, WA.
Coquille Tribe of Oregon	Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR.
Coushatta Tribe of Louisiana	Allen Parish, LA, Elton, LA.[13]
Cow Creek Band of Umpqua Indians of Oregon	Coos, OR,[14] Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR.
Cowlitz Indian Tribe, Washington	Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Pierce, WA, Skamania, WA, Thurston, WA, Columbia, OR, Kitititas, WA, Wahkiakum, WA.[15]
Crow Tribe of Montana	Big Horn, MT, Carbon, MT, Treasure, MT,[16] Yellowstone, MT, Big Horn, WY, Sheridan, WY.
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota	Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD.
Eastern Band of Cherokee Indians of North Carolina	Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC.
Flandreau Santee Sioux Tribe of South Dakota	Moody, SD.
Fond du Lac Band of Chippewa Indians of Minnesota	Carlton, MN, St. Louis, MN.
Forest County Potawatomi Community, Wisconsin	Forest, WI, Marinette, WI, Oconto, WI.
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.	Blaine, MT, Phillips, MT.
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.	Nevada, Malheur, OR.
Fort McDowell Yavapai Nation, Arizona	Maricopa, AZ.
Fort Mojave Indian Tribe of Arizona, California and Nevada	Nevada, Mohave, AZ, San Bernardino, CA.
Gila River Indian Community of the Gila River Indian Reservation, Arizona.	Maricopa, AZ, Pinal, AZ.
Grand Portage Band of Chippewa Indians of Minnesota	Cook, MN.
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan	Antrim, MI,[17] Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI.
Hannahville Indian Community, Michigan	Delta, MI, Menominee, MI.
Haskell Indian Health Center	Douglas, KS.[18]
Havasupai Tribe of the Havasupai Reservation, Arizona	Coconino, AZ.
Ho-Chunk Nation of Wisconsin	Adams, WI,[19] Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI.
Hoh Indian Tribe of the Hoh Indian Reservation, Washington	Jefferson, WA.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Hopi Tribe of Arizona	Apache, AZ, Coconino, AZ, Navajo, AZ.
Houlton Band of Maliseet Indians of Maine	Aroostook, ME.[20]
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona	Coconino, AZ, Mohave, AZ, Yavapai, AZ.
Huron Potawatomi, Inc., Michigan	Allegan, MI,[21] Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Iowa Tribe of Kansas and Nebraska	Brown, KS, Doniphan, KS, Richardson, NE.
Jamestown S'Klallam Tribe of Washington	Clallam, WA, Jefferson, WA.
Jena Band of Choctaw Indians, Louisiana	Grand Parish, LA,[22] LaSalle Parish, LA, Rapides Parish, LA.
Jicarilla Apache Nation, New Mexico	Archuleta, CO, Rio Arriba, NM, Sandoval, NM.
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.	Coconino, AZ, Mohave, AZ, Kane, UT.
Kalispel Indian Community of the Kalispel Indian Reservation, Washington.	Pend Oreille, WA, Spokane, WA.
Keweenaw Bay Indian Community, Michigan	Baraga, MI, Houghton, MI, Ontonagon, MI.
Kickapoo Tribe of Indians of the Kickapoo Reservation of Kansas	Brown, KS, Jackson, KS.
Kickapoo Traditional Tribe of Texas	Maverick, TX.[23]
Klamath Tribes of Oregon	Klamath, OR.[24]
Kootenai Tribe of Idaho	Boundary, ID.
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.	Sawyer, WI.
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.	Iron, WI, Oneida, WI, Vilas, WI.
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan	Gogebic, MI.
Leech Lake Band of Chippewa Indians of Minnesota	Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN.
Little River Band of Ottawa Indians, Michigan	Kent, MI,[25] Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI.
Little Traverse Bay Bands of Odawa Indians, Michigan	Alcona, MI,[26] Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI, Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI.
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota	Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD.
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington.	Clallam, WA.
Lower Sioux Indian Community in the State of Minnesota	Redwood, MN, Renville, MN.
Lummi Tribe of the Lummi Reservation, Washington	Whatcom, WA.
Makah Indian Tribe of the Makah Reservation, Washington	Clallam, WA.
Mashantucket Pequot Tribe of Connecticut	New London, CT.[27]
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan	Allegan, MI,[28] Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Menominee Indian Tribe of Wisconsin	Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI.
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico	Chaves, NM, Lincoln, NM, Otero, NM.
Miccosukee Tribe of Indians of Florida	Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL.
Mille Lacs Band of Chippewa Indians of Minnesota	Aitkin, MN, Kanebec, MN, Mille Lacs, MN, Pine, MN.
Mississippi Band of Choctaw Indians, Mississippi	Attala, MS, Jasper, MS,[29] Jones, MS, Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS,[30] Scott, MS,[31] Winston, MS.
Mohegan Indian Tribe of Connecticut	Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT.
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington	King, WA, Pierce, WA.
Narragansett Indian Tribe of Rhode Island	Washington, RI.[32]
Navajo Nation, Arizona, New Mexico and Utah	Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM.
Nevada	Entire State.[33]
Nez Perce Tribe of Idaho	Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID.
Nisqually Indian Tribe of the Nisqually Reservation, Washington	Pierce, WA, Thurston, WA.
Nooksack Indian Tribe of Washington	Whatcom, WA.
Northern Cheyenne Tribe Northern Cheyenne Indian Reservation, Montana.	Big Horn, MT, Carter, MT,[34] Rosebud, MT.
Northwestern Band of Shoshoni Nation of Utah (Washakie)	Box Elder, UT.[35]
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota	Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD,[36] Mellete, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD.
Oklahoma	Entire State.[37]
Omaha Tribe of Nebraska	Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE.
Oneida Nation of New York	Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY.
Oneida Tribe of Indians of Wisconsin	Brown, WI, Outagamie, WI.
Onondaga Nation of New York	Onondaga, NY.
Paiute Indian Tribe of Utah	Iron, UT,[38] Millard, UT, Sevier, UT, Washington, UT.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Pascua Yaqui Tribe of Arizona	Pima, AZ.[39]
Passamaquoddy Tribe of Maine	Aroostook, ME,[40] Washington, ME.
Passamaquoddy Tribe of Pleasant Point, Maine	Washington, ME, south of State Route 9.[41]
Penobscot Tribe of Maine	Aroostook, ME,[42] Penobscot, ME.
Poarch Band of Creek Indians of Alabama	Baldwin, AL,[43] Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL.
Pokagon Band of Potawatomi Indians, Michigan and Indiana	Allegan, MI, Berrien, MI, Cass, MI, Elkhart, IN,[44] Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI.
Ponca Tribe of Nebraska	Boyd, NE,[45] Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawattomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA.
Port Gamble Indian Community of the Port Gamble Reservation, Washington.	Kitsap, WA.
Prairie Band of Potawatomi Nation, Kansas	Jackson, KS.
Prairie Island Indian Community in the State of Minnesota	Goodhue, MN.
Pueblo of Acoma, New Mexico	Cibola, NM.
Pueblo of Cochiti, New Mexico	Sandoval, NM, Sante Fe, NM.
Pueblo of Jemez, New Mexico	Sandoval, NM.
Pueblo of Isleta, New Mexico	Bernalillo, NM, Torrance, NM, Valencia, NM.
Pueblo of Laguna, New Mexico	Bemalillo, NM, Cibola, NM, Sandoval, NM, Valencia, NM.
Pueblo of Nambe, New Mexico	Santa Fe, NM.
Pueblo of Picuris, New Mexico	Taos, NM.
Pueblo of Pojoaque, New Mexico	Rio Arriba, NM, Santa Fe, NM.
Pueblo of San Felipe, New Mexico	Sandoval, NM.
Pueblo of San Ildefonso, New Mexico	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of San Juan, New Mexico	Rio Arriba, NM.
Pueblo of Sandia, New Mexico	Bernalillo, NM, Sandoval, NM.
Pueblo of Santa Ana, New Mexico	Sandoval, NM.
Pueblo of Santa Clara, New Mexico	Los Alamos, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Santo Domingo, New Mexico	Sandoval, NM, Santa Fe, NM.
Pueblo of Taos, New Mexico	Colfax, NM, Taos, NM.
Pueblo of Tesuque, New Mexico	Santa Fe, NM.
Pueblo of Zia, New Mexico	Sandoval, NM.
Puyallup Tribe of the Puyallup Reservation, Washington	King, WA, Pierce, WA, Thurston, WA.
Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona.	Yuma, AZ, Imperial, CA.
Quileute Tribe of the Quileute Reservation, Washington	Clallam, WA, Jefferson, WA.
Quinault Tribe of the Quinault Reservation, Washington	Grays Harbor, WA, Jefferson, WA.
Rapid City, South Dakota	Pennington, SD.[46]
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	Bayfield, WI.
Red Lake Band of Chippewa Indians, Minnesota	Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN.
Rosebud Sioux Tribe of the Rosebud Indian Reservation. South Dakota	Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD.
Sac & Fox Tribe of the Mississippi in Iowa	Tama, IA.
Sac & Fox Nation of Missouri in Kansas & Nebraska	Brown, KS, Richardson, NE.
Saginaw Chippewa Indian Tribe of Michigan	Arenac, MI,[47] Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI.
St. Croix Chippewa Indians of Wisconsin	Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI.
Saint Regis Mohawk Tribe, New York	Franklin, NY, St. Lawrence, NY.
Salt River Pima-Maricopa Indian Community of Salt River Reservation, Arizona.	Maricopa, AZ.
Samish Indian Tribe, Washington	Clallam, WA,[48] Island, WA, Jefferson, WA, King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA.
San Carlos Apache Tribe of the San Carlos Reservation, Arizona	Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ.
San Juan Southern Paiute Tribe of Arizona	Coconino, AZ, San Juan, UT.
Santee Sioux Nation, Nebraska	Bon Homme, SD, Knox, NE.
Sauk-Suiattle Indian Tribe of Washington	Snohomish, WA, Skagit, WA.
Sault Ste. Marie Tribe of Chippewa Indians of Michigan	Alger, MI,[49] Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI.
Seminole Tribe of Florida	Broward, Fl, Collier, Fl, Miami-Dade, FL, Glades, FL, Hendry, FL.
Seneca Nation of New York	Allegany, NY, Cattaraugus, NY, Chautaugua, NY, Erie, NY, Warren, PA.
Shakopee Mdewakanton Sioux Community of Minnesota	Scott, MN.
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington.	Pacific, WA.
Shoshone Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho	Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID,[50] Power, ID.
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada	Nevada, Owyhee, ID.
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.	Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Skokomish Indian Tribe of Skokomish Reservation, Washington	Mason, WA.
Skull Valley Band of Goshute Indians of Utah	Tooele, UT.
Snoqualmie Tribe, Washington	King, WA,[51] Snohomish, WA, Pierce, WA, Island, WA, Mason, WA.
Sokaogon Chippewa Community, Wisconsin	Forest, WI.
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado	Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM.
Spirit Lake Tribe, North Dakota	Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND.
Spokane Tribe of the Spokane Reservation, Washington	Ferry, WA, Lincoln, WA, Stevens, WA.
Squaxin Island Tribe of the Squaxin Island Reservation, Washington	Mason, WA.
Standing Rock Sioux Tribe of North and South Dakota	Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD.
Stockbridge Munsee Community, Wisconsin	Menominee, WI, Shawano, WI.
Stillaguamish Tribe of Washington	Snohomish, WA.
Suquamish Indian Tribe of the Port Madison Reservation, Washington	Kitsap, WA.
Swinomish Indians of the Swinomish Reservation, Washington	Skagit, WA.
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota	Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND.
Tohono O'odham Nation of Arizona	Maricopa, AZ, Pima, AZ, Pinal, AZ.
Tonawanda Band of Seneca Indians of New York	Genesee, NY, Erie, NY, Niagara, NY.
Tonto Apache Tribe of Arizona	Gila, AZ.
Trenton Service Unit, North Dakota and Montana	Divide, ND,[52] McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT.
Tulalip Tribes of the Tulalip Reservation, Washington	Snohomish, WA.
Tunica-Biloxi Indian Tribe of Louisiana	Avoyelles, LA, Rapides, LA.[53]
Turtle Mountain Band of Chippewa Indians of North Dakota	Rolette, ND.
Tuscarora Nation of New York	Niagara, NY.
Upper Sioux Community, Minnesota	Chippewa, MN, Yellow Medicine, MN.
Upper Skagit Indian Tribe of Washington	Skagit, WA.
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT.
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah.	Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT.
Wampangoag Tribe of Gay Head (Aquinnah) of Massachusetts	Dukes, MA.[54]
Washoe Tribe of Nevada & California	Entire State of NV. Entire State of CA, except for the counties listed in footnote.
White Earth Band of Chippewa Indians of Minnesota	Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN.
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ.
Winnebago Tribe of Nebraska	Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA.
Yankton Sioux Tribe of South Dakota	Bon Homme, SD, Boyde, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD, Knox, NE.
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.	Yavapai, AZ.
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona	Yavapai, AZ.
Ysleta Del Sur Pueblo of Texas	El Paso, TX.[55]
Zuni Tribe of the Zuni Reservation, New Mexico	Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM.

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).

[3] Aroostook Band of Micmac was recognized by Congress on November 26, 1991 through the Aroostook Band of Micmac Settlement Act. Aroostook County was defined as the SDA.

[4] Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Brigham City (Public Law 88–358).

[5] Entire State of California, excluding counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).

[6] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[7] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[8] Historically part of the Coleville Service Unit population since 1970.

[9] Members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation (Public Law 98–481, and H. Rept. No. 98–904).

[10] Confederated Tribes of Grande Ronde Community of Oregon recognized by Public Law 98–165, signed into law on November 22, 1983, provides for eligibility in these six counties without regard to the existence of a reservation.

[11] In order to carry out the Congressional intent of the Siletz Restoration Act, Public Law 95–195, as expressed in H. Report No. 95–623, at page 4, Siletz Tribal members residing in these counties are eligible for contract health services.

[12] Historically part of the Yakama Service Unit population since 1979.

[13] Contract Health Service Delivery Area expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(6)) to include city limits of Elton, LA.

[14] Cow Creek Band of Umpqua Indians of Oregon recognized by Public Law 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later exercised administrative discretion to add Coos, Deshutes, Klamath and Lane counties to the service delivery area.

[15] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638. It is proposed that Columbia County, OR, Kittitas, WA and Wahkiakum County, WA be added to the existing SDA.

[16] Historically part of Crow Service Unit population.

[17] Historically part of the Grande Traverse Service Unit population since 1980.

[18] Historically part of Kansas Service Unit since 1979. Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Haskell (H. Rept. No. 95–392).

[19] The counties included in this CHSDA were designated by regulation (42 CFR 136.22(a)(5)).

[20] Public Law 97–428 provides for eligibility in or around the Town of Houlton without regard to existence of a reservation.

[21] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[22] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[23] Texas Band of Kickapoo was recognized by Public Law 97–429, signed into law on January 8, 1983.The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.

[24] Legislative history states that for the purpose of Federal services and benefits "members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation". (Pub. L. 99–398, Sec. 2(2)).

[25] The Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians were recognized by Congress (Pub. L. 103–324, Sec. 4 (b)(2)) and the listed counties were designated as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[26] The Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians were recognized by Congress (Pub. L. 103–324, Sec. 4 (b)(2)) and the listed counties were designated as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[27] Mashantucket Pequot Indian Claims Settlement Act, Public Law 98–134, signed into law on October 18, 1983, provides for a reservation in New London.

[28] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[29] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services. These two counties were inadvertently omitted from 42 CFR 136.22.

[30] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services. These two counties were inadvertently omitted from 42 CFR 136.22.

[31] Historically part of the Choctaw Service Unit population since 1970.

[32] Narragansett Indians recognized by Public Law 95–395, signed into law September 30, 1978. Lands in Washington County are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[33] Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22(a)(2)).

[34] Historically part of the Northern Cheyenne Service Unit population since 1979.

[35] Land of Box Elder County, Utah, taken into trust for the Tribe in 1986.

[36] Washabaugh County, SD is part of Jackson County, SD, on November 5, 1968.

[37] Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22(a)(3)).

[38] Paiute Indian Tribe of Utah Reservation Act, Public Law 96–227, provides for the extension of services to these four counties without regard to the existence of a reservation.

[39] Legislative history (H.R. Report No. 95–1021) to Public Law 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Tribes pursuant to Act of October 8, 1964. (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[40] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353).

[41] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353)

[42] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353)

[43] Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[44] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[45] Ponca Restoration Act, Public Law 101–484, recognized members of the Tribe residing in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota shall be deemed to be residing on or near a reservation. Public Law 104–109 added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawattomie and Woodbury counties of Iowa.

[46] Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Rapid City.

[47] Historically part of Isabella Reservation Area and Eastern Michigan Service Unit population since 1979.

[48] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[49] The counties included in this CHSDA were designated by regulation (42 CFR 136.22(a)(4)).

[50] Historically part of the Fort Hall Service Unit population since 1979.

[51] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[52] The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Area of Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

[53] Historically part of the Tunica Biloxi Service Unit population since 1982.

[54] Members of the Tribe residing in Martha's Vineyard [are] deemed to be living "on or near an Indian reservation" for purposes of eligibility for Federal services (Sec. 12, Pub. L. 100–95).

[55] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

Dated: April 8, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–8831 Filed 4–19–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0195]

Risk Profile: Pathogens and Filth in Spices: Request for Comments and for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments and scientific data and information that would assist the agency in its plans to conduct a risk profile for pathogens and filth in spices. The purpose of the risk profile is to ascertain the current state of knowledge about spices contaminated with microbiological pathogens and/or filth, and the effectiveness of current and potential new interventions to reduce or prevent illnesses from contaminated spices.

DATES: Submit electronic or written comments and scientific data and information by June 21, 2010.

ADDRESSES: Submit electronic comments and scientific data and information to *http://www.regulations.gov*. Submit written comments and scientific data and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sherri B. Dennis, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1914.

SUPPLEMENTARY INFORMATION:

I. Background

A risk profile is a science-based document that describes the current state of knowledge about a specific food safety problem or issue and provides an evaluation of the data and information to support current interventions or new approaches to reduce or prevent illnesses (Ref. 1). FDA has adapted this tool as a new approach to assist the agency in its regulatory decisionmaking. Unlike a quantitative risk assessment, which provides information about the number of people affected by a hazard in food and how this number might be changed if various control options were implemented, a risk profile provides qualitative answers to questions about the hazard and options for controlling it, based on available data. The information in a risk profile may affect a range of decisions, such as whether or not to commission a quantitative risk assessment or a request for research, or whether or not to implement an immediate and/or provisional regulatory decision. In some cases, it may reveal that no further action is needed.

The risk profile for pathogens and filth in spices will provide information for FDA to use in the development of plans to reduce or prevent illness from spices contaminated by microbial pathogens and/or filth. Concerns regarding the effectiveness of current control measures to reduce or prevent illness from spices have been renewed by recent outbreaks of *Salmonella* associated with spices, including the imported ground white and black pepper products linked to an April 2009 outbreak of *Salmonella* Rissen illness, and the black and red pepper products recalled in March 2010 in response to an outbreak of *Salmonella* Montevideo illness (Refs. 2 and 3).

For the purpose of this risk profile, the term "spice" means any aromatic vegetable substances in the whole, broken, or ground form, except for those substances which have been traditionally regarded as foods, whose significant function in food is seasoning rather than nutritional, and from which no portion of any volatile oil or other flavoring principle has been removed. The specific hazards in spices to be considered in this risk profile include those microbiological pathogens and filth in spices that are identified in the published literature, outbreaks, recalls, and submissions to the Reportable Food Registry (RFR).[1] For purposes of this risk profile, FDA considers "filth" to mean "extraneous materials" as defined in FDA's Defect Levels Handbook (Ref. 4). The Defect Levels Handbook defines "extraneous materials" as "any foreign matter in a product associated with objectionable conditions or practices in production, storage, or distribution * * * [including] objectionable matter contributed by insects, rodents, and birds; decomposed material; and miscellaneous matter such as sand, soil, glass, rust, or other foreign substances."

The overall objectives of the risk profile are to:

- Describe the nature and extent of the public health risk, by identifying the most commonly occurring microbial and filth hazards in spices;
- Describe and evaluate current mitigation and control options;
- Identify potential additional mitigation or control options;
- Identify research needs and data gaps.

The specific questions to be addressed by the risk profile include:

- What is known about the frequency and levels of pathogen and/or filth contamination of spices throughout the food supply chain (e.g., on the farm, at primary processing/manufacturing, intermediary processing (where spices are used as ingredients in multi-component products), distribution (including importation), retail sale/use, and the consumer's home)?
- What is known about differences in production and contamination of imported and domestic spices?
- What is known about the effectiveness, cost, and practicality of currently available and potential future interventions to prevent human illnesses associated with pathogen and/or filth contamination of spices (e.g., practices and/or technologies to reduce or prevent contamination, surveillance, inspection, import strategies, or guidance)?
- What are the highest priority research needs related to prevention or reduction of pathogens and/or filth in spices?

II. Request for Comments and for Scientific Data and Information

FDA is requesting comments on the risk profile approach outlined previously in this document and the submission of scientific data and information relevant to the risk profile. The agency is particularly interested in the following types of information:

1. Data, including unpublished data, on the incidence of contamination in spices according to:
   a. Date tested,
   b. Country exporting the spice and/or country of origin if different,
   c. Type of spice,
   d. Pathogen(s) and/or filth type (e.g., insect, rodent, extraneous),
   e. Quantitative (enumeration) or qualitative (presence/absence) results, and
   f. Other product sample information (e.g., pre- or post-treatment, treatment type, stage of production/processing).

[1] The RFR is an electronic portal where responsible parties are required to file a report when there is a reasonable probability that the use of, or exposure to, an article of food will cause serious adverse health consequences or death to humans or animals (Ref. 5).

2. Factors that influence the survival, growth, and levels of pathogens in spices including:
   a. On-farm practices,
   b. Manufacturing, processing, or marketing practices,
   c. Shipping, storage, and distribution practices,
   d. Storage conditions encountered throughout the farm-to-table continuum, and
   e. Pathways for transfer of pathogens to spices, including data on frequencies or amounts of transfer (e.g., cross-contamination potential).
3. Consumption patterns (including serving size and frequency) in the United States.
4. Intended use (e.g., ready-to-eat, ingredient in a prepared food).
5. Manufacturing practices, including the use of spices as ingredients in prepared foods.
6. Data, including unpublished data, on the identity and effectiveness of control measures or interventions to reduce levels and frequency of pathogens and/or filth in spices during growing, harvesting, processing, manufacturing, packaging, storage, and transportation prior to retail sale including:
   a. Description of treatment or other control measure,
   b. Country exporting spice using this treatment/control measure,
   c. Name of the specific spice and its form (e.g., whole, cracked, ground),
   d. Effect of the treatment/control measure on pathogen and/or filth levels, and
   e. Types of validation protocols used to verify the effectiveness of treatment/control measures.
7. Data relating to supplier specifications including required treatments, performance standards, microbial testing, and audit programs.
8. Any other data related to the occurrence and control of pathogens and/or filth in spices that are applicable to the risk profile.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and scientific data and information regarding this document. Submit a single copy of electronic comments and scientific data and information to *http://www.regulations.gov* or two copies of any mailed comments and scientific data and information, except that individuals may submit one paper copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Received comments and scientific data and information may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

We have placed the following references on display in the Division of Dockets Management (see **ADDRESSES**). You may see them between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Codex Alimentarius Commission, 19th Procedural Manual, *http://www.codexalimentarius.net/web/procedural_manual.jsp*, accessed April 13, 2010.
2. Food and Drug Administration, "FDA Alerts the Public to Uncle Chen and Lian How Brand Dry Spice Product Recall," April 2, 2009, *http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2009/ucm149555.htm*, accessed April 13, 2010.
3. Food and Drug Administration, "FDA Update on the Investigation into the Salmonella Montevideo Outbreak," March 17, 2010, *http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm204917.htm*, accessed April 13, 2010.
4. Food and Drug Administration, Defect Levels Handbook, *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/Sanitation/ucm056174.htm*, accessed April 13, 2010.
5. Food and Drug Administration, "Reportable Food Registry for Industry," *http://www.fda.gov/food/foodsafety/FoodSafetyPrograms/RFR/default.htm*, accessed April 13, 2010.

Dated: April 14, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–9010 Filed 4–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0266]

Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625–0007, 1625–0074, 1625–0084, 1625–0093, and 1625–0102

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 Requests (ICRs) and Analyses to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collections of information: (1) 1625–0007, Characteristics of Liquid Chemicals Proposed for Bulk Water Movement; (2) 1625–0074, Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels; (3) 1625–0084, Audit Reports under the International Safety Management Code; (4) 1625–0093, Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual; and (5) 1625–0102, National Response Resource Inventory. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 21, 2010.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2010–0266], 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.*

Copies of the ICRs are 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: 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 these ICRs 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–2010–0266], 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 8½ 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. Enter the docket number for this Notice [USCG–2010–0266] in the Search box, and click "Go >>." 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

1. *Title:* Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

OMB Control Number: 1625–0007.

Summary: The Coast Guard requires manufacturers of new chemicals to submit data on new materials. From the data, the Coast Guard determines appropriate precautions.

Need: Title 46 CFR parts 30 to 40, 151, 153, and 154 govern the transportation of hazardous materials. The chemical industry constantly produces new materials that must be moved by water. Each of these new materials has unique characteristics requiring special attention to their mode of shipment.

Forms: None.

Respondents: Manufacturers of chemicals.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 78 hours to 600 hours a year.

2. Title: Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

OMB Control Number: 1625–0074.

Summary: This collection requires the submission of identifying information such as a vessel's name, identification number, and of the owner's choice of whether or not to pay fees for future years. A written request to the Coast Guard is necessary.

Need: The Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508], which amended 46 U.S.C. 2110, requires the Coast Guard to collect user fees from inspected vessels. To properly collect and manage these fees, the Coast Guard must have current information on identification. This collection helps to ensure we get that information and manage it efficiently.

Forms: None.

Respondents: Owners of vessels.

Frequency: Annually.

Burden Estimate: The estimated burden hours has decreased from 4,268 hours to 4,160 hours a year.

3. Title: Audit Reports under the International Safety Management (ISM) Code.

OMB Control Number: 1625–0084.

Summary: This information helps to determine whether U.S. vessels, subject to SOLAS 74, engaged in international trade, are in compliance with that treaty. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety management systems.

Need: Title 46 U.S.C. 3203 authorizes the Coast Guard to prescribe regulations regarding safety management systems. The rules for those systems and hence the safe operation of vessels are contained in 33 CFR part 96.

Forms: None.

Respondents: Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the United States.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 16,873 hours to 18,610 hours a year.

4. Title: Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual.

OMB Control Number: 1625–0093.

Summary: A Letter of Intent is a notice to the Coast Guard Captain of the Port indicating an operator's intention to manage a facility that will transfer bulk oil/hazardous materials to or from vessels. An Operations Manual (OM) is also required for this type of facility. The OM establishes procedures to follow when conducting transfers and in the event of a spill.

Need: Under 33 U.S.C. 1321 and Executive Order 12777, the Coast Guard is authorized to prescribe regulations to prevent the discharge of oil/hazardous substances from facilities and to contain such discharges. The Letter of Intent regulation is contained in 33 CFR 154.110 and the OM regulations are contained in 33 CFR part 154 subpart B.

Forms: None.

Respondents: Operators of facilities that transfer oil or hazardous materials in bulk.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 53,960 hours to 90,076 hours a year.

5. Title: National Response Resource Inventory.

OMB Control Number: 1625–0102.

Summary: The information is needed to improve the effectiveness of deploying response equipment in the event of an oil spill. It may also be used in the development of contingency plans.

Need: Section 4202 of the Oil Pollution Act of 1990 (Pub. L. 101–380) requires the Coast Guard to compile and maintain a comprehensive list of spill removal equipment. This collection helps fulfill that requirement.

Forms: None.

Respondents: Oil spill removal organizations.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 1,296 hours a year.

Dated: April 9, 2010.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2010–9020 Filed 4–19–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0212]

Interagency Coordinating Committee on Oil Pollution Research (ICCOPR); Public Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) will hold a public meeting in Seattle, Washington to hear comments on the priorities of oil pollution research, including projects in the Arctic environment. This meeting is designed to give the public an opportunity to provide statements as to where the ICCOPR, a Federally mandated committee, should focus their efforts concerning oil pollution research. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, May 19, 2010, from 9 a.m. to 12 p.m. (noon). This meeting may close early if all business is finished. Written material (no more than 2 full pages) and requests to make brief oral presentations should reach the Coast Guard on or before May 7, 2010. Requests to have a copy of your material (no more than 2 full pages) distributed to each member of the committee should reach the Coast Guard on or before May 7, 2010.

ADDRESSES: The Committee will meet in Grand Ballroom #1, The Westin Seattle, 1900 Fifth Avenue, Seattle, Washington 98101. Send written material (no more than 2 full pages) and requests to make brief oral presentations to Lieutenant Tracy Wirth, Assistant to the Chairman of the ICCOPR at Commandant (CG–533), Office of Incident Management and Preparedness, U.S. Coast Guard, 2100 2nd St., SW., STOP 7363, Washington, DC 20593–7363. A transcript of this meeting will be provided in the online docket. In addition, this notice and documents identified in the **SUPPLEMENTARY INFORMATION** section as being available in the docket, may be viewed in our online docket, USCG–2010–0212, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or the meeting, contact Lieutenant Tracy Wirth, Assistant to the Chairman of the ICCOPR, telephone 202–372–2236.

If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 7001(a) of the Oil Pollution Act of 1990 (OPA 90) established the Interagency Coordinating Committee on Oil Pollution Research. The purpose of the Interagency Committee is twofold: (1) To prepare a comprehensive, coordinated Federal oil pollution research and development (R&D) plan; and (2) to promote cooperation with industry, universities, research institutions, State governments, and other nations through information sharing, coordinated planning, and joint funding of projects. The Interagency Committee was commissioned with 13 members and is chaired by the Coast Guard. Membership includes:

Department of Commerce (DOC)

—National Oceanic and Atmospheric Administration (NOAA).
—National Institute of Standards and Technology (NIST).

Department of Energy (DOE)

Department of Interior (DOI)

—Minerals Management Service (MMS).
—United States Fish and Wildlife Service (USFWS).

Department of Transportation (DOT)

—Maritime Administration (MARAD).
—Pipeline and Hazardous Materials Safety Administration (PHMSA).

Department of Defense (DoD)

—United States Army Corps of Engineers (USACE).
—United States Navy (USN).

Environmental Protection Agency (EPA)

National Aeronautics and Space Administration (NASA)

Department of Homeland Security (DHS)

—United States Coast Guard (USCG).
—Federal Emergency Management Agency (FEMA).
—United States Fire Administration (USFA).

Section 7001(b) of the Oil Pollution Act of 1990 required the Interagency Committee to prepare an Oil Pollution Research and Technology Plan. The Interagency Committee prepared the original Oil Pollution Research and Development (R&D) Technology Plan to define the roles of each Federal agency involved in oil spill research and development. The plan was submitted to Congress in April 1992 and later reviewed by the National Research Council's Committee on Oil Spill Research and Development under the auspices of the Marine Board. Using input from the Marine Board, the Committee revised the plan in May 1993 to address spill prevention, human factors, and the field testing/demonstration of developed response technologies. The current version of the plan, still based on Marine Board recommendations, is dated April 1997. The Interagency Committee is coordinating an update of the Technology Plan during the next two fiscal years.

Tentative Meeting Agenda

The agenda for the May 19, 2010 Committee meeting is as follows:

(1) 9 a.m.: Convene: Welcome and Opening Comments by the ICCOPR Chairman; Captain Anthony S. Lloyd, U.S. Coast Guard.

(2) 9:15 a.m.: ICCOPR Background and Overview Brief.

(3) 9:45 a.m.: Public Comment Period.

(4) 11:45 a.m.: Closing Remarks: Captain Anthony S. Lloyd, U.S. Coast Guard, Chairman.

(5) 12 p.m. (noon): Adjourn.

ICCOPR Biennial Report

The Interagency Coordinating Committee on Oil Pollution Research Biennial Report for Fiscal Years 2008 and 2009, which will be discussed by the Committee, may be viewed in our online docket. To view the Report, this notice, and the transcript of the meeting once it is concluded, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2010–0212) in the "Keyword" box, and then click "Search."

If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–40 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with

the Department of Transportation to use the Docket Management Facility.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may make brief oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify Lieutenant Tracy Wirth where listed under the **ADDRESSES** section of this notice no later than May 7, 2010. Written material (no more than 2 full pages) for distribution at a meeting should reach the Coast Guard no later than May 7, 2010. If you would like a copy of your material (no more than 2 full pages) distributed to each member of the committee in advance of a meeting, please submit 25 copies to Lieutenant Tracy Wirth no later than May 7, 2010.

The transcript of the meeting, including all comments received during the meeting, will be posted to *http://www.regulations.gov* and will include any personal information you have provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Chairman as soon as possible.

Authority: This notice is issued under authority of 5 U.S.C. 552(a).

Dated: April 9, 2010.

A.S. Lloyd,

Captain, U.S. Coast Guard, Chief, Office of Incident Management & Preparedness.

[FR Doc. 2010–9017 Filed 4–19–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0202]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet in New Orleans to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. This meeting will be open to the public.

DATES: The Committee will meet on Thursday, May 6, 2010 from 9 a.m. to 12 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 19, 2010. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 19, 2010.

ADDRESSES: The Committee will meet at the New Orleans Yacht Club, 403 North Roadway, West End, New Orleans, LA 70124. Send written material and requests to make oral presentations to Commander, Coast Guard Sector New Orleans Designated Federal Officer (DFO) of Lower Mississippi River Waterway Safety Advisory Committee, ATTN: Waterways Management, 1615 Poydras St., New Orleans, LA 70112. This notice, and documents identified in the Supplementary Information section as being available in the docket may be viewed in our online docket, USCG–2010–0202, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer David Chapman, Assistant to DFO of Lower Mississippi River Waterway Safety Advisory Committee, telephone 504–565–5103.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the May 6, 2010 Committee meeting is as follows:

(1) Introduction of committee members.
(2) Opening Remarks.
(3) Approval of the October 7, 2009 minutes.
(4) Old Business.
(a) Captain of the Port status report.
(b) Subcommittee/Working Groups update reports.
(5) New Business.
(6) Adjournment.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the DFO no later than April 19, 2010. Written material for distribution at a meeting should reach the Coast Guard no later than April 19, 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 DFO no later than April 19, 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 meeting, contact the DFO as soon as possible.

Dated: April 11, 2010.

Mary E. Landry,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2010–9019 Filed 4–19–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N074; 1112–0000–81440–F2]

Endangered and Threatened Wildlife and Plants; Permit, Santa Cruz County, CA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Todd and Lisa Mansfield (applicants) for an incidental take permit under the Endangered Species Act of 1973, as amended (Act). We are considering issuing a permit that would authorize the applicants' take of the federally endangered Mount Hermon June beetle (*Polyphylla barbata*) incidental to otherwise lawful activities that would result in the permanent loss of 483 square feet of habitat for the species in Scotts Valley, Santa Cruz County, California. We invite comments from the public on the application, which includes a Habitat Conservation Plan (HCP) that fully describes the proposed project and measures the applicants would undertake to minimize and mitigate anticipated take of the species. We also invite comments on our preliminary determination that the HCP qualifies as a "low-effect" plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this determination in our draft Environmental Action Statement and associated Low-Effect Screening Form, both of which are also available for review.

DATES: To ensure consideration, please send your written comments by May 20, 2010.

ADDRESSES: You may download a copy of the permit application, plan, and related documents on the Internet at *http://www.fws.gov/ventura/,* or you may request documents by U.S. mail or phone (see below). Please address written comments to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator, at the Ventura address above, or by telephone at (805) 644–1766, extension 224.

SUPPLEMENTARY INFORMATION:

Background

The Mount Hermon June beetle was listed as endangered on January 24, 1997 (62 FR 3616). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 part CFR 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take (*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

The applicants propose the construction of an addition to an existing single-family residence within a 0.30 acre parcel (APN 021–052–21) located at 9 Locke Way in Scotts Valley, Santa Cruz County, California. The parcel contains Zayante sand soils and vegetation consisting of landscaping and ruderal species. Habitat on this parcel is presumed to be occupied by the Mount Hermon June beetle as the species is known to occur approximately 550 feet to the west of the property.

The proposed project would result in permanent impacts to a total of 483 square feet of habitat for the Mount Hermon June beetle. The applicants propose to implement the following measures to minimize and mitigate for the loss of Mount Hermon June beetle habitat within the permit area: (1) Applicants will purchase 483 square feet of conservation credits at the Ben Lomond Sandhills Preserve of the Zayante Sandhills Conservation Bank operated by PCO, LLC; (2) a qualified biologist will oversee construction and provide worker training on the Mount Hermon June beetle and requirements of the HCP; (3) temporary fencing will be installed to demarcate the impact area from the protected habitat area at the property; (4) any life stages of the Mount Hermon June beetle will be captured and relocated if one is observed in an area that would be impacted; (5) dust control measures will be implemented to reduce impacts to the Mount Hermon June beetle and its habitat; (6) approximately 408 square feet of degraded habitat adjacent to the project area will be revegetated with native Sandhills plant species; and (7) all exposed soils will be covered with impermeable material if construction occurs during the species flight season.

In the proposed HCP, the applicants consider three alternatives to the taking of Mount Hermon June beetle. The No Action alternative would maintain current conditions, the project would not be implemented, and an incidental take permit application would not be submitted to the Service. The second alternative would involve a redesign of the project. The project would be reduced in scale under this alternative; however, this alternative was rejected as the project would not meet the applicants' need for additional living space. The third alternative is the proposed action which includes issuing an incidental take permit to the applicants, who would then implement the HCP.

We are requesting comments on our preliminary determination that the applicants' proposal will have a minor or neglible effect on the species covered in the plan, and that the plan qualifies as a "low-effect" HCP as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determination that the HCP qualifies as a low-effect plan on the following three criteria: (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to the environmental values or resources that would be considered significant. As more fully explained in our Environmental Action Statement and associated Low-Effect Screening Form, the applicants' proposed HCP qualifies as a "low-effect" HCP for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the Mount Hermon June beetle and its habitat. We do not anticipate significant direct or cumulative effects to the Mount Hermon June beetle resulting from the proposed project;

(2) Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks;

(3) Approval of the HCP would not result in any cumulative or growth-inducing impacts and would not result in significant adverse effects on public health or safety;

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment; and

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have made the preliminary determination that the approval of the HCP and incidental take permit application qualifies for a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 8). Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue the permit for incidental take of the Mount Hermon June beetle. We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the Act by conducting an

intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements are met, we will issue the permit to the applicants.

Public Comments

If you wish to comment on the permit application, plan, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

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. If you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Authority: We provide this notice under section 10 of the Act (U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: April 14, 2010.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2010–9047 Filed 4–19–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2009–N0054]; [30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits. We are also making available for comment an associated environmental assessment (EA) written for each permit application.

DATES: We must receive any written data or comments on or before May 20, 2010.

ADDRESSES: Send written comments by U.S. Mail to the Regional Director, Attn: Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, MN 55111–4056, or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*), and our regulations governing the taking of endangered species in the Code of Federal Regulations at 50 CFR 17. We are also making available for comment an associated EA for each permit application. Submit your written data, comments, or request for a copy of the complete applications and EAs to the address shown in **ADDRESSES**. Please refer to the permit application numbers below when submitting comments.

On February 8, 2007, we published a final rule that legally established the Western Great Lakes Distinct Population Segment (DPS) of the gray wolf (*Canis lupis*) and removed Act protection for that DPS at the same time (72 FR 6052). This rule became effective March 12, 2007. However, three parties challenged this final rule by filing a lawsuit. On September 29, 2008, the U.S. District Court for the District of Columbia ruled in favor of the plaintiffs by vacating the final rule, rendering it no longer in effect and remanding it back to us to address the court's concerns. On April 2, 2009, we published a new final rule that responded to the issues raised in the court's decision and again removed Act protection for the Western Great Lakes DPS of the gray wolf (74 FR 15070; effective May 4, 2009). In response to a second legal challenge, we withdrew our April 2, 2009, final rule. We agree with the plaintiffs that sufficient opportunity for public review and comment, as required by Federal law, was not provided before the April 2009 final decision was published. The effect of this withdrawal is reinstatement of Act protections for gray wolves in the Western Great Lakes area while we gather additional public comment. Therefore, gray wolves are now listed as threatened in Minnesota and endangered elsewhere in the western Great Lakes region.

The Wisconsin Department of Natural Resources and Michigan Department of Natural Resources have each applied for a Federal Fish and Wildlife Permit, as described below, to allow their continued management and research of the wolf. In both States, the proposed take of wolves would involve both lethal and nonlethal control for individual wolves involved in depredating livestock, livestock guard animals, and pets. Both States request lethal take authority to abate damages to livestock and pets that result from wolves, and demonstrate the efficacy of control techniques through research since the applicants' ability to control them was negated by the recent relisting of wolves in the Great Lakes States. Under the terms of both permits, wolves captured at depredation sites would be euthanized or released unharmed rather than translocated elsewhere, because:

(a) Virtually all suitable wolf habitat in Michigan and Wisconsin is currently occupied by packs;

(b) Residents do not want problem wolves moved from one area to another; and

(c) Research has shown that some relocated wolves—after being taken out of their element—often die, either slowly by starvation, brutally by being killed by another pack, or by being struck on a highway, while others resume depredation at the relocation site.

Permit Applications

Permit Application Number: TE206840

Applicant: Wisconsin Department of Natural Resources, Madison, Wisconsin.

The applicant requests a permit to take the gray wolf throughout Wisconsin for research, monitoring, and depredation abatement activities. The take would involve both lethal and non-lethal control for wolves involved in depredating livestock, livestock guard animals, and pets. Non-lethal control would involve harassing wolves by using rubber bullets, projectile bean bags, or other scare tactics. Research and monitoring efforts may involve unintentional injury or death to animals caught during the course of these

activities, as well as euthanizing live-captured wolves severely affected by mange or other contagious diseases and those severely injured or in very poor condition. The taking is consistent with both the State Management Plan for wolves and our 1992 Recovery Plan for the Eastern Timber Wolf. The scientific research and depredation abatement activities are aimed at the enhancement of survival of the species in the wild.

Permit Application Number: TE219624

Applicant: Michigan Department of Natural Resources, Lansing, Michigan.

The applicant requests a permit to take the gray wolf throughout Michigan. The take would include both lethal and non-lethal control for wolves involved in depredating livestock, livestock guard animals, and pets and is consistent with the 2008 Michigan Wolf Management Plan and the 1992 Recovery Plan for the Eastern Timber Wolf. Non-lethal control would involve harassing wolves by using rubber bullets, projectile bean bags, or other scare tactics. The scientific research and depredation abatement activities are aimed at the enhancement of survival of the species in the wild.

Availability of Documents

To request copies of the permit applications and associated documents, contact Peter Fasbender (*see* **ADDRESSES**). The permit applications and the environmental assessments are also available for public inspection at: *http://www.fws.gov/midwest/endangered.*

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.

All comments we receive become part of our public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Protection Act regulations (40 CFR 1506.6(f)).

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), Environmental Assessments have been completed to evaluate the activities proposed in these permit applications. The Environmental Assessments are also available for review and comment in conjunction with the permit applications.

Authority: 16 U.S.C. 1539(c).

Dated: March 1, 2010.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 2010–9022 Filed 4–19–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2010–N054; 10120–1113–0000–F5]

Endangered Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a permit application; request for comments.

SUMMARY: In accordance with the requirements of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications for permits to conduct enhancement of survival activities with endangered species.

DATES: To ensure consideration, please send your written comments by May 20, 2010.

ADDRESSES: Program Manager, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE, 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for recovery permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We are soliciting review of and comments on these applications by local, State, and Federal agencies and the public.

Permit No. TE–02997A

Applicant: University of Hawaii, Hilo, Hawaii.

The applicant requests a permit to take (collect live specimens) the hammerhead pomace fly (*Drosophila heteroneura*) in conjunction with scientific research including genetic, morphological and behavioral research on the island of Hawaii in the State of Hawaii for the purpose of enhancing its survival. The applicant also requests a permit to take (collect and voucher) no more than two each of the following unnamed pomace fly species: *Drosophila musaphilia, D. aglaia, D. hemipeza, D. montgomeryi, D. obatai, D.supstenoptera, D. tarphytrichia, D. differens, D. neoclavisetae,* and *D. ochrobasis,* incidental to the collection of non-listed *Drosohphila* species in conjunction with genetic research on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii in the State of Hawaii for the purpose of enhancing their survival.

Permit No. TE–018078

Applicant: Hawaii Volcanoes National Park, Hawaii National Park, Hawaii.

The applicant requests an amendment to an existing scientific research permit to take (harass) the Hawaiian goose (*Branta sandvichensis*) and the Hawaiian dark rumped petrel (*Pterodroma phaeopygia*) in conjunction with predator control activities on the island of Hawaii in the State of Hawaii, and remove/reduce to possession *Cyanea shipmanii* (haha) and *Haplostachys haplostachya* (honohono) in conjunction with propagation and outplanting on the island of Hawaii in the State of Hawaii for the purpose of enhancing their survival.

Permit No. TE–141832

Applicant: Oregon State University, Corvallis, Oregon.

The applicant requests an amendment to an existing scientific research permit to take (capture, handle, and release) the Oregon chub (*Oregonichthys crameri*) in conjunction with research in the State of Oregon, for the purpose of enhancing its survival.

Public Comments

We are soliciting public review and comment on these recovery permit applications. 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.

Please refer to the permit number for the application when submitting comments. All comments and materials we receive in response to this request

will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: April 2, 2010.

Carolyn A. Bohan,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2010–9021 Filed 4–19–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–10–L19100000–BJ0000–LRCM08RS3470]

Notice of Filing of Plat of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, thirty (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Superintendent, Fort Peck Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine boundaries of trust or Tribal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 49 E.

The plat, in 2 sheets, representing the dependent resurvey of a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 15, 16, and 17, a portion of the subdivision of sections 15, 16, 17, and 18, and the subdivision of sections 15, 17, and 18, and the survey of the meanders of the present left bank of the Missouri River and informative traverse, downstream, through sections 15, 16, and 17, and certain division of accretion lines, Township 27 North, Range 49 East, Principal Meridian, Montana, was accepted April 5, 2010.

We will place a copy of the plat, in 2 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in 2 sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: April 12, 2010.

Michael T. Birtles,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2010–9089 Filed 4–19–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–10–L19100000–BJ0000–LRCM08RS3123]

Notice of Filing of Plat of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, thirty (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Superintendent, Fort Peck Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine boundaries of trust or tribal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 48 E.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 20 and 29, the adjusted 1994 meanders of the former left bank of the Missouri River, downstream, through section 20, a certain division of accretion line in section 20, and the survey of the meanders of the present left bank of the Missouri River, downstream, through a portion of section 20 and through section 29, the meanders of the left bank of a relicted channel of the Missouri River, the medial line of a relicted channel of the Missouri River, certain partition lines and an island (Tract 37), Township 27 North, Range 48 East, Principal Meridian, Montana, was accepted March 31, 2010.

We will place a copy of the plat, in 1 sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in 1 sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: April 12, 2010.

Michael T. Birtles,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2010–9088 Filed 4–19–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; AZ.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of a portion of the north boundary, Township 29 North, Range 6 East, and the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 23 and 26, which is identical to the boundary between the Navajo Indian Reservation and the Kaibab National Forest and the Grand Canyon National Park, Township

30 North, Range 6 East, accepted November 3, 2009, and officially filed November 6, 2009, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines, which is identical to the boundary between the Navajo Indian Reservation and the Grand Canyon National Park, Township 31 North, Range 6 East, accepted April 5, 2010, and officially filed April 7, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines, which is identical to the boundary between the Navajo Indian Reservation and the Grand Canyon National Park, Township 32 North, Range 6 East, accepted April 5, 2010, and officially filed April 7, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the subdivision of a portion of section 28, the subdivision of section 29 and metes-and-bounds surveys in sections 28 and 29, Township 20 North, Range 7 East, accepted February 2, 2010, and officially filed February 5, 2010, for Group 1016, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of the north boundary and a portion of the east boundary, Township 29 North, Range 7 East, accepted November 3, 2009, and officially filed November 6, 2009, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the Second Guide Meridian East (east boundary), Townships 30, 31 and 32 North, Range 8 East, accepted January 26, 2010, and officially filed January 29, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the Second Guide Meridian East (west boundary), the south and east boundaries, the subdivisional lines and the survey of the subdivision of certain sections, Township 28 North, Range 9 East, accepted January 22, 2010, and officially filed January 27, 2010, Group No. 1058, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (3 sheets) representing the dependent resurvey of a portion of the Seventh Standard Parallel North (south boundary), the Second Guide Meridian East (west boundary), a portion of the subdivisional lines and the Adjusted 1916 Meanders of the Left Bank of the Little Colorado River, and the survey of a portion of the Seventh Standard Parallel North (south boundary), the east and north boundaries, a portion of the subdivisional lines, a portion of the subdivision of section 22 and the Meanders of the Right Bank of the Little Colorado River, Township 29 North, Range 9 East, accepted January 19, 2010, and officially filed January 22, 2010, for Group 1057, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 30 North, Range 9 East, accepted February 9, 2010, and officially filed February 12, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner and an electronic control monument, Township 31 North, Range 9 East, accepted February 9, 2010, and officially filed February 12, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of an electronic control monument, Township 32 North, Range 9 East, accepted February 9, 2010, and officially filed February 12, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the south boundary, Township 32 ½ North, Range 8 East, and a portion of the Eight Standard Parallel North (south boundary), Township 33 North, Range 9 East, accepted January 26, 2010, and officially filed January 29, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (3 sheets) representing the dependent resurvey of the west boundary and a portion of the boundary of Management District No. 6, Hopi Indian Reservation, and the survey of a portion of the Fifth Guide Meridian East (east boundary), and the subdivisional lines, Township 29 North, Range 20 East, accepted March 25, 2010, and officially filed March 29, 2010, for Group 1066, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the survey of the south, east and west boundaries, and the subdivisional lines, Township 39 North, Range 27 East, accepted August 6, 2009, and officially filed August 12, 2009, for Group 1046, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The supplemental plat of section 14, Township 21 North, Range 28 East, accepted March 1, 2010, and officially filed March 3, 2010, for Group 9104, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of portions of the Sixth Standard Parallel North (south boundary), Townships 25 North, Ranges 28 and 29 East and the dependent resurvey of the south boundary, and the survey of the Seventh Guide Meridian East (west boundary) and the subdivisional lines, Township 24 North, Range 29 East, accepted October 13, 2009, and officially filed October 16, 2009, for Group 1049, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, a portion of the subdivision of sections 19 and 30, and Tract 37 and the survey of the east and west center line of the northeast quarter of section 30, Township 8 South, Range 22 West, accepted March 23, 2010, and officially filed March 25, 2010, for Group 1060, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The supplemental plat of section 34, Township 8 South, Range 23 West, accepted August 11, 2009, and officially filed August 14, 2009, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The supplemental plat of the SW ¼ of section 12, Township 11 South, Range 25 West, accepted March 2, 2010, and officially filed March 4, 2010, for Group 9104, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of the Sectional Correction Line and a portion of the subdivisional lines and the subdivision of sections 23, 24 and 26, Township 14 South, Range 10 East, accepted March 17, 2010, and officially filed March 19, 2010, for Group 1055, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat (2 sheets) representing the dependent resurvey of a portion of the west boundary of the San Carlos Indian Reservation, a portion of the Gila and Salt River Base Line through Range 16 East (north boundary), a portion of the south boundary and the survey of south and east boundaries, and subdivisional lines (within the San Carlos Indian Reservation), Township 1 South, Range 16 East, accepted August 12, 2009, and officially filed August 17, 2009, for Group 873, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the Gila and Salt River Base Line through Ranges 16 and 17 East (north boundary) and the survey of the south and east boundaries and the subdivisional lines, Township 1 South, Range 17 East, accepted October 28, 2009, and officially filed October 30, 2009, for Group 873, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the establishment of the southeast and northeast township corners and an electronic control monument, Township 1 South, Range 18 East, accepted October 29, 2009, and officially filed October 30, 2009, for Group 873, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the corrective dependent resurvey of a portion of the east boundary of the San Carlos Indian Reservation, Township 4 South, Range 22 East, accepted January 8, 2010, and officially filed January 13, 2010, for Group 554, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats are available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427.

Dated: April 13, 2010.

Stephen K. Hansen,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2010–9046 Filed 4–19–10; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON01000 L07770000.XX0000]

Notice of Public Meetings, Northwest Colorado Resource Advisory Council Meetings in 2010

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC will meet on:

1. May 13, 2010, 8 a.m. to 3 p.m.
2. August 19, 2010, 8 a.m. to 3 p.m.
3. December 2, 2010, 8 a.m. to 3 p.m.

Public comment periods regarding matters on the agenda will be held at 10 a.m. and 2 p.m. each day.

ADDRESSES: The locations for the meetings are:

1. May 13, 2010, Rangely Town Hall, 209 E. Main St., Rangely, CO.
2. August 19, 2010, Wattenberg Center, 682 County Road 42, Walden, CO.
3. December 2, 2010, Hampton Inn, 205 Main St., Grand Junction, CO.

FOR FURTHER INFORMATION CONTACT: David Boyd, Public Affairs Specialist, Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO, (970) 876–9008.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion during Northwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, working group reports, sub-committee updates, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Subcommittees under this RAC meet regarding the McInnis Canyon National Conservation Area, Resource Management Plan revisions for the Glenwood Springs, Kremmling, and Grand Junction field offices, and the White River Field Office Resource Management Plan Oil and Gas Amendment. Subcommittees report to the Northwest Colorado RAC at each council meeting. Subcommittee meetings are open to the public.

More information is available at *http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.*

Dated: April 13, 2010.

Anna Marie Burden,

Acting State Director.

[FR Doc. 2010–9023 Filed 4–19–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Third Review)]

Barium Chloride From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

DATES: *Effective Date:* April 9, 2010.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 16, 2009, the Commission established a schedule for the conduct of this review (74 FR 62587, November 30, 2010).

Subsequently, counsel for domestic interested party filed a request to appear at the hearing or, in the alternative, for consideration of cancellation of the hearing. Counsel indicated a willingness to submit written testimony and responses to any questions by a date to be specified by the Commission in lieu of an actual hearing. To date, no other party has filed a request to appear at the hearing. Consequently, the public hearing in connection with the review, scheduled to begin at 9:30 a.m. on April 15, 2010, at the U.S. International Trade Commission Building, is cancelled.

The Commission has determined to accept the offer to submit written testimony in lieu of an oral public hearing presentation. Written testimony shall be filed with the Commission by the close of business on Thursday, April 15, 2010. The party is expected to respond to the Commission's written questions in its post-hearing brief, which is due to be filed on April 26, 2010. Additional changes to the schedule are as follows: The final staff report in the review will be placed in the nonpublic record on May 10, 2010, and a public version will be issued thereafter; the Commission will make available to parties all information on which they have not had an opportunity to comment on May 17, 2010; and parties may submit final comments on this information on or before May 19, 2010.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Dated: Issued: April 9, 2010.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–9030 Filed 4–19–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

Correction

In notice document 2010–6412 beginning on page 14186 in the issue of Wednesday, March 24, 2010, make the following correction:

On page 14186, in the third column, in the table, the last cell, "III" should read "II".

[FR Doc. C1–2010–6412 Filed X–XX–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 15, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Financial and Program Reporting and Performance Standards System for Indian and Native American Programs Under Title I, Section 166 of the Workforce Investment Act (WIA).

OMB Control Number: 1205–0422.

Agency Form Number: ETA–9084 and ETA–9085.

Affected Public: State, Local, or Tribal Governments; Private Sector Not-for-profit institutions; and Individuals or Households.

Total Estimated Number of Respondents: 20,747.

Total Estimated Annual Burden Hours: 90,262.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: OMB Control No. 1205–0422 contains two forms: ETA 9084 and 9085. It also includes standard data elements for participants, the basis of the current performance standards system for the Workforce Investment Act of 1998 (WIA) Title I section 166 grantees. The burden estimates for this collection include the Supplemental Youth Services Program and the Comprehensive Services Program authorized under section 166, as well as financial reporting requirements for both funds and the separate reporting for Recovery Act-funded youth programs. For additional information, *see* related notice published in the **Federal Register** on November 5, 2009 (74 FR 57333).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–9049 Filed 4–19–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, is soliciting comments concerning renewal of the Application for Indemnification. A copy of this collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 15, 2010. The National Endowment for the Arts is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
—Enhance the quality, utility and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting the electronic submissions of responses.

ADDRESSES: Alice Whelihan, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 726, Washington, DC 20506–0001, telephone (202) 682–5574 (this is not a toll-free number), fax (202)682–5603.

Kathleen Edwards,

Director, Administrative Services.

[FR Doc. 2010–9074 Filed 4–19–10; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (25150)

Date and Time: May 26, 2010, 10 a.m.–5:30 p.m.

May 27, 2009, 8:30 a.m.–12:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Kristen Oberright, Office of the Director, Office of Cyberinfrastructure (OD/OCI), National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230, Telephone: 703–292–8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CI community. To provide advice to the Director/NSF on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Director. Discussion of CI research initiatives, education, diversity, workforce issues in CI and long-range funding outlook.

Dated: April 15, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–9051 Filed 4–19–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0156]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 25, 2010 to April 7, 2010. The last biweekly notice was published on April 6, 2010 (75 FR 17439).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, 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. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the

comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 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 requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, 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/EHDProceeding/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 which is available for public inspection 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 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 at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: November 30, 2009.

Description of amendment request: The amendments would revise Technical Specification (TS) 3.3.5, "Engineered Safety Features Actuation System Instrumentation," Table 3.3.5–1, to raise the refueling water tank (RWT) low level allowable values for the recirculation actuation signal (RAS); raise the minimum required RWT volume shown in TS Figure 3.5.5–1; and implement a time-critical operator action to close the RWT isolation valves, including consideration of a potentially more limiting single failure of a low-pressure safety injection pump to automatically stop, as designed, on an RAS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The RWT is a passive component of the Chemical and Volume Control System (CVCS) that supports ECCS [emergency core cooling system] and CSS [containment spray system] operation to mitigate the consequences of an accident. A[n] RAS is an active component of the Engineered Safety Features Actuation System (ESFAS) that actuates safety equipment to mitigate the consequences of a LOCA [loss-of-coolant accident]. Neither of these components initiates an accident previously evaluated. The RWT isolation valves are also components of the CVCS; however, their closure was not previously credited for RWT isolation following a[n] RAS. The proposed amendment will credit closure of these valves following a[n] RAS to preclude the potential for air entrainment in the ECCS and CS [containment spray] pump suction piping for any LOCA scenario. The required isolation is being performed as a time critical

operator action, which is consistent with ANSI/ANS–58.8–1984 [American National Standards Institute/American Nuclear Society Standard 58.8–1984], Time Response Design Criteria for Safety-Related Operator Actions, 1984 guidance. Although the change in the closure requirement and the operator action could introduce additional potential malfunctions, these malfunctions have been evaluated and found not to initiate or have a significant adverse affect on the mitigation or consequences of any accident previously evaluated.

The proposed changes do not alter or prevent the ability of structures, systems or components to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes will ensure continued performance of the ECCS and CS pumps following a LOCA by precluding the potential for air entrainment in the pump suction piping from the RWT after a[n] RAS.

The effect of the proposed changes to the RAS Allowable Values and RWT minimum required level on the RWT structural design, containment post-LOCA flood level, post-LOCA boron precipitation, and containment sump pH remain within the limits assumed in the design and accident analyses. The proposed license amendment does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite. The proposed license amendment is consistent with these analyses' assumptions and resultant consequences.

The proposed amendment also recognizes and evaluates a different single failure associated with the RWT drain down following a LOCA than previously evaluated. It was determined this failure was of low probability and did not adversely affect any previous bounding analysis or the capability of the associated systems to perform their design functions.

Therefore, the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment does not involve or add any new or different components to the plant and does not change any accident initiators.

The proposed changes to the RAS Allowable Values and RWT minimum required level will not change the design function of the RWT to support ECCS and CSS operation following a LOCA. However, the closure of the RWT isolation valves following a LOCA was not previously credited. As a result, the credited RWT isolation valve design function has been changed, and closure of these valves is now credited to preclude the possibility of air entrainment in the ECCS and CS pump suction piping for any LOCA scenarios. The credited isolation is being performed as a time critical operator action, which is consistent with ANSI/ANS 58.8 guidance. Although changes to the valve closure requirement and the operator action introduce additional potential malfunctions, these malfunctions have been evaluated and found not to create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment recognizes and evaluates a different single failure associated with the RWT drain down following a LOCA than previously evaluated. It was determined that this failure was of low probability and did not adversely affect any previous bounding analysis or create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed license amendment does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined or implemented. The safety analysis acceptance criteria are not affected by this amendment. The proposed changes in the credited design function of the RWT isolation valves, along with the change in the RAS Allowable Value and RWT minimum required levels, continue to ensure sufficient RWT water volume to enable the ECCS and CSS to satisfy required design functions for all postulated LOCA break sizes. Therefore, these changes do not impact the results of safety analyses.

The proposed changes to the RAS Allowable Values and minimum required RWT level include appropriate instrument uncertainties and are based on conservative analyses for establishing the required RWT volumes. The proposed amendment will not result in plant operation in a configuration outside of the design basis.

The proposed amendment recognizes and evaluates a different single failure associated with the RWT drain down following a LOCA than previously evaluated. It was determined this failure was of low probability and did not adversely affect any previous bounding analysis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: January 29, 2010.

Description of amendment request: The amendment would modify the existing Note within Technical Specification 3.4.10, "Pressurizer Safety Valves [PSVs]," which covers operation in the applicable portions of Mode 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The proposed change, revising an existing NOTE within Technical Specification 3.4.10 to allow the PSVs lift settings to be outside LCO [Limiting Condition for Operation] values, as a result of temperature related drift, while the Unit is in applicable portions of Mode 3 for periods up to 36 hours, does not change the design function or operation of the PSVs and it does not change the way the PSVs are maintained, tested, or inspected. In addition the proposed change does not change any of the evaluated accidents in our Updated Final Safety Analysis Report, does not change PSV lift settings, or impact the ability of the PSVs to perform their safety function during evaluated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

The proposed change, revising an existing NOTE within Technical Specification 3.4.10 to allow the PSVs lift settings to be outside LCO values, as a result of temperature related drift, while the Unit is in applicable portions of Mode 3 for periods up to 36 hours, does not change the PSVs design function to maintain RCS [reactor coolant system] pressure below the RCS pressure Safety Limit of 2750 psia during design basis accidents nor does it affect the PSVs ability to perform this design function. The proposed change does not require any modification to the plant or change equipment operation or testing. It also does not create any credible new failure mechanisms, malfunctions, or accident initiators that would cause an accident not previously considered.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No.

The proposed change, revising an existing NOTE within Technical Specification 3.4.10 to allow the PSVs lift settings to be outside LCO values, as a result of temperature related drift, while the Unit is in applicable portions of Mode 3 for periods up to 36 hours, does not involve a significant reduction in the margin of safety in maintaining RCS pressure below Safety Limits of 2750 psia during design basis accidents. The analysis conducted in support of this proposed change evaluated the ability of the PSVs to maintain an adequate safety margin when required in applicable Mode 3 conditions despite the identified temperature related lift setting drift. The analysis identified that there were no credible design accident scenarios, when in the applicable Mode 3 conditions, that challenged the PSVs to respond in order to maintain an adequate safety margin to the reactor coolant Safety Limit of 2750 psia.

Therefore the proposed change does not involve a significant reduction in the margin of safety of maintaining RCS pressure below the RCS pressure Safety Limit.

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 amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Branch Chief: Nancy L. Salgado.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 4, 2010.

Description of amendment request: The proposed amendment would revise the Core Spray flow requirement in Technical Specifications Surveillance Requirements 3.5.1.8 and 3.5.2.6 from 6,350 to 5,725 gallons per minute consistent with the flow assumed in the Emergency Core Cooling System (ECCS) safety analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The minimum performance requirements of the low pressure Emergency Core Cooling System (ECCS) pumps, including the Core Spray pumps, are determined through application of the 10 CFR 50, Appendix K methodology to ensure the criteria of 10 CFR 50.46 are satisfied. The surveillance testing of the Core Spray pumps is performed periodically in accordance with the ASME Code, Section XI verifies that two Core Spray pumps in parallel operation within a single division develop sufficient discharge pressure at the Technical Specification required flow to overcome the elevation head pressure between the pump suction and the vessel discharge, the piping friction losses, and TS SR specified Reactor Pressure Vessel pressure. The acceptance criteria necessary to satisfy the revised TS SRs would be established in the plant design basis in the form of the minimum required pump performance defined for a range of flow about the specified TS SR flow. Detroit Edison intends to continue TS SR and IST pump testing at the current IST pump baseline flow and establish compliance with the TS SR by comparing the measured performance against the design minimum pump curve. In this manner, the minimum actual delivered divisional Core Spray pump performance is assured to meet or exceed that required by the Appendix K safety analyses. These performance requirements are unchanged and are met by the proposed change.

The bases for the core spray flow requirements in the Technical Specifications Surveillance Requirements are unchanged. The requirements are selected based on the flow values assumed and used in the current ECCS safety analyses. The value proposed for core spray divisional (2 pump) flow is consistent with the inputs used for ECCS safety analyses performed for the current licensed power level.

Therefore, the proposed 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 accident previously evaluated.

The proposed change revises the Technical Specification Surveillance Requirements for Core Spray flow to be consistent with the accident analysis. No physical changes are being made to the installed core spray system. The proposed surveillance requirements are consistent with those used in the accident analyses which analyze the effect of Core Spray system performance for the accident conditions for which the system is designed to respond. No new or different accident scenarios are created by this change.

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 Core Spray system has historically been capable of meeting the Core Spray Technical Specification Surveillance Requirements. However, correction of non-conservative errors in the system hydraulic calculation and the identification of a non-conservative bias in the test flow instrument calibration have eroded the test margin such that it is possible that the Technical Specification Surveillance Requirements may not be satisfied for some surveillances and at the same time maintain a relatively large margin compared to the minimum performance assumed in the ECCS safety analyses. These non-conservative errors or biases have always existed, but have not always been specifically accounted for in the surveillance testing acceptance criteria. Since there is no change in the Technical Specification bases associated with the requested change, there is no real change in the margin provided in the system design or analyses. The proposed change makes the margin between the current Core Spray Technical Specification Surveillance Requirements and the performance assumed in the plant safety analyses available as a design and test margin. The minimum required performance necessary to satisfy the Core Spray Technical Specification Surveillance Requirements will be established in the plant design basis with the minimum required pump performance adjusted upward as necessary to account for instrument uncertainty and bias as well as differences between assumed accident and actual test operating conditions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David G. Pettinari, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 23, 2009, as supplemented by letter dated March 18, 2010.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) requirements for testing of the James A. FitzPatrick Nuclear Power Plant (JAFNPP) Safety/Relief Valves (SRVs) by replacing the current requirement to manually actuate each SRV during plant startup with a requirement to verify that each valve is capable of being opened. The proposed amendment would change both TS Surveillance Requirements (SRs) 3.4.3.2 and 3.5.1.13 to verify that each required valve "is capable of being opened." The current Frequency for both TS SRs is "24 months on a STAGGERED TEST BASIS for each valve solenoid"; this

would be changed to state, "In accordance with the Inservice Testing Program."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not modify the method of demonstrating the Operability of the Safety/Relief Valves (SRVs) in both the safety and relief modes of operation. As currently stated in the Bases "...valve OPERABILITY and the setpoints for overpressure protection are verified, per ASME Code requirements, prior to valve installation." The proposed change does modify the method for demonstrating the proper mechanical functioning of the SRVs and that the valves and discharge lines are free of obstructions. The SRVs are required to function in the safety mode to prevent overpressurization of the reactor vessel and reactor coolant system pressure boundary during various analyzed transients, including Main Steam Isolation Valve closure. SRVs associated with the Automatic Depressurization System are also required to function in the relief mode to reduce reactor pressure to permit injection by low pressure Emergency Core Cooling System (ECCS) pumps during certain reactor coolant pipe break accidents. The current testing method demonstrates the proper mechanical functioning of the SRVs in both modes through manual actuation of the SRVs. The proposed new testing method demonstrates both Operability and proper mechanical functioning using a series of overlapping tests that demonstrate proper functioning of the SRV stages and supporting control components. This proposed testing method results in acceptable demonstration of the SRV functions in both the safety and relief modes, and therefore provides assurance that the probability of SRV failure will not increase. None of the accident safety analyses is affected by the requested Technical Specifications (TS) changes. Therefore, the consequences of accidents mitigated by the SRVs will not increase.

Certain SRV malfunctions are included in the FSAR [final safety analysis report] safety analyses. Specifically, the plant safety analyses include the inadvertent opening of an SRV and a stuck open SRV. By not actuating the SRVs during plant operation for testing and thus reducing the incidence of pilot stage leakage of the SRVs, the proposed testing eliminates a contributor to these events.

Based on these considerations, the proposed test method does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change modifies the method of testing of the SRVs, but does not alter the functions or functional capabilities of the SRVs. Testing under the proposed method is performed in offsite test facilities or in the plant during outage periods when the SRV functions are not required. Existing analyses address events involving an SRV inadvertently opening or failing to reclose. Analyses also address the likelihood and consequences of failure of one or more SRVs to open. The proposed change does not introduce any new failure mode, and therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

Overpressure protection of the reactor coolant pressure boundary is based on the SRV setpoints and total relief capacity. Setpoint is verified at an offsite testing facility; this requirement is not altered by the proposed change. Relief capacity of each SRV is determined by valve geometry, which is also not altered by the test methods. The margin of safety in the Loss of Coolant Accident analysis due to operation of the Automatic Depressurization System is also based on total relief capacity of the associated SRVs. The proposed change in surveillance test methods demonstrates the operability of the SRVs, but does not alter the critical parameters that affect the margin of safety in analyses involving the SRV functions. 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.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 22, 2010.

Description of amendment request: The proposed amendment will allow implementation of leak-before-break (LBB) on the Waterford Steam Electric Station, Unit 3 (Waterford 3) pressurizer surge line. The licensee will be replacing the two Waterford 3 steam generators (SGs) during the forthcoming spring 2011 refueling outage. Based on design changes in the replacement SGs, piping systems will require rerouting in the SG cavity area. Due to the existing dynamic piping protection associated with the pressurizer surge line, rerouting of the replacement SG blowdown line cannot be effectively performed without the elimination of dynamic protection for the pressurizer surge line.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change uses an approved leak-before-break (LBB) fracture mechanics methodology, in accordance with 10CFR50 [Title 10 of the *Code of Federal Regulations,* Part 50], Appendix A, General Design Criterion (GDC) 4 to demonstrate that the probability of fluid system rupture for these lines attached to the Reactor Coolant System (RCS) is extremely low under conditions associated with the design basis for the piping. The proposed change does not adversely affect accident initiators or precursors nor significantly alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. Overall protection system performance will remain within the bounds of the previously performed accident analyses. The design of the protection systems will be unaffected. The Reactor Protection System (RPS) and Emergency Core Cooling System (ECCS) will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed amendment will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR [Final Safety Analysis Report].

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident, since it provides an NRC acceptable alternate means for demonstrating that the probability of a fluid system rupture is extremely small. There are no changes in the methods by which any safety-related plant

system performs its safety function. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment. LBB methodology per GDC–4 still requires that ECCS, containment, and equipment qualification (EQ) requirements be maintained consistent with the original postulated accident assumptions. Only protection from dynamic effects is modified.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes apply conservative approved analytical methods to demonstrate that the probability of a fluid system rupture is very low. This analysis retains substantial margins to assure that pipe rupture is extremely low and justifies differences in protection from dynamic effects with these extremely low probability ruptures. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. For overall ECCS, containment, and EQ requirements, there will be no changes to the assumed margins.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 22, 2010.

Description of amendment request: The proposed amendment would add valve SI–4052A (Reactor Coolant Loop (RCL) 2 Shutdown Cooling (SDC) suction inside containment bypass isolation) and valve SI–4052B (RCL 1 SDC suction inside containment bypass isolation) to Technical Specification (TS) Table 3.4–1, "Reactor Coolant System Pressure Isolation Valves." The purpose of this line is to equalize the SDC system pressure down stream of valve SI–405A (RCL 2 SDC suction inside containment isolation) and valve SI–405B (RCL 1 SDC suction inside containment isolation) in order to minimize the pressure transient in the system when valves SI–405A(B) are opened.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The addition of the bypass fill line will decrease the likelihood of a pressure transient in the Shutdown Cooling System suction piping which increases the reliability of the Shutdown Cooling System. Once this change is installed valves SI–405A(B) and SI–4052A(B) become parallel inside containment isolation valves in the shutdown cooling system suction lines. The configuration of SI–405A(B) and SI–4052A(B) includes interlocks such that these valves cannot be inadvertently opened with the RCS [reactor coolant system] above the design pressure of the shutdown cooling system. This change does not affect the capability of these valves to isolate the RCS from SDC. Therefore, there is no credible mechanism by which this change can introduce an inter-system LOCA [loss-of-coolant accident] (ISLOCA) different than previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. These features are, discussed in FSAR [Final Safety Analysis Report] section 7.6.1.1.2.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Once this change is installed valves SI–405A(B) and SI–4052A(B) become parallel inside containment isolation valves in the shutdown cooling system suction lines. SI–4052A(B) and its associated lines and valves are designed to the same requirements as SI–405A(B) and its associated lines. The previously evaluated SI–405A(B) failure modes bound those failure modes possible by SI–4052A(B). Thus, no failure of SI–4052A(B) exists that would be different or more severe than SI–405A(B),

This proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment adds SI–4052A(B) to Technical Specification Table 3.4–1. The change also adds an allowed leakage limit to SI–4052A(B) consistent with NUREG–1432 guidance.

Since the SI–4052A(B) leakage limit is commensurate with the valve size, this does not represent a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 22, 2010.

Description of amendment request: Entergy Operations, Inc. (the licensee), will be replacing the two Waterford Steam Electric Station, Unit 3 (Waterford 3) steam generators (SGs) during the 17th refueling outage which will commence in the spring of 2011. The existing Waterford 3 SG program under Technical Specification (TS) 6.5.9 contains an alternate repair criterion for SG tube inspections that is no longer applicable to the replacement SGs. The proposed amendment will modify TS 6.5.9, "Steam Generator (SG) Program," and TS 6.9.1.5, "Steam Generator Tube Inspection Report," to eliminate currently allowed SG tube alternate repair criteria and to modify the SG tube inservice inspection frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change continues to implement the Waterford 3 Steam Generator Program performance criteria for tube structural integrity, accident induced leakage, and operational leakage for the replacement SGs. Meeting the performance criteria provides reasonable assurance that the replacement SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant system (RCS) pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident.

The Steam Generator Tube Rupture (SGTR) is the primary accident analysis associated with SG tube integrity. The replacement SG tubing contains improved materials that will reduce the likelihood of tubing flaws. The proposed change to remove alternate repair criteria from the SG inspection program does not affect the design of the replacement SGs, their method of operation, operational leakage limits, or primary coolant chemistry controls. Therefore, the proposed change does not affect the probability of a SGTR accident. The SGs will be designed with substantial margin to burst. The SG tube inspection repair limit will also identify potential flaws before they become a safety concern. The extension of the SG tube inspection frequency after initial inspection is based on the low likelihood of having potential tube flaws and is considered to be an acceptable inspection period to preserve pressure boundary integrity. As a result, there will be no affect on the previous dose analysis reported in the FSAR [Final Safety Analysis Report] and the consequences of any accident are unchanged.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Steam generator tube rupture events have already been postulated and analyzed in the Waterford 3 FSAR. The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. Additionally, the proposed amendment does not impact any other plant systems or components. The TSs have established SG tube inspection requirements which assure that potential tubing flaws will be detected prior to affecting tube integrity and the RCS pressure boundary. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The structural integrity, accident induced leakage, and operational leakage performance criteria required by the Waterford 3 TSs provide substantial design margin for assuring SG tube integrity against the possibility of a SG tube pressure boundary failure. The proposed change removes an existing alternate repair criterion that is not applicable to the replacement SGs and establishes appropriate SG tube subsequent inspection periods consistent with the new SG tubing design. The replacement SGs will continue to meet their required performance criteria. The Waterford 3 SG tube inspection program will assure that this margin is maintained through the operational life of the plant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of amendment request: February 15, 2010.

Description of amendment request: This amendment request involves the adoption of Nuclear Regulatory Commission (NRC)-approved changes to the Standard Technical Specifications (STS) for Westinghouse plants (NUREG–1431), to allow relocation of specific TS surveillance frequencies to a licensee-controlled program. The proposed changes are described in Technical Specification Task Force (TSTF) Traveler, TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b," as announced in the Notice of Availability published in the **Federal Register** on July 6, 2009 (74 FR 31996). Additionally, the proposed changes would add a new program, the Surveillance Frequency Control Program, to TS Section 5, Administrative Controls. The changes are applicable to licensees using the probabilistic risk guidelines contained in NRC-approved Nuclear Energy Institute (NEI) 04–10, Revision 1, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration adopted by the licensee is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the Technical Specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the Updated Final Safety Analysis Report and Bases to the Technical Specifications), because these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant-licensing basis. To evaluate a change in the relocated surveillance frequency, EGC will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Revision 1 in accordance with the TS Surveillance Frequency Control Program. NEI 04–10, Revision 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: February 15, 2010.

Description of amendment request: This amendment request involves the adoption of Nuclear Regulatory Commission (NRC)-approved changes to the Standard Technical Specifications (STS) for Westinghouse plants (NUREG–1431), to allow relocation of specific TS surveillance frequencies to a licensee-controlled program. The proposed changes are described in Technical Specification Task Force (TSTF) Traveler, TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b," as announced in the Notice of Availability published in the **Federal Register** on July 6, 2009 (74 FR 31996). Additionally, the proposed changes would add a new program, the Surveillance Frequency Control Program, to TS Section 5, Administrative Controls. The changes are applicable to licensees using the probabilistic risk guidelines contained in NRC-approved Nuclear Energy Institute (NEI) 04–10, Revision 1, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration adopted by the licensee is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the Technical Specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the Updated Final Safety Analysis Report and Bases to the Technical Specifications), because these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant-licensing basis. To evaluate a change in the relocated surveillance frequency, EGC will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Revision 1 in accordance with the TS Surveillance Frequency Control Program. NEI 04–10, Revision 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois

Date of amendment request: February 4, 2010.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.3.61, "Primary Containment Isolation Instrumentation," Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation," Function 6.a, "Shutdown Cooling System Isolation, Recirculation Line Water Temperature—High," to enable implementation of a modification that replaces the temperature-based isolation instrumentation with reactor pressure-based isolation instrumentation. The proposed modification will address instrumentation reliability problems that have led to interruptions of Shutdown Cooling (SDC) system operation, leading to unplanned heat-up of reactor coolant while the reactor was in operational Modes 3 and 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment implements a revised process parameter and the associated Allowable Value (AV) for the DNPS Units 2 and 3 SDC system isolation function 6.a in TS Table 3.3.6.1–1.

The proposed changes to the isolation function do not affect the probability of any event initiators at the facilities. This isolation function is provided for equipment protection to prevent exceeding the system design temperature. The isolation function is not credited or assumed in the accident or transient analysis in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes will not degrade the performance of, or increase the number of challenges imposed on, safety-related equipment that is assumed to function during an accident situation. The SDC system and the isolation function that is being revised are not safety related and are not credited to function during an accident situation. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the UFSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment implements a revised process parameter and AV for the DNPS Units 2 and 3 SDC system isolation function 6.a in TS Table 3.3.6.1–1. The proposed change enables implementation of a modification that will enhance the reliability of instrumentation used to protect the functionality and integrity of the non safety-related SDC system. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. 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) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed license amendment revises a process parameter and AV for the DNPS Units 2 and 3 SDC system isolation function 6.a in TS Table 3.3.6.1–1.

The margin of safety is established through the design of the plant structures, systems, and components (SSCs), the parameters within which the plant is operated, and the setpoints for the actuation of equipment relied upon to respond to an accident.

The proposed change to the SDC system isolation instrumentation function for the SDC system does not change the SSCs, operational parameters, or actuation setpoints for equipment that is relied upon to respond to an accident. Both the SDC system and the isolation function that is being revised are non-safety related and are not credited to function during an accident situation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois

Date of amendment request: February 16, 2010.

Description of amendment request: The proposed amendments would modify the DNPS Units 2 and 3, Technical Specifications (TS) by relocating specific surveillance frequencies to a licensee-controlled program with the adoption of Technical Specification Task Force (TSTF)–425, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b," Revision 3. Additionally, the change would add a new program, the "Surveillance Frequency Control Program [SFCP]," to TS Section 5, "Administrative Controls."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee reviewed the proposed No Significant Hazards Consideration (NSHC) determination published in the **Federal Register** dated July 6, 2009 (74 FR 31996).

The licensee has concluded that the proposed NSHC presented in the **Federal Register** notice is applicable to DNPS, Units 2 and 3. The proposed NSHC is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements (SRs) to licensee control under a new SFCP. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the TS for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the SRs, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to the TS), because these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, EGC will utilize the guidance contained in NRC-approved NEI 04–10, in accordance with the TS SFCP. NEI 04–10, Revision 1 methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: February 15, 2010.

Description of amendment request: The proposed amendments would modify the LaSalle County Station (LSCS) Technical Specifications (TS) by relocating specific surveillance frequencies to a licensee-controlled program with the implementation of Nuclear Energy Institute (NEI) 04–10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any

accident previously evaluated is not significantly increased. The systems and components required by the Technical Specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the Updated Final Safety Analysis Report and Bases to the Technical Specifications), because these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, EGC will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Revision 1 in accordance with the TS Surveillance Frequency Control Program. NEI 04–10, Revision 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: February 22, 2010.

Description of amendment request: The proposed amendments would revise Technical Specification 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time associated with Condition B from 8 hours to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment revises Technical Specification (TS) 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time (CT) associated with Condition B (*i.e.,* "Two SLC subsystems inoperable.") from eight hours to 72 hours.

The proposed change is based on a risk-informed evaluation performed in accordance with Regulatory Guides (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis," and RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decision-making: Technical Specifications."

The proposed amendment modifies an existing CT for a dual-train SLC system inoperability. The condition evaluated, the action requirements, and the associated CT do not impact any initiating conditions for any accident previously evaluated.

The proposed amendment does not increase postulated frequencies or the analyzed consequences of an Anticipated Transient Without Scram (ATWS). Requirements associated with 10 CFR 50.62 will continue to be met. In addition, the proposed amendment does not increase postulated frequencies or the analyzed consequences of a large-break loss-of-coolant accident for which the SLC system will be used for pH control (*i.e.,* upon NRC approval of an August 26, 2008 proposed LSCS license amendment regarding the adoption of an alternate source term methodology). The extended CT provides additional time to implement actions in response to a dual-train SLC system inoperability, while also minimizing the risk associated with continued operation. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment revises TS 3.1.7 to extend the CT associated with Condition B from eight hours to 72 hours. The proposed amendment does not involve any change to plant equipment or system design functions. This proposed TS amendment does not change the design function of the SLC system and does not affect the system's ability to perform its design function. The SLC system provides a method to bring the reactor, at any time in a fuel cycle, from full power and minimum control rod inventory to a subcritical condition with the reactor in the most reactive xenon free state without taking credit for control rod movement. Required actions and surveillance requirements are sufficient to ensure that the SLC system functions are maintained. No new accident initiators are introduced by this amendment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises TS 3.1.7 to extend the CT associated with Condition B from eight hours to 72 hours. The proposed amendment does not involve any change to plant equipment or system design functions. The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the setpoints for the actuation of equipment relied upon to respond to an event.

Safety margins applicable to the SLC system include pump capacity, boron concentration, boron enrichment, and system response timing. The proposed amendment does not modify these safety margins or the point at which SLC is manually initiated, nor does it affect the system's ability to perform its design function. In addition, the proposed change complies with the intent of the defense-in-depth philosophy and the principle that sufficient safety margins are maintained, consistent with RG 1.177 requirements (*i.e.,* Section C, "Regulatory Position," paragraph 2.2, "Traditional Engineering Considerations").

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 16, 2010.

Description of amendment request: The proposed amendments would modify the QCNPS Units 1 and 2, Technical Specifications (TS) by relocating specific surveillance frequencies to a licensee-controlled program with the adoption of Technical Specification Task Force (TSTF)–425, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b," Revision 3. Additionally, the change would add a new program, the "Surveillance Frequency Control Program [SFCP]," to TS Section 5, "Administrative Controls."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee reviewed the proposed No Significant Hazards Consideration (NSHC) determination published in the **Federal Register** dated July 6, 2009 (74 FR 31996).

The licensee has concluded that the proposed NSHC presented in the Federal Register notice is applicable to QCNPS, Units 1 and 2. The proposed NSHC is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements (SRs) to licensee control under a new SFCP. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the TS for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the SRs, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to the TS), because these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, EGC will utilize the guidance contained in NRC-approved NEI 04–10, in accordance with the TS SFCP. NEI 04–10, Revision 1 methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: December 14, 2009.

Description of amendment request: The proposed amendment would remove the structural integrity requirements contained in Technical Specifications (TSs) 3/4.4.10 (Unit 1) and 3/4.4.11 (Unit 2) and their associated Bases; incorporate changes to accident monitoring instrumentation for consistency with NUREG–1432 actions and allowed outage times for conditions that drive a unit to hot shutdown; and administrative corrections based on obvious typos, previous amendments, or obsolete requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to remove structural integrity controls from the TSs does not impact any mitigation equipment or the ability of the RCS [reactor coolant system] pressure boundary to fulfill any required safety function. The proposed change will continue to ensure the requirements of 10 CFR 50.55a are maintained as specified in TS 4.0.5 and the new administrative TS program for RCP [reactor coolant pump] flywheel inspections. The changes to the accident instrumentation actions and allowed outage time have no appreciable effect on accident initiation or mitigation. Since no other accident mitigation or initiators are impacted by this change, no design basis accidents are affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

The proposed change will not alter the plant configuration or change the manner in which the plant is operated. Structural integrity will continue to be maintained as required by 10 CFR 50.55a and specified in TS 4.0.5 and the new administrative TS program for RCP flywheel inspections. Accident monitoring instrumentation does not contribute to failure modes. No new failure modes are being introduced by the proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Removing TSs 3/4.4.10 (Unit 1) and 3/4.4.11 (Unit 2) from the TSs does not reduce the controls that are required to maintain the structural integrity of ASME Code Class 1, 2, or 3 components. There is no increase with any accident mitigation risk associated with the accident monitoring instrumentation TS changes as the proposed allowed outage times and the intervening step through HOT STANDBY are consistent with the equivalent to NUREG–1432 completion times and actions for post accident instrumentation and are equal to or more conservative than the current TS requirements. No other safety margins are impacted due to the proposed change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Acting Branch Chief: Douglas A. Broaddus.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 25, 2010.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 3.8.1.9, Diesel Generator (DG) Load Test, to correct a non-conservative power factor (PF) value and to add a new note consistent with TS Task Force (TSTF) traveler TSTF–276–A, Revision 2, "Revise DG Full Load Rejection Test."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Performing a surveillance that tests the DG is not a precursor of any accident previously evaluated. Revising the PF limit to be more conservative, and relaxing the requirement to maintain PF when paralleled to offsite power does not significantly affect the method of performing the surveillances such that the probability of an accident would be affected. These changes only affect surveillances of mitigative equipment and, therefore, do not have an impact on the probability of an accident previously evaluated.

Revising the surveillances by specifying a more conservative PF value ensures the DG's will provide the power assumed in calculations of design basis accident mitigation. Relaxing the requirement to maintain PF when paralleled to offsite power does not affect performance of the DG under accident conditions. The performance of the surveillances ensures that mitigative equipment is capable of performing its intended function, and therefore, the change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. The systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on a safety-related system or component and do not challenge the performance or integrity of safety related systems. As such, it does not introduce a mechanism for initiating a new or different accident than those described in the USAR [updated safety analysis report].

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will continue to ensure the DGs are able to perform their design function as assumed in calculations that evaluate their function during design basis accidents. Decreasing the PF limit for testing will not affect the design or functioning of the DGs. The increased reactive loading required to maintain the PF below the limit is small and well within DG capability. Based on this, the ability of CNS [Cooper Nuclear Station] to mitigate the design basis accidents that rely on operation of the DG's is not adversely impacted. Revising the PF increases the margin of safety by specifying a more conservative value for the PF limit. Therefore, NPPD [Nebraska Public Power District] concludes these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 13, 2007, as supplemented by letters dated. July 13, 2007, September 30, 2008, March 5, 2009, March 23, 2009, March 1, 2010, and March 5, 2010.

Brief description of amendment: The license amendment revises the Millstone Power Station, Unit No. 3 (MPS3) spent fuel pool (SFP) storage requirements. The July 13, 2007, license amendment request proposed a stretch power uprate (SPU) of MPS3. Included in a supplement dated July 13, 2007, was a request to amend the MPS3 SFP storage requirements. The July 13, 2007, request was noticed in the ***Federal Register*** on January 15, 2008 (73 FR 2549). By letter dated March 5, 2008, Dominion Nuclear Connecticut, Inc. (DNC) separated the MPS3 SFP storage

requirements request from the MPS3 SPU request. The request to revise the MPS3 SFP storage requirements was re-noticed on September 8, 2009 (74 FR 46241) using the original significant hazards consideration, specific to the request to revise the SFP storage.

Date of issuance: March 26, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 248.

Renewed Facility Operating License No. NPF–49: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 15, 2008 (73 FR 2549) and September 8, 2009 (74 FR 46241). The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination as published in the **Federal Register** (73 FR 2549). The SFP LAR no significant hazards consideration determination was noticed a second time, separate from the MPS3 SPU (74 FR 46241).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 2010.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: June 29, 2010.

Brief description of amendment: The amendment revised the RBS Technical Specification (TS) 5.5.6, "Inservice Testing Program." TS 5.5.6 contains references to the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI as the source for the inservice testing (IST) of ASME Code Class 1, 2, and 3 pumps and valves. The proposed changes delete the references to Section XI of the ASME Code and incorporate references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). In addition, the amendment changes will limit applying Surveillance Requirement (SR) 3.0.2 to surveillances with a frequency of 2 years or less. These changes are consistent with the changes identified in the Improved Standard Technical Specifications (ISTS) in Technical Specification Task Force Traveler (TSTF) Change Travelers TSTF–479, "Changes to Reflect Revision of 10 CFR 50.55a," and TSTF–497, "Limit Inservice Testing Program 3.0.2 Application to Frequencies of 2 Years or Less."

Date of issuance: March 31, 2010.

Effective date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 167.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** August 25, 2009 (74 FR 42928).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2010.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station (GGNS), Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 27, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) Section 2.1.1, "Reactor Core SLs [Safety Limits]," Subsection 2.1.1.2, to change the two recirculation loop safety limit for minimum critical power ratio (SLMCPR) from 1.08 to 1.09 and the single recirculation loop SLMCPR from 1.10 to 1.12. The changes to the TSs are necessary as a result of the GGNS Cycle 18 cycle-specific SLMCPR calculations.

Date of issuance: March 25, 2010.

Effective date: As of the date of issuance and shall be implemented after the current cycle (Cycle 17) is completed and prior to the operation of Cycle 18.

Amendment No: 184.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 5, 2010 (75 FR 461).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2 (Braidwood), Will County, Illinois, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2 (Byron), Ogle County, Illinois

Date of application for amendment: December 4, 2008, as supplemented by letters dated February 17, 2009; July 27, 2009; December 4, 2009; and January 29, 2010.

Brief description of amendment: The amendments revise Technical Specifications (TSs) 1.1, "Definitions," and 3.4.16, "RCS [Reactor Coolant System] Specific Activity," and Surveillance Requirements 3.4.16.1, 3.4.16.2, and 3.4.16.3. The revisions replace the current TS 3.4.16 limit on RCS gross specific activity with a new limit on RCS noble gas-specific activity. The revisions adopt TS Task Force (TSTF) Change Traveler, TSTF–490, "Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec [sic],"

Revision 0.

Date of issuance: March 23, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: Braidwood Unit 1—162; Braidwood Unit 2—162; Byron Unit No. 1–167; and Byron Unit No. 2—167.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revise the TSs and Licenses.

Date of initial notice in ***Federal Register:*** January 27, 2009 (74 FR 4771).

The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: April 7, 2009, as supplemented by letter dated October 5, 2009.

Brief description of amendments: The amendments delete a footnote from DNPS Technical Specification (TS) 3.4.5, "RCS Leakage Detection Instrumentation," that was incorporated as part of a limited duration emergency license amendment in August 2008, and is no longer applicable. The amendments also correct errors in the titles of analytical methods in DNPS and QCNPS TS 5.6.5, "Core Operating Limits Report (COLR)," paragraph b. The proposed changes delete historical analytical methods from DNPS and

QCNPS TS 5.6.5.b that are no longer applicable, and renumber the remaining analytical methods.

Date of issuance: April 1, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 234/227, 246/241.

Renewed Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** June 30, 2009 (74 FR 31322). The October 5, 2009, supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 2010.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 28, 2009, as supplemented by letter dated January 20, 2010.

Brief description of amendment request: The proposed amendment would support application of optimized weld overlays or full structural weld overlays. Applying these weld overlays on the reactor coolant pump suction and discharge nozzle dissimilar metal welds requires an update to the DBNPS leak-before-break (LBB) evaluation.

Date of issuance: March 24, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 281.

Facility Operating License No. NPF–3: The amendment revised the current licensing basis.

Date of initial notice in ***Federal Register:*** February 22, 2010 (75 FR 7628).

The January 20, 2010 supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 2010.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 6, 2008; superseded by letters dated August 4 and December 4, 2009.

Brief description of amendment: The amendment modifies the Crystal River Unit 3 (CR–3) technical specifications (TS) surveillance requirements (SRs) related to allowable voltage and frequency limits for the emergency diesel generator (EDG) testing. Specifically, the amendment revises the CR–3 TS SRs 3.8.1.2, 3.8.1.6, 3.8.1.10.c.3 and 3.8.1.10.c.4 to restrict the voltage and frequency limits for both slow and fast EDG starts.

Date of issuance: December 10, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 236.

Facility Operating License No. DPR–72: Amendment revises the facility operating license and the technical specifications.

Date of initial notice in ***Federal Register:*** September 8, 2009 (74 FR 46242). The supplement dated December 4, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a safety evaluation dated December 10, 2009.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 4, 2009.

Brief description of amendment: The amendment changed the Duane Arnold Energy Center Technical Specification (TS) Section 5.5.12 (Primary Containment Leakage Rate Testing Program) to exclude the Main Steam pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the sum of the leakage rates from Type B and Type C tests and changed TS Section 3.6.1.3 (Primary Containment Isolation Valves) to remove the repair criterion for main steam isolation valves that fail their as-found leakage rate acceptance criterion found in current Surveillance Requirement 3.6.1.3.9.

Date of issuance: March 31, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 276.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 30, 2009 (74 FR 31324).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2010.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station (NMPNS), Unit No. 2 (NMP2), Oswego County, New York

Date of application for amendment: June 29, 2009, as supplemented on August 13, 2009, and February 3, 2010.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.5.12, "10 CFR 50 Appendix J Testing Program Plan," by replacing the reference to Regulatory Guide 1.163 with a reference to Nuclear Energy Institute (NEI) topical report NEI 94–01, Revision 2–A, as the implementation document used by NMPNS to develop the NMP2 performance-based leakage testing program in accordance with Option B of 10 CFR 50, Appendix J. In addition, the amendment allows NMPNS to extend the current interval for the NMP2 primary containment integrated leak rate test (ILRT) from 10 years to 15 years, and allows successive ILRTs to be performed at 15-year intervals.

Date of issuance: March 30, 2010.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 134.

Renewed Facility Operating License No. NPF–069: The amendment revises the License and TSs.

Date of initial notice in ***Federal Register:*** October 20, 2009 (74 FR 53779).

The supplemental letters dated August 13, 2009, and February 3, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 2010.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: October 8, 2009, as supplemented by letter dated February 25, 2010.

Brief description of amendments: The amendment approves a one-time change to Technical Specification (TS) 6.8.4.i,

"Steam Generator (SG) Program," regarding the SG tube inspection and repair required for the portion of the SG tubes passing through the tubesheet region. Specifically, for Salem Unit No. 1 refueling outage 20 (planned for spring 2010) and subsequent operating cycles until the next scheduled SG tube inspection, the amendment limits the required inspection (and repair if degradation is found) to the portions of the SG tubes passing through the upper 13.1 inches of the approximate 21-inch tubesheet region. In addition, the amendment revises TS 6.9.1.10, "Steam Generator Tube Inspection Report," to provide reporting requirements specific to the one-time change.

Date of issuance: March 29, 2010.

Effective date: As of the date of issuance, to be implemented prior to completion of refueling outage 20 (currently scheduled for spring 2010).

Amendment No.: 294.

Facility Operating License Nos. DPR–70 and DPR–75: The amendment revised the TSs and the License.

Date of initial notice in ***Federal Register:*** January 5, 2010 (75 FR 464).

The letter dated February 25, 2010, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 29, 2010.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment requests: February 3, 2009, and March 3, 2009; both applications were supplemented by letters dated November 20, 2009, and January 20, 2010.

Brief description of amendments: The amendments approved a revision to the South Texas Project (STP), Units 1 and 2 Fire Protection Program for Fire Areas 27 and 31. In the event of a fire in the Fire Areas 27 and 31, the amendments allow the licensee to perform operator manual actions to achieve and maintain safe shutdown in lieu of meeting the circuit separation and protection requirements of Title 10 of the *Code of Federal Regulations,* Part 50, Appendix R, Section III.G.2. The amendments revised the License Condition 2.E, "Fire Protection," in the facility operating licenses, to reflect the changes. The approved changes to the Fire Protection Program will be documented in the licensee's "Fire Hazards Analysis Report."

Date of issuance: March 31, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—193; Unit 2—181.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses.

Date of initial notices in ***Federal Register:*** August 25, 2009 (74 FR 42929, 42930). The supplemental letters dated November 20, 2009, and January 20, 2010, provided additional information that clarified the applications, did not expand the scope of the applications as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 31, 2010.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to

Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 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/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. 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 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* 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 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.[1] 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.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. *Environmental*—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

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.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 22, 2010, as supplemented on March 23, 2010.

Description of amendment request: The previous Technical Specification (TS) 3.4.17, "Chemical and Volume Control System (CVCS)," Action B, allowed the licensee 24 hours to restore an inoperable makeup water pathway from the Refueling Water Storage Tank before taking further actions. This amendment increased the completion time of TS 3.4.17, Action B, from 24 hours to 72 hours for fuel cycle 26.

Date of issuance: March 25, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 223.

Facility Operating License No. (DPR–23): Amendment revises the technical specifications.

Public comments requested as to propose no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated March 25, 2010.

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.

NRC Branch Chief: Douglas A. Broaddus.

Dated at Rockville, Maryland, this 12th day of April 2010.

For The Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–8744 Filed 4–19–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0158]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–4018.

FOR FURTHER INFORMATION CONTACT: Gregory C. Chapman, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 492–3106 or e-mail to *Gregory.Chapman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, "Constraint on Releases of Airborne Radioactive Materials to the Environment for Licensees Other than Power Reactors" is temporarily identified by its task number, DG–4018, which should be mentioned in all related correspondence. DG–4018 is proposed Revision 2 of Regulatory Guide 4.2, dated December 1996.

This regulatory guide provides guidance on methods acceptable to the U.S. Nuclear Regulatory Commission (NRC) staff for meeting the constraint on air emissions of radioactive material to the environment as described in title 10, section 20.1101(d), of the Code of Federal Regulations (10 CFR 20.1101(d)). In 1996, the NRC added a constraint to 10 CFR part 20, "Standards for Protection against Radiation" (Ref. 1), to remove dual regulation by the NRC and the U.S. Environmental Protection Agency (EPA) and to provide an "ample margin of safety" to members of the public from air emissions of radioactive material to the environment.

II. Further Information

The NRC staff is soliciting comments on DG–4018. Comments may be accompanied by relevant information or supporting data and should mention DG–4018 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0158 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0158. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rules, Announcements and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* Draft Regulatory Guide, DG–4018 is available electronically under ADAMS Accession Number ML092590180.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0158.

FOR FURTHER INFORMATION CONTACT: Gregory C. Chapman, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 492–3106 or e-mail to *Gregory.Chapman@nrc.gov.*

Comments would be most helpful if received by June 14, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 12th day of April 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–9055 Filed 4–19–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 61906; File No. 3–13860]

Order Instituting Administrative Proceedings Pursuant to Section 15E(a)(2)(A)(ii) of the Securities Exchange Act of 1934 and Notice of Hearing; In the Matter of the Application of Dagong Global Credit Rating Co., Ltd.

April 14, 2010.

Dagong Global Credit Rating Co., Ltd. ("Dagong"), a credit rating agency based in Beijing, China, submitted an application with the Securities and Exchange Commission ("Commission") for registration as a nationally recognized statistical rating organization ("NRSRO") pursuant to section 15E(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17g–1 thereunder.

Pursuant to section 15E(a)(2)(A) of the Exchange Act, not later than 90 days (or within such longer period as to which the applicant consents) after the application for registration is furnished to the Commission, the Commission shall, by order, either grant such registration or institute proceedings to determine whether such registration should be denied. Under section 15E(a)(2)(C), the Commission shall grant registration as an NRSRO to an applicant if the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied and unless the Commission finds (in which case the Commission shall deny such registration) that, among other things, if the applicant were so registered, its registration would be subject to suspension or revocation under section 15E(d) of the Exchange Act.

If the Commission institutes proceedings to determine whether an application for registration should be denied, section 15E(a)(2)(B)(i)(I) of the Exchange Act requires that the Commission shall include notice of the grounds for denial under consideration and an opportunity for a hearing. Section 15E(a)(2)(B)(i)(II) provides that the proceedings shall be concluded not later than 120 days after the date on which the application for registration is furnished to the Commission. The Commission may extend the time for conclusion of such proceedings, pursuant to section 15E(a)(2)(B)(iii), for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for such finding, or for such longer period as to which the applicant consents. Section 15E(a)(2)(B)(ii) provides that, at the conclusion of such proceedings, the Commission, by order, shall grant the application or deny the application for registration.

After furnishing its application on December 24, 2009, Dagong consented to two extensions of time for the Commission to act on the application. The first extension was for seven days and the second extension was fourteen additional days. Under Section 15E(a)(2)(B), the Commission is required to act on the application no later than April 14, 2010, unless further extensions are granted by Dagong.

Dagong has provided the following information in connection with its application to register as an NRSRO. Dagong is located in Beijing, China. Dagong has no physical presence in the United States, does not rate any U.S. companies, and has no U.S. persons subscribing to its ratings. When submitting certifications from companies that rely on its ratings for investment purposes, as required for registration, Dagong relied exclusively on companies located in China.

In addition, to date the Commission has been unable to determine whether, under local law requirements applicable to Dagong, Dagong would be able to comply with the provisions in Section 17 of the Exchange Act, and the rules thereunder, relating to making its books and records available for Commission examination, producing books and records to the Commission, and furnishing reports to the Commission.

Accordingly, pursuant to section 15E(a)(2)(A)(ii) of the Exchange Act, the Commission is instituting proceedings to determine whether Dagong's application for registration as a nationally recognized statistical rating organization should be denied. In these proceedings, grounds for denial under consideration will include:

(I) Whether Dagong has a sufficient connection with U.S. interstate commerce to register as an NRSRO, and thereby invoke the regulatory and oversight authority of the Commission; and

(II) Whether Dagong's application for registration should be denied pursuant to Section 15E(a)(2)(C)(ii)(II) on the grounds that, if registered as an NRSRO, Dagong would be subject to having its registration suspended or revoked under section 15E(d)(1) of the Exchange Act because, in light of requirements in its home jurisdiction, Dagong would be unable to comply with provisions of the U.S. securities laws and rules (an act identified in Section 15(b)(4)(D) of the Exchange Act), including, in particular, Section 17 of the Exchange Act and Rules 17g–2 and 17g–3 thereunder.

Given the nature of the issues raised in the application, the Commission is currently of the view that a hearing on the basis of written submissions will sufficiently allow the parties to address these issues.

Accordingly, *it is ordered,* that proceedings under section 15E(a)(2)(A)(ii) of the Exchange Act be and hereby are instituted to determine whether the application of Dagong should be denied.

It is further ordered that a hearing shall be conducted on the basis of written submissions (and in accordance with the Commission's Rules of Practice, 17 CFR 201.100, *et seq.,* except as otherwise provided) addressing issues of law or fact in dispute and legal arguments supporting the parties' positions. Dagong and the interested divisions or offices of the Commission shall each file an opening submission not later than May 5, 2010 and a responsive submission not later than May 17, 2010. Each party shall simultaneously serve according to the Rules of Practice on the other party a copy of each submission. Any requests for extensions of time (which shall be made pursuant to Rule of Practice 161), and any requests to submit oral testimony shall be considered contingent upon Dagong's consent to a reasonable extension of time pursuant to section 15E(a)(2)(B)(iii) of the Exchange Act in addition to the 90-day extension the Commission is hereby ordering as set forth below.

It is further ordered that the time period for the conclusion of all proceedings, after which the Commission is required to grant or deny the application, is extended for an additional 90 days pursuant to section 15E(a)(2)(B)(iii) of the Exchange Act to July 22, 2010. The Commission finds good cause for this 90-day extension on the basis that the application raises substantial legal questions, including questions of foreign law, which necessitate granting the parties sufficient time to prepare written submissions and the Commission sufficient time to consider those submissions.

It is further ordered that any person who seeks to participate on a limited basis, or amicus curiae, pursuant to Rules of Practice 210(c) and (d), shall file a motion for leave to participate, together with the proposed submission, with the Secretary of the Commission not later than May 5, 2010.

It is further ordered that the Secretary of the Commission shall serve this Order forthwith upon Dagong in accordance with Rule of Practice 141; and that notice to all other persons shall be given by publication of this Order and Notice in the **Federal Register;** and that this Order and Notice and any subsequent orders granting or denying the application shall be posted on the Commission's Web site at *http://www.sec.gov* and published in the SEC Docket.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9052 Filed 4–19–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 22, 2010 at 1 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries

will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c), (5), (7), 9(B) and (10) and 17 CFR 200.402(a), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 22, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: April 15, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9116 Filed 4–16–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In The Matter of Apogee Technology, Inc.; Order of Suspension of Trading

April 16, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Apogee Technology, Inc. ("Apogee") because it has been delinquent in its required periodic reports since March 2009. Apogee is quoted on the Pink Sheets OTC Markets, Inc. under the ticker symbol ATCS.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 16, 2010, through 11:59 p.m. EDT on April 29, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–9144 Filed 4–16–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61891; File No. SR–BX–2010–026]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Chapter V, Section 7 (Customer Orders and Order Flow Providers)

Date: April 13, 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 March 31, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes NASDAQ OMX BX, Inc. (the "Exchange") proposes to amend Chapter V, Section 17 (Customer Orders and Order Flow Providers) of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 amend Chapter V, Section 17 (Customer Orders and Order Flow Providers) of the BOX Rules in order to eliminate some of its restrictions. Section 17(c) currently provides that an Order Flow Provider ("OFP") [3] shall not enter into BOX, as principal or agent, Limit Orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the OFP or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis.

The Exchange is proposing that these restrictions be eliminated so that they are no longer applicable to instances where an OFP is acting as principal on its own behalf or is acting as agent on behalf of other broker-dealer or Public Customer orders.[4] Because broker-dealer and Public Customer orders are not subject to priority on the BOX Book that is any better than Market Makers, BOX does not believe it is necessary to impose the Rule's restrictions on the entry of broker-dealer and Public Customer orders. The Exchange believes that the elimination of these restrictions will permit entities other than Market Makers to enter orders on both sides of the market more freely, which may result in more orders on the BOX Book and therefore increased liquidity on the BOX market, all to the benefit of investors.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Chapter I, Section 1 (Definitions) of the BOX Rules which defines the term "Order Flow Provider" or "OFP" to mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading.

[4] The Exchange notes that the Securities and Exchange Commission ("Commission") has previously found that it is consistent with the Securities Exchange Act of 1934 ("the Act") for an options exchange not to prohibit a user of its market from effectively operating as a market maker by holding itself out as willing to buy and sell options contracts on a regular or continuous basis without registering as a market maker. *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (Order Approving, among other things, a Proposed Rule Change to Establish Rules Governing the Trading of Options on the NASDAQ Options Market ("NOM")).

The Exchange notes that OFPs must register as BOX Options Participants as well as registering with the Commission under Section 15 of the Act,[5] and the rules and regulations thereunder.[6] Further, an entity which acts as a "dealer," as defined in Section 3(a)(5) of the Act,[7] must also register with the Commission under Section 15 of the Act,[8] and the rules and regulations thereunder, or alternatively qualify for any exception or exemption from such registrations.[9]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed changes should continue to contribute to the Exchange's ability to maintain a fair and orderly market in a manner that will limit unfair advantage and encourage competition. Specifically, because broker-dealer and Public Customer orders are not subject to priority on the BOX Book that is any better than Market Makers, the Exchange does not believe it is necessary to impose the Rule's restrictions on the entry of broker-dealer and Public Customer orders. The Exchange believes that the elimination of these restrictions will permit entities other than Market Makers to enter orders on both sides of the market more freely, resulting in more orders on the BOX Book and therefore increased liquidity on the BOX market, all to the benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

Because broker-dealer and Public Customer orders are not subject to priority on the BOX Book that is any better than Market Makers, the Exchange does not believe it is necessary to impose the Rule's restrictions on the entry of broker-dealer and Public Customer orders. The Exchange believes that the elimination of these restrictions will permit entities other than Market Makers to enter orders on both sides of the market more freely, resulting in more orders on the BOX Book and therefore increased liquidity on the BOX market, all to the benefit of investors.

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–BX–2010–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–026. This file number should be included on the subject line if e-mail is used. To help the

[5] 15 U.S.C. 78o.

[6] The Exchange notes that this rule change would only eliminate the restrictions of Chapter V, Section 17 in the manner proposed. BOX Options Participants would continue to remain subject to the requirements of Chapter III, Section 4(a) (which requires BOX Options Participants to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Participant's business, to prevent the misuse of material nonpublic information by such Participant or persons associated with such Participant); Chapter III, Section 4(f) (which may consider it conduct inconsistent with just and equitable principles of trade for any Participant or person associated with a Participant who has knowledge of all material terms and conditions of (i) an order and a solicited order, (ii) an order being facilitated or submitted to the Price Improvement Period, or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms and conditions of the order and any changes in the terms and conditions of the order of which the Participant or person associated with the Participant has knowledge are disclosed to the trading crowd, or (b) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received); Supplementary Material .02 to Chapter V, Section 17 (which provides that if an Options Participant fails to expose its Customer Order[s] on BOX, it will be a violation of Section 17 for an Options Participant to cause the execution of an order it represents as agent on BOX through the use of orders it solicited from Options Participants and/or non-Participant broker-dealers to transact with such orders, whether such solicited orders are entered into the BOX market directly by the Options Participant or by the solicited party (either directly or through another Participant), unless the agency order is first exposed to the BOX Book for at least one (1) second); and Supplementary Material .03 to Chapter V, Section 17 (which provides that an OFP may not execute as principal an order it represents as agent unless, (i) the agency order is first exposed to the BOX Book for at least one (1) second, or (ii) the OFP has been bidding or offering on BOX for a least one (1) second prior to receiving an agency order that is executable against such bid or offer; or (iii) the OFP sends the agency order to the Price Improvement Period or Universal Price Improvement Period process pursuant to Sections 18 and 29 of Chapter V of the BOX Rules).

[7] 15 U.S.C. 78c(a)(5).

[8] 15 U.S.C. 78o.

[9] Activity that may cause a person to be deemed a dealer includes "quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system generally available to non-broker-dealers, such as a retail screen broker for government securities)." *See* Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 47364, 68 FR 8685, 8689, note 26 (February 24, 2003) (quoting OTC Derivatives Dealers, Securities Exchange Act Release No. 40594, 63 FR 59362, 59370, note 61 (November 3, 1998)).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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,[14] 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–BX–2010–026 and should be submitted on or before May 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–9031 Filed 4–19–10; 8:45 am]

BILLING CODE 8011–01–P

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61892; File No. SR–CBOE–2010–015)

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Enable the Listing and Trading of Options on the ETFS Palladium Trust and the ETFS Platinum Trust

April 13, 2010.

On February 8, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust (collectively "ETFS Options"). The proposed rule change was published in the **Federal Register** on March 12, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61663 (March 5, 2010), 75 FR 11955.

I. Description of Proposal

Recently, the Commission authorized CBOE to list and trade options on the SPDR Gold Trust,[4] the iShares COMEX Gold Trust, the iShares Silver Trust,[5] the ETFS Silver Trust and the ETFS Gold Trust.[6] Now, the Exchange proposes to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust.

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 ("Commodity Pool Units"), or (iv) represent interests in the streetTRACKS Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust or the ETFS Silver Trust or the ETFS Gold 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 ("Managed Fund Share") are eligible as underlying securities for options traded on the Exchange.[7] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include the ETFS Palladium Trust and the ETFS Platinum Trust.

Apart from allowing the ETFS Palladium Trust and the ETFS Platinum Trust to be an underlying security 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

[4] *See* Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR–CBOE–2005–11).

[5] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (order approving SR–CBOE–2008–72).

[6] *See* Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (order approving SR–CBOE–2010–007).

[7] *See* Interpretation and Policy .06 to CBOE Rule 5.3.

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 the ETFS Palladium Trust and the ETFS Platinum Trust. 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, the ETFS Palladium Trust and the ETFS Platinum Trust 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 the ETFS Palladium Trust and the ETFS Platinum Trust, if the ETFS Palladium Trust and the ETFS Platinum Trust ceases to be an "NMS stock" as provided for in paragraph (f) of Interpretation and Policy .01 of Rule 5.4 or the ETFS Palladium Trust and the ETFS Platinum Trust is halted from trading on its primary market.

The addition of the ETFS Palladium Trust and the ETFS Platinum Trust to Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits [8] or margin.[9]

The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Palladium Trust and the ETFS Platinum Trust 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 the ETFS Palladium Trust and the ETFS Platinum Trust 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 palladium or platinum.

II. Commission Findings

After careful consideration, the Commission finds that the proposed rule change submitted by CBOE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [10] and, in particular, the requirements of Section 6 of the Act.[11] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] 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 a national securities exchange, the CBOE is required under Section 6(b)(1) of the Act [13] 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.[14] Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFS Options.[15] Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[16]

ETFS Options will trade as options under the trading rules of the CBOE. These rules, among other things, are designed to avoid trading through better displayed prices for ETFS Options available on other exchanges and, thereby, satisfy CBOE's obligation under the Options Order Protection and Locked/Crossed Market Plan.[17] 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.[18] 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.[19] 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 has represented that it has surveillance programs in place for the listing and trading of ETFS Options. For example, CBOE 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, palladium or platinum. Additionally, the listing and trading of ETFS Options will be subject to the

[8] *See* CBOE Rules 4.11 and 4.12.

[9] *See* CBOE Rule 12.3.

[10] 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).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(1).

[14] *See* NASD Rule 2320.

[15] *See* CBOE Rule 9.15.

[16] *See* FINRA Rule 2360(b) and CBOE Rules 9.7 and 9.9.

[17] *See* CBOE Rule 6.81. Specifically, CBOE is a participant in the Options Order Protection and Locked/Crossed Market Plan.

[18] 17 CFR 242.600.

[19] *See* Interpretation and Policy .06 to CBOE Rule 5.3.

exchange's rules pertaining to position and exercise limits[20] and margin.[21]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the propose rule change (SR–CBOE–2010–015) be, and is hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–9032 Filed 4–19–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61904; File No. SR–NASDAQ–2010–047]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Global Select Market Initial Listing Requirements

April 14, 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 April 6, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial 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.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change to amend the Global Select initial listing requirements and to make a technical conforming correction to a rule cross reference. The text of the proposed rule change is below. Proposed new language is in italics and proposed deletions are in brackets.

* * * * *

5310. Definitions and Computations

(a)–(d) No change.

(e) In the case of a Company listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 5315(f)(3)(B), [and] (C) *and (D)* will be based on the Company's market capitalization at the time of listing.

(f)–(h) No change.

(i) A Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM–5101–2, is not eligible to list on the Nasdaq Global Select Market.

5315. Initial Listing Requirements for Primary Equity Securities

Rule 5310 provides guidance about computations made under this Rule 5315.

(a)–(e) No change.

(f)

(1) No change.

(2) Market Value Requirement

The Publicly Held Shares shall meet one of the following:

(A)–(B) No change.

(C) A Market Value of at least $*45*[70] million in the case of: (i) A Company listing in connection with its initial public offering; *and* (ii) a Company that is affiliated with, or a spin-off from, another Company listed on the Global Select Market; *or* [and (iii)]

(D) A Market Value of at least $70 million in the case of a closed end management investment company registered under the Investment Company Act of 1940.

(3) Valuation Requirement

A Company, other than a closed end management investment company, shall meet the requirements of sub-paragraph (A), (B), [or] (C), *or (D)* below:

(A)–(B) No change.

(C)(i) Average market capitalization *of* at least $850 million over the prior 12 months, and (ii) total revenue of at least $90 million in the previous fiscal year[.]*; or*

(D)(i) Market capitalization of at least $160 million, (ii) total assets of at least $80 million for the most recently completed fiscal year, and (iii) stockholders' equity of at least $55 million.

* * * * *

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 proposes to amend Rule 5315(f)(3) to adopt a fourth initial listing standard for listing on the Nasdaq Global Select Market. This standard would permit listing if the company has: (i) $80 million in total assets, (ii) $55 million in stockholders' equity and (iii) $160 million of market capitalization. Companies qualifying under this standard will also have to meet all other requirements of Rule 5315, including the ownership and market value requirements contained in Rule 5315(f) and, upon listing, would be subject to the Global Market continued listing standards.

Nasdaq believes that this new listing standard will continue to ensure that only companies of a significant size and financial standing will be able to list on the Global Select Market. In addition, the new listing standard will permit certain companies that qualify for listing today on other national securities exchanges to also qualify for the Global Select Market. In that regard, Nasdaq notes that the Commission recently approved a similar alternative standard for listing on the New York Stock Exchange, Inc. ("NYSE").[4] This new NYSE alternative allows a company to list if it has total assets of at least $75 million, stockholders' equity of at least $50 million, and a global market capitalization of at least $150 million. The proposed requirements for initial listing on the Nasdaq Global Select Market are higher than those adopted by the NYSE.

Like companies listing under the current Global Select Market initial listing standards, companies listing under the proposed new standard must

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[20] *See* CBOE Rules 4.11 and 4.12.

[21] *See* CBOE Rule 12.3. *See also* FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 58934 (November 12, 2008), 73 FR 69708 (SR–NYSE–2008–098, modifying Section 102.01C of the Listed Company Manual).

also comply with the continued listing standards of Nasdaq's Global Market.[5] While in some cases based on different criteria, these continued listing standards are generally the same as or lower than those of the NYSE. Nasdaq believes that its Global Market continued listing standards, which Nasdaq strictly applies, are designed to ensure that only companies of adequate size and stature remain listed on Nasdaq.

Nasdaq is also proposing to reduce the market value of publicly held shares ("MVPHS") requirement contained in Rule 5315(f)(2)(C) from $70 million to $45 million for companies listing in connection with an initial public offering or that are affiliated with, or a spin-off from, another company listed on the Global Select Market.[6] Nasdaq believes that this proposed reduction in the market value of publicly held shares requirement to $45 million for companies that are new to the public markets will enable otherwise qualified companies to qualify for the Global Select Market and is similar to a recent change by the NYSE. In that regard, Nasdaq notes that the NYSE recently adopted a $40 million public float requirement applicable to initial public offerings and spin-offs for listing on the NYSE.[7] Nasdaq notes that the proposed $45 million market value of publicly held shares requirement is higher than the analogous NYSE requirement.[8]

In addition, Nasdaq proposes to add Rule 5310(i) to provide that a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time is not eligible to list on the Global Select Market.[9]

Nasdaq believes that the proposed Global Select Market listing standards will continue to exceed the standards established by Rule 3a51–1 of the Exchange Act[10] (the "Penny Stock Rules"), and notes that, in approving the NYSE's assets and equity test and reduced public float requirement, the Commission found that the NYSE's rules exceeded those standards.[11]

The requirement in Rule 5315(f)(3)(A) for a minimum of $2.2 million income from continuing operations exceeds the $750,000 income requirement of SEC Rule 3a51–1(a)(2)(i)(A)(3). In addition, companies qualifying under this Rule must have at least three years of positive income, thus satisfying the requirement in SEC Rule 3a51–1(a)(2)(i)(B) that a company have a minimum one year operating history. Rule 5315(f)(3)(B) requires an average market capitalization of at least $550 million over the prior 12 months; Rule 5315(f)(3)(C) requires an average market capitalization of at least $850 million over the prior 12 months; and proposed Rule 5315(f)(3)(D) would require a minimum market capitalization of $160 million, as well as equity of at least $55 million. Nasdaq believes that each of these requirements satisfy the requirements of SEC Rules 3a51–1(a)(2)(i)(A)(2) and 3a51–1(a)(2)(i)(B) that a company have a market value of listed securities of at least $50 million. While SEC Rule 3a51–1(a)(2)(i)(A)(2) requires a market value of listed securities of $50 million calculated over a 90 consecutive day period, the $50 million in market value of listed securities requirement is far lower than the requirements of the Nasdaq rule, including the $160 million of market capitalization required under proposed Rule 5315(f)(3)(D). As such, Nasdaq believes that proposed rule is comparable to, and arguably more stringent than, the $50 million market value of listed securities requirement of SEC Rule 3a51–1(a)(2)(i)(A)(2) and (B).

Nasdaq believes that its Global Select Market's rules will also exceed the Penny Stock Rules remaining stock price and distribution requirements. Rule 5315(e)(1) requires companies initially listing on Nasdaq to have a minimum bid price of $4 per share, thereby satisfying the $4 requirement of SEC Rule 3a51–1(a)(2)(i)(C). Rule 5315(f)(1) requires a company's securities to have either 450 round lot holders or at least 2,200 total holders, although if a company is publicly traded and has an average monthly trading volume over the prior 12 months of at least 1.1 million shares per month, it can list with 550 total holders. Nasdaq believes that these requirements are comparable to, or more stringent than, the requirement of SEC Rule 3a51–1(a)(2)(i)(D) that a security have at least 300 round lot holders, and satisfy the same objective by assuring adequate liquidity in the security.[12]

Last, SEC Rule 3a51–1(a)(2)(i)(E) requires at least 1 million publicly held shares with a market value of at least $5 million. Rule 5315(e)(2) requires all securities listing on the Nasdaq Global Select Market to have at least 1.25 million publicly held shares. In addition, Rule 5215(f)(2), as proposed to be amended, would require a minimum $45 million market value of publicly held shares. As such, Nasdaq believes its initial listing standards for the Global Select Market continue to meet or exceed the requirements of the Penny Stock Rules.

Nasdaq also believes that, the addition of the new valuation requirement does not change the fact that the Nasdaq Global Market quantitative continued listing standards are reasonably related to the quantitative initial listing standards of the Global Select Market, as required by SEC Rule 3a51–1(a)(2)(ii). The quantitative continued listing standards, which are not changing as a result of this proposed rule change, require a company to maintain either $10 million in stockholders' equity, $50 million in market value of listed securities, or total assets and total revenue of at least $50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years, along with other requirements.[13]

Companies listing under the proposed Global Select Market listing standards would have to comply with these requirements, as well as all other applicable Nasdaq listing rules, including Nasdaq's corporate governance requirements. As with all other listing applicants, Nasdaq reserves the right to apply its discretionary authority to deny initial or continued listing to any company seeking to list under the proposed standards if Nasdaq determines that the listing of such

[5] Under Rule 5450, a company's primary equity security must qualify under at least one of three standards for continued listing: Equity (Rule 5450(b)(1)); Market Value (Rule 5450(b)(2)); or Total Assets/Total Revenue (Rule 5450(b)(3)).

[6] Closed-end funds will continue to be required to have a minimum of $70 million of MVPHS. Nasdaq does not believe that it is unfairly discriminatory to apply different public float requirements to closed-end funds given that they are subject to their own separate listing standards and have characteristics that make them significantly different from operating companies.

[7] Securities Exchange Act Release No. 60501 (August 13, 2009), 74 FR 42348 (August 21, 2009) (SR–NYSE–2009–080, approving changes to Section 102.01B of the Listed Company Manual).

[8] *Id.*

[9] These companies are commonly referred to as special purpose acquisition companies or SPACs. *See* IM–5101–2. SPACs cannot currently list on the Global Select Market because they would not be able to meet any of the existing Valuation Requirement alternatives in Rule 5315(f)(3). The addition of proposed Rule 5310(i) will clarify that they also cannot list under the proposed new standards.

[10] 17 CFR 240.3a51–1.

[11] Securities Exchange Act Release Nos. 58934 and 60501, *supra* notes 4 and 7.

[12] Nasdaq notes that each of these requirements exceed the comparable requirements of the NYSE and that the Commission did not raise concerns under the Penny Stock Rules in connection with the NYSE adopting standards comparable to those proposed herein. *See* Securities Exchange Act Release No. 60501, *supra,* note 7; Securities Exchange Act Release No. 58934, *supra,* note 4.

[13] Rule 5450(b).

company is contrary to the public interest.[14]

Nasdaq is also making a minor technical correction to Rule 5315(f)(3)(C)(i) to insert an omitted word.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general and with Sections 6(b)(5) of the Act,[16] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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. The proposed rule change is designed to provide an additional Global Select Market initial listing standard under which a company may qualify and modify the market value of publicly held shares requirement for certain companies. Nasdaq believes that these changes are consistent with the investor protection objectives of the Act in that the proposed requirements remain at a level high enough so that only companies that are suitable for listing on the Global Select Market will qualify to list.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[17] of the Act and Rule 19b–4(f)(6) thereunder.[18]

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. Nasdaq has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because the changes proposed herein allow only companies of adequate size and quality to list their shares on the Nasdaq Global Select Market. Nasdaq notes that the proposed new listing requirements are more stringent than recently-approved initial listing standards of the NYSE and exceed the requirements of the Penny Stock Rules. Consequently, Nasdaq believes the proposed rule change does not raise any novel regulatory issues or significantly affect the protection of investors or the public interest. Companies listing under the proposed Global Select Market listing requirements would have to comply with all other applicable Nasdaq listing rules, including Nasdaq's corporate governance requirements.

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–2010–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–047. 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–NASDAQ–2010–047, and should be submitted on or before May 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–9033 Filed 4–19–10; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Rule 5101 and IM–5101–1.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6959]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed TransCanada Keystone XL Pipeline Project

April 16, 2010.

AGENCY: Department of State.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (EIS) for the Proposed TransCanada Keystone XL Pipeline Project.

SUMMARY: The Department of State (DOS) has prepared a draft Environmental Impact Statement (EIS) for the Proposed TransCanada Keystone XL Pipeline Project. On September 19, 2008, TransCanada Keystone Pipeline, LP (Keystone) filed an application for a Presidential permit for the construction, operation, and maintenance of pipeline facilities at the border of the U.S. and Canada for the transport of crude oil across the U.S.-Canada international boundary. The Secretary of State is designated and empowered to receive all applications for Presidential permits, as referred to in Executive Order 13337, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country. Keystone has requested authorization to construct and operate border crossing facilities at the U.S.-Canadian border in Phillips County, near Morgan, Montana, in connection with its proposed international pipeline project (the Keystone XL Pipeline Project) that is designed to transport Canadian crude oil production from the Western Canadian Sedimentary Basin (WCSB) to destinations in the south central United States, including to an existing oil terminal in Cushing, Oklahoma, and to existing delivery points in the Port Arthur and East Houston areas of Texas.

SUPPLEMENTARY INFORMATION: The draft EIS was prepared consistent with the requirements of the National Environmental Policy Act (NEPA) and evaluates the potential environmental impacts of the proposed pipeline project. The draft EIS was also prepared consistent with the requirements of the Montana Environmental Policy Act (MEPA) and the Montana Major Facility Siting Act (MFSA). The draft EIS evaluates alternatives to the proposal, including system alternatives and pipeline route alternatives.

The Federal and State agencies that are serving as Cooperating Agencies in the development of the EIS include: U.S. Environmental Protection Agency; U.S. Department of the Interior—Bureau of Land Management (BLM), National Park Service, and U.S. Fish and Wildlife Service; U.S. Department of Agriculture—Natural Resources Conservation Service, Farm Service Agency, and Rural Utilities Service; U.S. Army Corps of Engineers; U.S. Department of Energy, Western Area Power Administration; U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety; and Montana Department of Environmental Quality (MDEQ). Cooperating agencies either have jurisdiction by law or special expertise with respect to the environmental impacts assessed in connection with the proposal and are participating with the DOS in analysis of those environmental impacts.

BLM has authority to issue right-of-way (ROW) grants for all affected Federal lands under the Mineral Leasing Act (MLA) of 1920, as amended (30 U.S.C 181 et seq.) excluding National Park Service lands and the public lands BLM administers under the Federal Land Policy and Management Act of 1976. BLM will consider the issuance of a new ROW grant and issuance of associated temporary use permits that would apply to BLM-managed lands crossed by the Keystone XL Project, as well as all other Federal lands affected. Conformance with land use plans and impacts on resources and programs will be considered in determining whether or not to issue a ROW grant. BLM staff is participating in agency meetings and assisting Keystone with routing across BLM lands.

BLM's purpose and need in preparing an EIS under NEPA for the proposed Keystone XL Project is to approve, approve with modification, or deny Keystone's application under section 28 of the MLA, as amended, for a ROW grant to construct, operate, and decommission a crude oil pipeline and related facilities on public Federal lands in the United States. The proposed ROW action appears consistent with approved BLM land use planning. For the decision to be made, BLM will decide whether or not to grant a ROW across Federal lands, and if so, under what terms and conditions.

The draft EIS addresses the potential environmental effects of the construction and operation of the United States portion of the Keystone XL Pipeline Project. The Keystone XL Project initially would have nominal transport capacity of 700,000 barrels per day (bpd) of crude oil, with up to 200,000 bpd delivered to an existing terminal in Cushing, Oklahoma and the remaining amount shipped to existing delivery points in Nederland (near Port Arthur), Texas, and Moore Junction (in Harris County), Texas. According to Keystone, additional pumping capacity could be added to increase the average throughput to 900,000 bpd, if warranted by future shipper demand and market conditions, with the additional 200,000 bpd transported to delivery points in the U.S. Gulf Coast. In total, the Project would consist of approximately 1,707 miles of new, 36-inch-diameter pipeline, with approximately 327 miles of pipeline in Canada and 1,380 miles in the U.S.

In Canada, Keystone filed an application on February 27, 2009, with the National Energy Board (NEB) requesting approval to construct and operate the Canadian portion of the Keystone XL Pipeline. NEB conducted oral public hearings from September 15–18, September 21–25, and October 1–2, 2009, for a total of 11 hearing days. Appropriate regulatory authorities in Canada conducted an independent environmental review process for the proposed Canadian facilities. As a Responsible Authority under the Canadian Environmental Assessment (CEA) Act, the NEB completed an Environmental Screening Report (ESR) pursuant to the CEA Act. On March 11, 2010, the NEB released its Reasons for Decision approving the application by Keystone. The ESR was included as an appendix to the NEB Reasons for Decision document.

The draft EIS prepared by the DOS describes and evaluates the U.S. portion of the proposed Keystone XL Project. Keystone intends to construct the 36-inch-diameter pipelines within a 110-foot-wide corridor, consisting of a temporary 60-foot-wide construction ROW and a 50-foot-wide permanent ROW. The Keystone XL Project would require construction of pump stations, pigging (cleaning) facilities, delivery facilities, and densitometer sites (for detection of crude oil batch interfaces). Mainline valves (MLVs) would be placed along the pipeline at locations necessary to maintain adequate flow through the pipeline. Keystone has advised DOS that valves would be installed and located as dictated by the hydraulic characteristics of the pipeline and as required by Federal regulations, with the intent to provide for public safety and environmental protection as part of pipeline integrity management practices. The electrical pumps at the Project pump stations would require power delivery through electrical power distribution lines and associated substations as appropriate. Although these facilities would be constructed by other entities that would be responsible for obtaining any necessary Federal, State, and local approvals or authorizations, the construction and operation of these facilities are considered connected actions under NEPA and therefore are considered within this draft EIS. Additionally, the power requirements for several pump stations in South Dakota at full pipeline throughput would require construction and operation of a new 230-kv electrical

transmission line to support regional power grid system reliability. A portion of this transmission line would be constructed by Western Area Power Administration and a portion would be constructed by Basin Electric Power Cooperative. These are both considered connected actions under NEPA and are therefore considered within this draft EIS.

U.S. counties that could possibly be affected by construction of the proposed pipeline are:

- *Montana:* Phillips, Valley, McCone, Dawson, Prairie, Fallon
- *South Dakota:* Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman, Tripp
- *Nebraska:* Keya Paha, Rock, Holt, Garfield, Wheeler, Greeley, Boone, Nance, Merrick, Hamilton, York, Fillmore, Saline, Jefferson
- *Kansas:* Clay, Butler
- *Oklahoma:* Atoka, Bryan, Coal, Creek, Hughes, Lincoln, Okfuskee, Payne, Seminole
- *Texas:* Angelina, Cherokee, Delta, Fannin, Franklin, Hardin, Hopkins, Jefferson, Lamar, Liberty, Nacogdoches, Polk, Rusk, Smith, Upshur, Wood, Chambers, Harris

Comment Procedures and Public Meetings: Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to issuance of the final EIS (a prerequisite to a DOS decision on the proposal), it is important that we receive your comments by no later than May 31, 2010.

Options for submitting comments on the Draft EIS are as follows:

- *By mail to:* Elizabeth Orlando, Keystone XL Project Manager, US Department of State, OES/ENV Room 2657, Washington, DC 20520. Please note that Department of State mail can be delayed due to security screening.
- *Fax to:* (202) 647–1052, attention Elizabeth Orlando.
- *E-mail to: xlpipelineproject@state.gov*.
- *Comment over the internet via the Keystone XL EIS Web site: http://www.keystonepipeline-xl.state.gov*.

Comments received will be included in the public docket without change and may be made available on-line at *http://www.keystonepipeline-xl.state.gov*, including any personal information provided, unless the commenter indicates that 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 e-mail. If you send a comment by e-mail, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

In addition to or in lieu of sending written comments, DOS invites you to attend the public meetings listed below that are intended to allow officers from DOS and the Cooperating Agencies to receive comments on the draft EIS. The public meetings will be conducted in a workshop style. A court reporter will be present and will accept oral comments for the record, which carry the same validity as written comments, and will also be addressed in the final EIS. The meetings in Montana will be considered official hearings in accordance with MEPA guidelines. Dates and locations for the public meetings are:

- Monday, May 3, 2010, 7 to 9 p.m., Durant, Oklahoma, Holiday Inn Express Hotel, 613 University Pl., Durant, OK 74701.
- Tuesday, May 4, 2010, 7 to 9 p.m., Stroud, Oklahoma, Best Western Stroud Motor Lodge, 1200 N. 8th Avenue, Stroud, OK 74079.
- Wednesday, May 5, 2010, 7 to 9 p.m., El Dorado, Kansas, Holiday Inn Express Hotel, 3100 El Dorado Avenue, El Dorado, KS 67042.
- Thursday, May 6, 2010, 12 to 2 p.m., Fairbury, Nebraska, Rock Island Railroad Depot, 910 Second Street, Fairbury, NE 68352.
- Monday, May 10, 2010, 7 to 9 p.m., York, Nebraska, York Auditorium, 211 E. 7th Street, York, NE, 68467.
- Tuesday, May 11, 2010, 7 to 9 p.m., Atkinson, Nebraska, Atkinson Community Center, 206 W. 5th Street, Atkinson, NE 68713.
- Wednesday, May 12, 2010, 7 to 9 p.m., Murdo, South Dakota, Triple H Restaurant (Interstate 90, Exit 192), 601 5 Street, Murdo, SD 57559.
- Thursday, May 13, 2010, 12 to 2 p.m., Faith, South Dakota, Community Legion Hall, Main Street, Faith, SD 57626.
- Thursday, May 13, 2010, 7 to 9 p.m., Buffalo, South Dakota, Harding County Memorial Recreation Center, 204 Hodges Street, Buffalo, SD 57720.
- Monday, May 17, 2010, 7 to 9 p.m., Beaumont, Texas, American Legion Hall #817, 3430 West Cardinal Drive, Beaumont, TX 77705.
- Tuesday, May 18, 2010, 7 to 9 p.m., Liberty, Texas, VFW Hall, 1520 North Main Street, Liberty, TX 77575.
- Wednesday, May 19, 2010, 7 to 9 p.m., Livingston, Texas, Livingston Junior High School, 1801 Highway 59 Loop North, Livingston, TX 77351.
- Thursday, May 20, 2010, 7 to 9 p.m., Tyler, Texas, Ramada Hotel and Conference Center, 3310 Troup Highway SE. Loop 323 & Highway 110 North, Tyler, TX 75701.
- Monday, May 17, 2010, 7 to 9 p.m., Malta, Montana, Great Northern Hotel, 2 South 1st Street East, Malta, MT 59538.
- Tuesday, May 18, 2010, 12 to 2 p.m., Glasgow, Montana Cottonwood Inn and Suites, Highway 2 East, Glasgow, MT 59230.
- Tuesday, May 18, 2010, 7 to 9 p.m., Terry, Montana Terry High School, 215 East Park, Terry, MT 59349.
- Wednesday, May 19, 2010, 12 to 2 p.m., Circle, Montana, Schmidt Super Value, 105 10th Street, Circle, MT 59215.
- Wednesday, May 19, 2010, 7 to 9 p.m., Glendive, Montana, Dawson Community College, 300 College Drive, Glendive, MT 59330.
- Thursday, May 20, 2010, 12 to 2 p.m., Baker, Montana, Thee Garage and Steakhouse, 19 West Montana Avenue, Baker, MT 59313.

Any significant new issues that are identified within the comment period will be analyzed and the draft EIS will be modified as appropriate. A final EIS will then be published and distributed by DOS and the Cooperating Agencies. The final EIS will contain the DOS responses to timely comments received on the draft EIS, including oral comments received during public meetings, and will also contain MDEQ responses to timely comments as required under MEPA. Copies of the draft EIS have been mailed to interested Federal, State and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS or who provided comments during the scoping process; libraries; newspapers; and other stakeholders.

FOR FURTHER INFORMATION CONTACT: The TransCanada Keystone Pipeline application for a Presidential Permit, including associated maps and drawings; the draft EIS; a list of libraries where the draft EIS may be viewed; and other project information are available

for viewing and download at the project Web site: *http://www.keystonepipeline-xl.state.gov.*

For information on the proposed project or the draft EIS contact Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC, 20520, or by telephone (202) 647–4284, or by fax at (202) 647–1052.

Issued in Washington, DC, on April 16, 2010.

Willem Brakel,

Director, Bureau of Oceans and International Environmental and Scientific Affairs/Office of Environmental Policy, Department of State.

[FR Doc. 2010–9075 Filed 4–19–10; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice: 6957]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: smART Power: Visual Arts

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C–CU–10–50.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates:

Application Deadline: May 26, 2010.

Executive Summary: The Cultural Programs Division in the Office of Citizen Exchanges in the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for one award to administer the "smART Power: Visual Arts" program. Under the "smART Power: Visual Arts" program, the Bureau seeks an organization capable of soliciting, selecting, and facilitating approximately ten (10) to thirty (30) collaborative visual arts projects, whereby U.S. visual artists will travel abroad to engage with foreign audiences for periods of approximately six to twelve weeks each.

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: The overall objective of the "smART Power: Visual Arts" program is to support the Bureau of Educational and Cultural Affairs' mission to increase mutual understanding between the peoples of the United States and other countries, emphasizing shared social and cultural values. The program will showcase the role of visual artists as vibrant, engaged, and innovative partners in addressing the broader social issues important to communities worldwide. International audiences will have an opportunity to engage with American artists and learn about our country's cultural history as well as the contemporary cultural scene. The American artists will themselves learn about the societies and cultures of the foreign host countries.

The "smART Power: Visual Arts" program will administer projects where U.S. artists travel to foreign locales and collaborate with local individuals and communities to create works of art. Projects will be designed to stimulate discourse about local or global social issues including, but not limited to the environment, education, health, girls'/women's issues, and freedom of expression. Approved projects will focus on direct community engagement that encourages dialogue, experimentation, and creativity. Participating U.S. artists and foreign communities will have an opportunity to strengthen connections and create long-term relationships through the mutual engagement fostered by the art projects. U.S. missions will benefit from these projects by enhancing their ties with the American artists as well as with the local audiences they serve.

Guidelines: The award period will begin approximately August 31, 2010, and continue through December 31, 2012. ECA intends to award one cooperative agreement to a qualified institution or organization to administer the "smART Power: Visual Arts" program globally. The cooperative agreement will support the organization and implementation of approximately ten (10) to thirty (30) art projects.

All applications must be submitted by public or private non-profit organizations meeting the provisions described in Internal Revenue code section 26 USD 501(c)(3). All artists selected must be U.S. citizens. Total funding for this competition is $1 million. **Please Note:** The Bureau reserves the right to reallocate funds it has initially allocated to this competition, based upon factors such as the number of applications received and responsiveness to the review criteria outlined. No guarantee is made or implied that a grant will be awarded for projects to any particular region.

The successful applicant for the cooperative agreement will organize the selection of approximately ten (10) to thirty (30) visual arts projects to be implemented abroad for periods of approximately six (6) to twelve (12) weeks each, as well as manage the administration of the program throughout the award period.

Proposals should reflect a practical understanding of global issues, and demonstrate sensitivity to cultural, political, economic and social differences in regions where projects may take place. Special attention should be given to describing the applicant organization's experience with planning and implementing complex and unpredictable logistical scenarios abroad. Applicants should identify any U.S. and foreign partner organizations and/or venues with whom they are proposing to collaborate, and describe previous cooperative projects to demonstrate their institutional capacity.

Projects will take place in countries to be designated by ECA and should primarily target and engage youth, underserved, and diverse populations, including Muslim and indigenous populations, as well as educators or groups that influence youth.

Award proposals should contain a detailed plan to work with ECA to identify and recruit U.S. visual artists to participate in the program, as well as a process for soliciting and reviewing proposals submitted by the U.S. artists through a competition for specific overseas projects. It is anticipated that no more than six months will be required to identify the first group of U.S. artists and solicit, review and select project proposals. Selected projects will be announced in or about February 2011, and project activities will be conducted and concluded by December 31, 2012.

The U.S. visual artists to be selected for specific projects must demonstrate high artistic ability, excellent interpersonal skills, and be conversant with the broader aspects of contemporary American society and culture. In addition to creating works of art, artists will conduct workshops, teach master classes, and perform other outreach activities.

Individual art projects deemed competitive under these programs should include the following elements:

• Dynamic public outreach, including a collaborative art project(s) with foreign community members, especially with youth and/or underserved or underprivileged populations.

• A description of how U.S. artists and foreign communities will benefit from participating in the projects; how the projects will stimulate public discourse and explore local or global social issues.

• A description of how U.S. artists, through their projects can encourage dialogue, experimentation, and creativity.

The award recipient's activities and responsibilities for these programs are as follows:

• Design and implementation of a process for openly soliciting applications from U.S. visual artists for international projects subject to ECA final approval.

• Design and implementation of a transparent process for reviewing and selecting proposals using criteria approved by ECA. Criteria may include, but are not limited to elements such as artistic quality/excellence of U.S. artist; U.S. artist experience with public outreach and foreign audiences; appropriateness of the project for the foreign policy context and objectives; opportunities for local outreach.

• Organization of procedures and events for announcing ECA's final decisions on proposals, including media coverage as appropriate.

• Advance project planning (including educational and outreach activities);

• Project implementation and monitoring;

• Processing and funding all administrative aspects of each project, including but not limited to disbursement of moneys to U.S. artists, travel arrangements, visas, immunizations, health insurance, purchase and shipment of supplies, payments and other applicable logistical elements.

• Arrangement of orientation sessions and pre-travel briefings for each artist or group of artists with State Department regional experts and ECA program officers in attendance. In the event a personal briefing session is not possible, a teleconference briefing should be scheduled.

• Production of logo and press and other materials to be used in outreach and program branding.

• Publicizing program activities and results to targeted U.S. and international media in a consultation with ECA, and, as applicable, the Public Affairs Sections of U.S. missions, and participating artists.

• Liaison and coordination with U.S. Missions and local foreign organizations, as appropriate;

• Evaluation of program activities;

• Reporting on project activities to ECA within one month of completion of project;

• Assisting artists and embassies with follow-on program development.

Successful applicants must be highly responsive and able to work in close consultation with ECA and the Public Affairs Sections of participating U.S. embassies overseas. Applicants should also have experience in global exchange planning and implementation, and should state how they intend to address the above elements in their proposal, particularly the specific procedures and criteria for the selection of American artists.

In a cooperative agreement, ECA/PE/C/CU is substantially involved in program activities above and beyond routine monitoring. ECA/PE/C/CU's activities and responsibilities for these programs are as follows:

• Determination of the countries for which projects will be selected. Countries will be those in all world regions of greatest importance to the Department of State's public diplomacy mission to build mutual understanding. Examples of countries where projects may take place include Egypt, Venezuela, Indonesia, Malaysia, Thailand, Syria and Russia. These are examples for purposes of the competition. ECA reserves the right to select participating countries based upon the overall policy priorities of the Department of State during the course of the cooperative agreement.

• Participation in the selection of artists and projects.

• Final approval of all projects and project arrangements.

• Arranging for participation of Department of State officers in pre-travel briefings and any debriefings that might take place.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY 2010.

Approximate Total Funding: $1,000,000.

Approximate Number of Awards: 1.

Approximate Average Award: $1,000,000.

Anticipated Award Date: August 31, 2010.

Anticipated Project Completion Date: December 31, 2012.

Additional Information

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew the cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $1,000,000, 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.

(b.) *Technical Eligibility:* All proposals must comply with: (1) Full adherence to the guidelines stated herein and in the Solicitation Package;

(2) proposal submission deadline; and (3) non-profit organization status, or your proposal will be declared technically ineligible and given no further consideration in the review process.

Applicants may submit only ONE proposal to administer the listed activities/programs. If more than one proposal is received from the same applicant, all submissions will be declared technically ineligible and will receive no further consideration in the review process. **Please Note:** Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

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 Cultural Programs Division (ECA/PE/C/CU) in the Office of Citizen Exchanges, Bureau of Educational Affairs, U.S. Department of State, SA–5, 2200 C Street, NW., 3rd Floor, Washington, DC 20522–0503; tel 202–632–6425; fax 202–632–9355; e-mail *StaplesCD@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C–CU–10–50 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from awards.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.

Please specify Alan Cross and refer to the Funding Opportunity Number ECA/PE/C–CU–10–50 located at the top of this announcement and ''smART Power: Visual Arts'' on all other inquiries and correspondence related to that program.

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/awards/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document 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, the award recipient will also be required to submit a one-page document, derived from its program reports, listing and describing its award activities. For the award recipient, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of award 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 website 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 following is for informational purposes only and is not directly relevant to this solicitation. The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, 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, demonstrating 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.)

The recipient organization will be required to provide reports analyzing its evaluation findings to the Bureau in its 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.3d.4. Describe your plans for: *i.e.* sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements *etc.*

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. The award may not exceed $1,000,000. 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.

IV.3e.2. Allowable costs for the program include the following:

(1) Program Expenses, including but not limited to: Domestic and international travel for the selected artists (per The Fly America Act); visas and immunizations; airport taxes and country entrance fees; honoraria; educational and project materials and presentation items; excess and overweight baggage fees; press kits and promotional materials; follow-on activities; monitoring and evaluation; and international travel for program implementation and/or evaluation purposes.

The following guidelines may be helpful in developing a proposed budget:

A. Travel Costs. International airfares (per The Fly America Act), transit costs, ground transportation, and visas for participating artists to travel to the project destinations.

B. *Per Diem:* Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC.* Foreign per diem rates may be accessed at: *http://aoprals.state.gov/content.asp?content_id=184&menu_id=78.*

C. Sub-awardees and Consultants. Sub-awardee organizations may be used, in which case the written agreement between the prospective award recipient and sub-awardee should be included in the proposal. Sub-awards must be itemized in the budget under General Program Expenses. Consultants may be used to provide specialized expertise. Daily honoraria cannot exceed $200 per day, and applicants are strongly encouraged to use organizational resources, and to cost share heavily in this area.

D. Health Insurance. Each participating artist will be covered under the terms of the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE) health insurance program. The cost for international travel insurance for staff travel may be included in the proposal budget.

E. Honoraria for participating artists. Daily honorarium is $200 per day for each artist.

F. Educational Material and Promotional Items. Artists may use these funds to purchase project material and promotional items whether in the U.S. or abroad. ECA funds for educational and promotional items (*e.g.* CDS, DVDS, catalogues, brochures, *etc.*) should be tailored to meet the needs of the project and be proportional to the overall project cost. Material costs may be subject to change once actual projects are scheduled; however, for proposal budget purposes, costs should be estimated at $1,000 per project.

G. Excess Baggage. Excess baggage costs are based on the size and weight of art materials and supplies. Excess baggage estimates may be subject to change once actual projects are scheduled; however for proposal budget purposes, costs should be estimated at $500 per visual arts project.

H. Immunizations/Visas. For purposes of a proposed budget, line items for immunizations should be estimated at $400 per artist, and visas/visa photos should be estimated at $200 per artist.

I. Press Kits. As appropriate, based on the project and foreign country, the award recipient should design and create press kits in consultation with ECA. This line item may include funds for designing and publishing print materials and/or CD's, DVD's.

J. Staff Travel. Allowable costs include domestic staff travel for one staff member to meet with sub-awardees. International staff travel will be allowable, especially if associated with monitoring and evaluation, as long as costs for each project are completely covered. Cost-sharing for staff travel is strongly encouraged.

2. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for award recipient organization employees, benefits, and other direct and indirect costs per detailed instructions in the Solicitation Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested from ECA award funds will be more competitive on cost effectiveness. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: May 26, 2010.

Reference Number: ECA/PE/C/CU–10–50.

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 ten copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/CU–10–50, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.Grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the website. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via grants.gov can take up to two

business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3f.3 Only one application may be submitted by an organization. Submission of more than one application will automatically disqualify that organization for all applications.

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 cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:* Proposals should exhibit originality, substance and precision. The program plan should state the project's relevance to the U.S. Department of State's foreign policy goals. Program objectives should be stated clearly and should reflect the organization's expertise in the visual arts and in the area of community outreach. Objectives should be reasonable, feasible, and flexible. Detailed agenda and plan should adhere to the program overview and guidelines described above. Proposals should include a detailed timeline/agenda for accomplishing all of the program activities including application phases, participant selection, project implementation and project monitoring.

2. *Institutional Capacity/Record:* Proposals should include the institution's mission and date that 501(c) 3 status was approved. Proposals should reflect institution's expertise in the subject areas, knowledge of conditions overseas, and expertise in planning programs that strengthen connections between the United States and other countries. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Institutions with previous successful experience in conducting exchange programs with the U.S. Government will be deemed more competitive. Proposals must include references with name and contact information for other assistance awards the applicant has received in the event the Bureau chooses to be in touch directly.

The Bureau strongly encourages submission of letters of support and commitment from proposed partner organizations.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should demonstrate a clear understanding of how the individual art projects can have a long lasting impact on the foreign community.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Follow-on Activities:* Proposals should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Post-award activities must be funded by contributions from sources outside the Bureau. Costs for these activities should not appear in the proposal budget, but should be outlined in the narrative.

6. *Project Monitoring and Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Competitive evaluation plans will describe how the project's success at meeting program objectives in quantitative terms will be measured, and should include draft data collection instruments such as surveys and questionnaires, media coverage, and other significant local reaction to specific projects. Proposals should include a plan to evaluate the activities' success, both as the activities unfold and at the end of the program. ECA is especially interested in the qualitative and quantitative results of project activities both in terms of the impact on audiences, as well as on participants. It will be the award recipient's responsibility to inform the Bureau of exchange activity results and changes to the program plan and/or project timeline.

7. *Cost-effectiveness and Cost Sharing:* 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. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. In the event programming involves Iran, West Bank and Gaza, the

following additional requirements may apply: A critical component of current U.S. government Iran policy is the support for indigenous Iranian voices. The State Department has made the awarding of awards for this purpose a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran awardees and sub-awardees for counter-terrorism purposes. To conduct this vetting the Department will collect information from awardees and sub-awardees regarding the identity and background of their key employees and Boards of Directors.

Note: To assure that planning for the inclusion of Iran complies with requirements, please contact Catherine Staples-Randolph at 202–632–6425 or *StaplesCD@state.gov* for additional information.

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Catherine Staples-Randolph at 202–632–6425 or *StaplesCD@state.gov* for additional information.

Special Provision for Performance in a Designated Combat Area (Currently Iraq and Afghanistan) (December 2008)

All Recipient personnel deploying to areas of combat operations, as designated by the Secretary of Defense (currently Iraq and Afghanistan), under assistance awards over $100,000 or performance over 14 days must register in the Department of Defense maintained Synchronized Pre-deployment and Operational Tracker (SPOT) system. Recipients of federal assistance awards shall register in SPOT before deployment, or if already in the designated operational area, register upon becoming an employee under the assistance award, and maintain current data in SPOT. Information on how to register in SPOT will be available from your Grants Officer or Grants Officer Representative during the final negotiation and approval stages in the federal assistance awards process. Recipients of federal assistance awards are advised that adherence to this policy and procedure will be a requirement of all final federal assistance awards issued by ECA.

Recipient performance may require the use of armed private security personnel. To the extent that such private security contractors (PSCs) are required, awardees are required to ensure they adhere to Chief of Mission (COM) policies and procedures regarding the operation, oversight, and accountability of PSCs.

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/awards.

http://fa.statebuy.state.gov

VI.3 Reporting Requirements

You must provide ECA with a hard copy original plus ten copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov website—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports that include final costs for each visual arts project and remaining award funds for additional projects.

(5) During the period of implementation of each visual arts project, bi-weekly reports to the ECA program office that include photographs, any media coverage and information on substantive elements of the project.

(6) No more than two weeks following conclusion of each visual arts project, a report and evaluation of the substantive aspects of the project (including budget) to the ECA program office.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements

The award recipient will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as requested. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For general (non-substantive) questions about this announcement, contact: Catherine Staples-Randolph at 202–632–6425 or *StaplesCD@state.gov*. For specific (substantive) questions about the "smART Power: Visual Arts" program, contact: Alan Cross, Cultural Programs Division (ECA/PE/C/CU), Room 3–K14, ECA/PE/C–CU–10–50,

U.S. Department of State, SA–5, 2200 C Street, NW., Washington, DC 20522–0503; tel 202–632–6407; fax 202–632–9355; e-mail *CrossA@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–CU–10–50 and the specific program being requested.

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: April 14, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–9076 Filed 4–19–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 6958]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: TechWomen

Announcement Type: Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C–10–55.

Catalog of Federal Domestic Assistance Number: 19.415

DATES: *Key Dates:*

Application Deadline: June 2, 2010.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for "TechWomen". Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct a professional mentorship exchange program. This initiative champions two distinct but key themes of President Obama's June 2009 speech in Cairo by supporting development in the field of technology and enabling women to reach their full potential in the technology industry. Applicants should plan to recruit and select a total of approximately 20–40 women from Algeria, Egypt, Jordan, Lebanon, Morocco, the West Bank and Gaza to participate in a four- to six-week peer mentoring program in the United States. The mentoring experience will focus on bolstering the status of professional women in the field of technology, will provide networking opportunities for the participants, and will support activities in the participants' home countries that encourage the interest of girls in technology-based careers.

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

The project "TechWomen" will link approximately 20–40 emerging female leaders from Algeria, Egypt, Jordan, Lebanon, Morocco, the West Bank and Gaza, who have at least two years of professional experience in the field of technology, with female peer mentors in the United States for a four- to six-week mentorship program. A smaller number of select American experts will then travel to the foreign participants' home region to offer skills development sessions and workshops for a broader range of local participants. The program is designed to reach beyond the exchange by serving as the basis for an international professional support network for women working in the field of technology both within and outside of each participant's home country. Participants will also have access to the community of alumni from previous State Department sponsored exchange programs.

Applicants must identify the U.S. and foreign organizations and individuals with whom they are proposing to collaborate both to secure mentorships in the United States, to recruit and select participants overseas, and to implement follow-on workshops conducted by American experts in certain of the participants' home countries. Proposals should contain letters of commitment or support from partner organizations for the proposed mentorships, and for the follow-on workshops overseas. A description of any previous cooperative activities with these partner organizations must be included in the proposal, along with information about their mission, activities, and accomplishments. Applicants should clearly outline and describe the roles and responsibilities of all partner organizations in terms of project logistics, management and oversight.

Competitive proposals will include the following:

- A proposed timeline detailing potential activities and project goals;
- A description of the recruitment and selection processes of participants from Algeria, Egypt, Jordan, Lebanon, Morocco, the West Bank and Gaza;
- A description of U.S.-based activities, including the securing of mentorships and mentors in American companies; monitoring and support of participants during the mentorship; a group orientation; and a debriefing/evaluation session at the conclusion of the program;
- A description of the workshops, seminars and/or other activities conducted by the American experts overseas;
- Letters of commitment from U.S. partners to serve as possible host mentoring sites;
- A description of the applicant organization's relevant expertise in the project area and working with participants or organizations from eligible countries;
- A description of relevant experience managing previous exchange and/or mentoring programs;
- Resumes of experienced staff who have demonstrated a commitment to implement and monitor projects and ensure outcomes;
- A comprehensive plan to evaluate whether program outcomes will achieve the specific objectives described in the narrative;

• A post-grant plan that demonstrates how the participants can maintain contacts initiated during the program. Applicants should discuss ways that U.S. and foreign participants will collaborate and communicate after the ECA-funded grant has concluded.

U.S. Embassy Involvement: Award recipients must acknowledge U.S. Embassy involvement in the final selection of all participants. Before submitting a proposal, all applicants are strongly encouraged to consult with the Bureau of Educational and Cultural Affairs Washington, DC-based State Department contact, Sheila Casey; (202) 632–6070 (tel); (202) 632–9355 (fax); e-mail: *caseysd@state.gov.*

Project Details

Audience

Participants will be women (aged 25–42) from Algeria, Egypt, Jordan, Lebanon, Morocco, the West Bank and Gaza who are engaged or rising in professional careers that require significant expertise/knowledge of technology and/or innovative application of these skills, and who already are, or show promise of being, role models for others in their countries, particularly for women. "Technology" should be interpreted broadly to include—but not be limited to—the fields of science, education, and business. Participants must have at least two years of previous work experience in a field that explicitly and directly involves and applies technology in meeting professional goals. All participants must be proficient in English.

Each participant should be matched with one female U.S. mentor who is a mid-level professional. Also, each participant should have a personal mentor as well to help ease her adjustment to American culture and life.

A successful program will:

• Provide foreign participants from eligible countries the opportunity for professional development through project-based mentorships with American peers for up to 6 weeks, and through activities conducted in select countries overseas after the conclusion of the U.S.-based program.

• Promote mutual understanding and partnerships between key professional groups in the United States and counterpart groups in eligible countries.

• Create sustainable professional mentoring relationships between U.S. and foreign participants.

• Expand the network of technology professionals in eligible countries.

Ideal Program Model

• A four- to six-week U.S.-based program that includes a group orientation at the beginning of the program; a mentorship with a peer mentor; a debrief/evaluation session at the conclusion of the U.S.-based mentorship; and additional educational and cultural programming, as appropriate. Participants should be placed in small groups in one or multiple tech hub areas to provide them with a social and support network. Placing participants in the Silicon Valley region of California and/or other centers of technology in the United States is strongly encouraged. Based on the participant's interests and goals, the award recipient will design each mentorship around a specific project or effort within a company that is clearly relevant to the participant's professional goals.

• Robust engagement with the private sector to expand networking opportunities and secure mentorship hosts in small-, medium- and large-size companies.

• A four- to seven-day project in one-two of the participants' home countries for select U.S. experts in technology (either the participants' mentors themselves, or other women that have been in close contact with the mentees in the United States) to conduct/participate in seminars, workshops, on-site consultancies, and other types of activities with the goal of reinforcing the mentorship experience and creating a wider network of women who are established in these professions, or who aspire to do so. During this overseas project, the award recipient should also arrange one–two workshops for at least 25 girls (within the age range of 11–15) each to expose them to role models and insight into what it means to be a female leader in a technological field. At the end of the overseas project, there should be a one-day debriefing and evaluation session with the participants.

• A follow-on plan to establish regular communication between the participants themselves, as well as with those who were engaged during the programming during the overseas project.

Successful applicants must demonstrate a capacity to achieve the following:

• Recruit and select 20–40 qualified individuals from Algeria, Egypt, Jordan, Lebanon, Morocco, the West Bank and Gaza. The program should be designed for participants to travel to the United States at the same time, in order to participate in a group orientation upon arrival, even if they will subsequently be engaged in smaller, more customized programs. The award recipient will be responsible for making all international and domestic travel arrangements.

• Identify U.S.-based organizations and individuals with whom collaboration on mentorships and networking opportunities is possible, and describe previous cooperative activities, if any.

• Identify qualified and established partner organizations/offices overseas where participants are being recruited in consultation with ECA and the relevant U.S. Embassies and Consulates.

• Implement meaningful and effective four- to six-week professional mentoring experiences in the United States. The final selection of foreign participants should take into account the types of mentorship placements that may be available in the United States.

• Three-six months after the conclusion of the mentorships in the United States, design and make all logistical arrangements to implement a four- to seven-day seminar, workshop, on-site consultancy or other activity conducted by U.S. experts in one-two of the participants' home countries that includes one-two age-appropriate workshops for girls (within the age range of 11–15), and a one-day debriefing and evaluation session with the participants at the conclusion of the overseas activities. The award recipient will be responsible for making all international and domestic travel arrangements.

• Propose specific ideas and approaches to maintaining contact and networking opportunities between the participants themselves, and between them and their U.S. mentors and host institutions/organizations.

• In collaboration with ECA and the respective U.S. Embassies, design and arrange for the publication (both in print and online) of program materials for TechWomen. Relevant materials include those to advertise and promote the program (both in the United States and overseas), orientation materials, mentoring guidelines, and materials for activities conducted in the participants' home countries. Materials and Web site designs must be approved by ECA prior to publication and/or distribution; please allow a minimum of three weeks for this review process. Printed materials and Web sites must prominently display the TechWomen program logo (designed by the award recipient in consultation with and subject to the approval of ECA) and U.S. Department of State seal. All official documents and materials developed for promotional purposes must use the TechWomen logo and acknowledge the

U.S. Department of State's role as program sponsor. **Please note:** All materials and Web site resources paid for by grant funds will become the property of the Department of State.

ECA envisions the *approximate* dates of TechWomen to be as follows:

- *September 2010–January 2011:* Recruitment and selection of foreign participants. Recruitment campaign for U.S. hosting institutions.
- *February 2011–April 2011:* Securing U.S.-based mentors and host sites.
- *May 2011–August 2011:* Travel to the United States by foreign participants to the United States for orientation and placement at mentorship sites for a four- to six-week program.
- *November 2011–February 2012:* U.S. experts travel to select countries overseas to conduct seminars, workshops and/or other activities.

Additional Information

All projects proposed for the mentorship should encourage both the American mentors and the foreign participants to come together, learn from each other and to build relationships.

The Department has initiated outreach to women in technology in the Middle East through previous contract and conferences; once a cooperative agreement has been awarded under this competition, the organizers of previous projects may be consulted for additional contacts and information.

Based on existing relations, the Department will work with the award recipient to finalize potential companies where the participants are placed; however, only applicants who can demonstrate a strong private sector network through their own resources will be deemed competitive.

In a cooperative agreement, ECA is substantially involved in program activities above and beyond routine monitoring. ECA's activities and responsibilities for this program are as follows:

- Collaborating with the award recipient on the outreach and selection of mentors and host sites.
- Approval of host institutions and organizations;
- Review and approval of all program publicity and other materials;
- Final selection of participants;
- Assistance with SEVIS-related issues;
- Assistance with participant emergencies;
- Liaison with relevant U.S. Embassies and country desk officers at the Department of State, particularly in terms of recruitment and selection efforts.
- Issuance of DS–2019 forms to participants.
- Enrolling participants in the Accident and Sickness Program for Exchanges (ASPE) for the duration of the program, issue health benefits identification cards, and provide instructions on host claim forms;
- Working with the award recipient to publicize the program through various media outlets; and
- Monitoring and evaluating the program as necessary, through site visits or debriefing sessions.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2010.

Approximate Total Funding: $1,000,000.

Approximate Number of Awards: 1–2.

Floor of Award Range: $500,000.

Ceiling of Award Range: $1,000,000.

Anticipated Award Date: September 1, 2010.

Anticipated Project Completion Date: June 30, 2012.

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 up to two awards for approximately $1,000,000 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 as the primary award recipient. Organizations and institutions that are interested in being part of the administration of TechWomen, but that have less than the required four years experience, are encouraged to explore the possibility of being a sub-grantee in a consortium lead by another entity that is the primary award recipient. Applicants may choose to apply for a minimum award of $500,000, or up to a maximum award of $1,000,000. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

b. *Technical Eligibility:* Eligible applicants may not submit more than one proposal in this competition. If more than one proposal is received from the same applicant, all submissions will be declared technically ineligible and will receive no further consideration in the review process. **Please note:** Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

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 Veronica Rector in the Office of Citizen Exchanges, ECA/PE/C, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0504, (202) 632–6081 (tel); (202) 632–9355 (fax); *rectorva@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C–10–55 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required

application forms, and standard guidelines for proposal preparation.

Please specify Sheila Casey and refer to the Funding Opportunity Number ECA/PE/C–10–55 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 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* 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. Budget requests may not exceed $1,000,000. 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.

IV.3e.2. Allowable costs for the program include the following:

- International and domestic air fares; visas; transit costs; ground transportation costs and airline baggage and seat fees. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.
- *Per Diem.* For U.S.-based programming, organizations should refer to the published Federal per diem rates for individual U.S. cities. *Domestic per diem rates* may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17943.*

ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. *Foreign per diem rates* for overseas activities can be accessed at: *http://aoprals.state.gov/content.asp?content_id=184&menu_id=78.*

- *Return Travel Allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. The allowance may be used for incidental expenses incurred during international travel.
- *Health Insurance.* Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.
- *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria may not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.
- *Room Rental.* Room rental may not exceed $250 per day.
- *Materials Development.* Your proposal may contain costs to purchase, develop and translate materials for participants.
- *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas. Award recipients are urged to research applicable taxes that may be imposed on these transfers by host governments.
- *In-country travel costs for visa processing purposes.* Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.
- *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for recipient organization employees, benefits, and

other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources. Please also include in the administrative portion of your budget plans to travel to Washington, DC, to meet with your program officer within the first 45 days after the grant has been awarded.

Please refer to the PSI for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: June 2, 2010.

Reference Number: ECA/PE/C–10–55.

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 seven (7) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C–10–55, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday—Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible. Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation.

Applicants will receive a validation e-mail from Grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the 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 (cooperative agreement) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program Planning and Ability to Achieve Objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and debriefing sessions, and follow-on activities).

4. *Institutional Capacity/Track Record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals, particularly in securing meaningful and effective mentorships for participants in TechWomen. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Program Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus a description of a methodology to link outcomes to the original program objectives are recommended.

6. *Cost-effectiveness/Cost-sharing:* 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. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an 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.1b The following additional requirements apply to this project:

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact (insert program office contact name, telephone and e-mail) for additional information.

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) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports which should include relevant details on participant recruitment efforts, mentorship hosts, and the status of overseas workshops, seminars, and/or other activities.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements:

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all

persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Sheila Casey, U.S. Department of State, Office of Citizen Exchanges, ECA/PE/C, SA–5, 3rd Floor, 2200 C Street, NW., Washington, DC 20522–0503, (202) 632–6070 (tel); (202) 632–9355 (fax); *caseysd@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference ECA/PE/C–10–55.

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: April 14, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–9079 Filed 4–19–10; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS402]

WTO Dispute Settlement Proceeding Regarding United States—Use of Zeroing in Anti-Dumping Measures Involving Products From Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on April 8, 2010, received a request from the Republic of Korea ("Korea") for the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning certain issues relating to the imposition of antidumping measures on stainless steel plate in coils, stainless steel sheet and strip in coils, and diamond sawblades and parts thereof from Korea. That request may be found at *http://www.wto.org* in a document designated as WT/DS402/3. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before May 18, 2010, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2009–0040. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Leigh Bacon, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–5859.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 2527(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that Korea has requested the establishment of a dispute settlement panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If such a panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by Korea

In its request for establishment of a panel, Korea challenges the use by the U.S. Department of Commerce ("Commerce") of what Korea describes as "the practice of 'zeroing' negative dumping margins in calculating overall weighted average margins of dumping" in the final and amended final determinations in the investigation with respect to stainless steel plate in coils from Korea,[1] in the final and amended final determinations in the investigation with respect to stainless steel sheet and strip in coils from Korea,[2] and in the final and amended final determinations in the investigation with respect to diamond sawblades and parts thereof from Korea.[3] Korea states that it

[1] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils ("SSPC") from the Republic of Korea,* 64 FR 15444 (Mar. 31, 1999), as amended by *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 66 FR 45279 (Aug. 28, 2001); *Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan,* 64 FR 25515 (May 12, 1999); *Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 64 FR 27756 (May 21, 1999), as amended by *Notice of Amended Antidumping Duty Orders: Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 11520 (Mar. 11, 2003), as amended by *Notice of Amended Antidumping Duty Orders: Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 16117 (Apr. 2, 2003), and as amended by *Notice of Correction to the Amended Antidumping Duty Orders: Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 20114 (Apr. 24, 2003).

[2] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 64 FR 30664 (June 8, 1999); *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 66 FR 45279 (Aug. 28, 2001); *Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom,* 64 FR 40896 (July 28, 1999); *Notice of Antidumping Duty Order: Stainless Steel Sheet and Strip in Coils from United Kingdom, Taiwan and South Korea,* 64 FR 40555 (July 27, 1999).

[3] *See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and*

considers these actions to be inconsistent with the obligations of the United States under Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2009–0040. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2009–0040 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *http://www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *http://www.wto.org.*

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Steven F. Fabry,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–9008 Filed 4–19–10; 8:45 am]

BILLING CODE 3190–W0–P

Parts Thereof from the Republic of Korea, 71 FR 29316 (May 22, 2006), as amended by *Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof From the Republic of Korea,* 75 FR 14126 (Mar. 24, 2010); *Diamond Sawblades and Parts Thereof from China and Korea,* Inv. Nos. 731–TA–1092 and 1093 (Final) (Remand), USITC Pub. 4007 (May 2008), approved in *Diamond Manufacturers Coalition* v. *United States,* CIT Court No. 06–00247, 2009 Ct. Intl. Trade LEXIS 6, Slip-Op. 2009–5 (Jan. 13, 2009); *Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (Nov. 4, 2009).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventieth Meeting: RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

DATES: The meeting will be held May 18–20, 2010 from 9 a.m.–5 p.m. SC–147 Plenary Session: May 18th & 19th and SC–147 Working Group Planning and organizational meetings May 20th.

ADDRESSES: The meeting will be held at RTCA, Inc. 1828 L. Street, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036.; telephone (202) 833–9339; fax (202) 833–9434; Web-site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment meeting. The agenda will include:

SC–147 Plenary Agenda

- Agenda Item 1. Opening Plenary Session.
  - SC–147 Co-Chairmen's opening remarks.
  - Introductions—See attendance list.
  - Approval of Agenda—Agenda was approved as written.
  - Approval of Minutes from 69th

meeting of SC–147.
- Agenda Item 2. Revised Terms of Reference for SC–147.
- Agenda Item 3. TCAS Program Office Activities.
  - Monitoring Efforts/TRAMS/TOPA.
  - TCAS Development Scenarios Paper.
  - Independence considerations for potential "NextCAS."
  - Horizontal Maneuvering.
- Agenda Item 4. AVS and other FAA activities.
  - TSOs, etc.
  - ASIAS/CAST/CAS Steering Committee.
- Agenda Item 5. EUROCAE WG–75: Status of current activities.
- Agenda Item 6. Narrow-band receivers (ACSS).
- Agenda Item 7: Other related TCAS efforts from industry.
  - Airbus automating responses for TCAS RAs (SC220).
- Agenda Item 8: 2nd look at Revised Terms of Reference for SC–147.
  - Deliverables
  - Schedules
  - SC–147 Organization 7 working arrangements
- Agenda Item 10: Closing Session.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 13, 2010.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–9028 Filed 4–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for O'Hare International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Winter 2010 Scheduling Season

AGENCY: Department of Transportation, Federal Aviation Administration (FAA).

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of May 13, 2010, for Winter 2010 flight schedules at Chicago's O'Hare International Airport (ORD), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Scheduling Guidelines and FAA orders limiting scheduled operations. The deadline of May 13, 2010, coincides with the schedule submission deadline for the IATA 126th Schedules Conference. The U.S. winter scheduling season for these airports is from October 31, 2010, through March 26, 2011.

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2, Schedules Facilitated Airport, and JFK and EWR as Level 3, Coordinated Airports. The scheduled operations at JFK and EWR are currently limited by FAA orders.[1] The FAA is primarily concerned about planned operations during peak hours but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 7 a.m. to 9 p.m. Central Time and at EWR and JFK from 6 a.m. to 11 p.m. Eastern Time. Schedule information should include all planned commercial operations including passenger, charter, and cargo flights. Carriers must submit schedule information in sufficient detail to include at minimum, the operating carrier, airline designator code, flight number, scheduled time of operation, frequency, and effective dates. The FAA encourages the use of IATA standard schedule information format and data elements in the IATA Standard Schedules Information Manual.

DATES: Schedules must be submitted no later than May 13, 2010.

ADDRESSES: Schedules may be submitted to the Slot Administration Office by e-mail to: *7-AWA-slotadmin@faa.gov;* facsimile: 202–267–7277; ARINC: DCAYAXD; or mail to Slot Administration Office, AGC–240, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, Assistant Chief Counsel for Regulations, Office of the Chief Counsel, AGC–40, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–3073 or e-mail: *rebecca.macpherson@faa.gov.*

[1] Order Limiting Scheduled Operations at John F. Kennedy International Airport, 73 FR 3,510 (Jan. 18, 2008); 73 FR 8,737 (Feb. 14, 2008); 74 FR 51,650 (Oct. 7, 2009), (amendments to order). Order Limiting Scheduled Operations at Newark Liberty International Airport, 73 FR 29,550 (May 21, 2008); 74 FR 51,648 (Oct. 7, 2009), (amendment to order).

Issued in Washington, DC, on April 14, 2010.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2010–9029 Filed 4–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Identifying Information Associated With Persons Whose Property and Interests in Property Are Blocked Pursuant to the Executive Order of April 12, 2010, "Blocking Property of Certain Persons Contributing to the Conflict in Somalia"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing additional identifying information associated with the eleven individuals and one entity listed in the Annex to the Executive Order of April 12, 2010, "Blocking Property of Certain Persons Contributing to the Conflict in Somalia," whose property and interests in property are therefore blocked.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202/622–0077.

Background

On April 12, 2010, the President issued the Executive Order "Blocking Property of Certain Persons Contributing to the Conflict in Somalia" (the "Order") pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President declared a national emergency to address the deterioration of the security situation and the persistence of violence in Somalia and acts of piracy and armed robbery at sea off the coast of Somalia.

Section 1 of the Order blocks, with certain exceptions, all property and

interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to satisfy certain criteria set forth in the Order.

The Annex to the Order lists eleven individuals and one entity whose property and interests in property are blocked pursuant to the Order. OFAC is publishing additional identifying information associated with those individuals and that entity. As noted in the listings below, the property and interests in property of some of those persons also are blocked pursuant to other OFAC sanctions programs.

The listings for those individuals and that entity now appear as follows:

Individuals

1. ABDILLAHI, Abshir (a.k.a. ABDULAHI, Asad; a.k.a. ABDULI, Aburashid Abdulahi; a.k.a. ABDULLAHI, Abshir; a.k.a. BOYAH, Abshir; a.k.a. "BOOYAH"; a.k.a. "BOYAH"), Eyl, Somalia; Garowe, Somalia; DOB circa 1966; POB Eyl, Somalia (individual) [SOMALIA]

2. AL-TURKI, Hassan Abdullah Hersi (a.k.a. AL-TURKI, Hassan; a.k.a. TURKI, Hassan; a.k.a. TURKI, Hassan Abdillahi Hersi; a.k.a. TURKI, Sheikh Hassan; a.k.a. XIRSI, Xasan Cabdilaahi; a.k.a. XIRSI, Xasan Cabdulle), Somalia; DOB circa 1944; POB Ogaden Region, Ethiopia; nationality Somalia (individual) [SDGT] [SOMALIA]

3. AWEYS, Hassan Dahir (a.k.a. ALI, Sheikh Hassan Dahir Aweys; a.k.a. AWES, Hassan Dahir; a.k.a. AWES, Shaykh Hassan Dahir; a.k.a. AWEYES, Hassen Dahir; a.k.a. AWEYS, Ahmed Dahir; a.k.a. AWEYS, Sheikh; a.k.a. AWEYS, Sheikh Hassan Dahir; a.k.a. DAHIR, Aweys Hassan; a.k.a. IBRAHIM, Mohammed Hassan; a.k.a. OAIS, Hassan Tahir; a.k.a. UWAYS, Hassan Tahir; a.k.a. "HASSAN, Sheikh"), Somalia; Eritrea; DOB 1935; citizen Somalia; nationality Somalia (individual) [SDGT] [SOMALIA]

4. AW-MOHAMED, Ahmed Abdi (a.k.a. ABU ZUBEYR, Muktar Abdirahman; a.k.a. ABUZUBAIR, Muktar Abdulrahim; a.k.a. AW MOHAMMED, Ahmed Abdi; a.k.a. AW-MOHAMUD, Ahmed Abdi; a.k.a. "GODANE"; a.k.a. "GODANI"; a.k.a. "MUKHTAR, Shaykh"; a.k.a. "ZUBEYR, Abu"); DOB 10 Jul 1977; POB Hargeysa, Somalia; nationality Somalia (individual) [SDGT] [SOMALIA]

5. BAYNAH, Yasin Ali (a.k.a. ALI, Yasin Baynah; a.k.a. ALI, Yassin Mohamed; a.k.a. BAYNAH, Yasin; a.k.a. BAYNAH, Yassin; a.k.a. BAYNAX, Yasiin Cali; a.k.a. BEENAH, Yasin; a.k.a. BEENAH, Yassin; a.k.a. BEENAX, Yasin; a.k.a. BEENAX, Yassin; a.k.a. BENAH, Yasin; a.k.a. BENAH, Yassin; a.k.a. BENAX, Yassin; a.k.a. BEYNAH, Yasin; a.k.a. BINAH, Yassin; a.k.a. CALI, Yasiin Baynax), Rinkeby, Stockholm, Sweden; Mogadishu, Somalia; DOB circa 1966; nationality Somalia; alt. nationality Sweden (individual) [SOMALIA]

6. GARAAD, Mohamed Abdi (a.k.a. GARAAD, Mohamud Mohamed; a.k.a. GARAD, Abdi; a.k.a. GARAD, Mohamed), Eyl, Somalia; Garowe, Somalia; DOB circa 1973; POB Eyl, Somalia (individual) [SOMALIA]

7. GHEBREAB, Yemane (a.k.a. GEBRE AB, Yemane; a.k.a. GEBREAB, Yemane; a.k.a. YOHANNES, Yemane Ghebreab W.), Tegadelti Street, Asmara, Eritrea; 12 Keren Street, Asmara, Eritrea; DOB 21 Jul 1951; POB Asmara, Eritrea; Passport D000901 (Eritrea); alt. Passport D001082 (Eritrea) (individual) [SOMALIA]

8. KHALAF, Fuad Mohamed (a.k.a. KALAF, Fuad Mohamed; a.k.a. KALAF, Fuad Mohammed; a.k.a. KHALAF, Fuad; a.k.a. KHALIF, Fuad Mohamed; a.k.a. KHALIF, Fuad Mohammed; a.k.a. QALAF, Fuad Mohamed; a.k.a. SHANGOLE, Fuad; a.k.a. SHONGALE, Fouad; a.k.a. SHONGALE, Fuad; a.k.a. SHONGOLE, Fuad; a.k.a. SHONGOLE, Fuad Muhammad Khalaf; a.k.a. SONGALE, Fuad), Mogadishu, Somalia; nationality Somalia; alt. nationality Sweden (individual) [SOMALIA]

9. MAHAMOUD, Bashir Mohamed (a.k.a. GAP, Gure; a.k.a. MAHMOUD, Bashir Mohamed; a.k.a. MOHAMMED, Bashir Mahmud; a.k.a. MOHAMOUD, Bashir Mohamed; a.k.a. MOHAMUD, Bashir Mohamed; a.k.a. QORGAB, Bashir; a.k.a. YARE, Bashir; a.k.a. "MUSCAB, Abu"; a.k.a. "QORGAB"), Mogadishu, Somalia; nationality Somalia; DOB circa 1979–1982; alt. DOB 1982 (individual) [SOMALIA]

10. MANA'A, Fares Mohammed (a.k.a. MANAA, Fares Mohamed Hassan; a.k.a. MANAA, Fares Mohammed; a.k.a. MANA'A, Faris; a.k.a. MANA'A, Faris Mohamed Hassan; a.k.a. MANAA, Faris Mohamed Hassan); DOB 8 Feb 1965; alt. DOB 22 May 1970; alt. DOB 1968; POB Sadah, Yemen; Diplomatic Passport 000021986 (Yemen); alt. Diplomatic Passport A011892 (Yemen); alt. Diplomatic Passport A009829 (Yemen); National ID No. 1417576 (Yemen) issued 7 Jan 1996; Passport 00514146 (Yemen) (individual) [SOMALIA]

11. SA'ID, Mohamed (a.k.a. ATOM, Mohamed Sa'id; a.k.a. ATOM, Mohamed Siad; a.k.a. "ATOM"), Badhan, Somalia; Galgala, Puntland, Somalia; DOB circa 1966; POB Galgala, Puntland, Somalia (individual) [SOMALIA]

Entity

1. AL-SHABAAB (a.k.a. AL-SHABAAB AL-ISLAAM; a.k.a. AL-SHABAAB AL-ISLAMIYA; a.k.a. AL-SHABAAB AL-JIHAAD; a.k.a. AL-SHABAB; a.k.a. HARAKAT AL-SHABAAB AL-MUJAAHIDIIN; a.k.a. HARAKAT SHABAB AL-MUJAHIDIN; a.k.a. HARAKATUL-SHABAAB AL MUJAAHIDIIN; a.k.a. HISB'UL SHABAAB; a.k.a. HIZBUL SHABAAB; a.k.a. MUJAHIDEEN YOUTH MOVEMENT; a.k.a. MUJAHIDIN AL-SHABAAB MOVEMENT; a.k.a. MUJAHIDIN YOUTH MOVEMENT; a.k.a. SHABAAB; a.k.a. "MUJAAHIDIIN YOUTH MOVEMENT"; a.k.a. "MYM"; a.k.a. "THE UNITY OF ISLAMIC YOUTH"; a.k.a. "THE YOUTH"; a.k.a. "YOUTH WING"), Somalia [FTO] [SDGT] [SOMALIA]

Dated: April 13, 2010.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2010–9009 Filed 4–19–10; 8:45 am]

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Federal Register

Tuesday,
April 20, 2010

Part II

Department of the Treasury

Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Departmental Offices (DO) is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the Department has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records. Such changes throughout the document are editorial in nature and consist principally of changes to system locations and system manager addresses, and revisions to organizational titles. The notices were last published in their entirety on August 9, 2005, beginning at 70 FR 46268.

On May 22, 2007, the Office of Management and Budget (OMB) issued M–07–16 "Safeguarding Against and Responding to the Breach of Personally Identifiable Information." This memorandum required agencies to develop and implement breach notification policies within 120 days.

As part of that effort the Department published on October 3, 2007, a new routine use for all Treasury systems of records. The routine use permits the Department to disclose information "to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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."

The routine use will facilitate an effective response to a confirmed or suspected breach by allowing for disclosure to those individuals affected by the breach, as well as to others who are in a position to assist in the Department's response efforts, either by assisting in notification to affected individuals or otherwise playing a role in preventing, minimizing, or remedying harms from the breach or compromise.

A routine use found in a number of DO systems of records notices, permitting disclosure of information in response to a subpoena has been revised. The revision limits the disclosure of records from a system of records to those disclosures made in response to a court order.

Three systems of record have been added to the Department's inventory of Privacy Act notices since August 9, 2005, as follows: DO .217—National Financial Literacy Challenge Records, (March 10, 2008, at 73 FR 12797); DO .219—TARP Standards for Compensation and Corporate Governance—Executive Compensation Information System, (July 24, 2009, at 74 FR 36823); and DO .218—Home Affordable Modification Program Records, (October 28, 2009, at 74 FR 55621).

This publication also incorporates the amendments to several systems of records maintained by DO: Treasury/DO .311—TIGTA Office of Investigations Files (November 25, 2005 at 74 FR 29532); and Treasury/DO .214—D.C. Pensions Retirement Records (June 22, 2009 at 74 FR 29532).

This notice covers all systems of records adopted up to October 30, 2009.

Dated: April 13, 2010.

Melissa Hartman,

Acting Deputy Assistant Secretary for Privacy and Treasury Records.

Departmental Offices (DO)

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TREASURY/DO .003

SYSTEM NAME:

Law Enforcement Retirement Claims Records—Treasury/DO.

SYSTEM LOCATION:

These records are located in the Office of Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted claims for law enforcement retirement coverage (claims) with their bureaus in accordance with 5 U.S.C. 8336(c)(1) and 5 U.S.C. 8412(d).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to claims filed by current and former Treasury employees under 5 U.S.C. 8336(c)(1) and 5 U.S.C. 8412(d). These case files contain all documents related to the claim including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8336(c)(1), 8412(d), 1302, 3301, and 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218 and 1959–1963 Comp., p. 519; and E.O. 10987.

PURPOSE(S):

The purpose of the system is to make determinations concerning requests by Treasury employees that the position he or she holds qualifies as a law enforcement position for the purpose of administering employment and retirement benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

(1) To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To disclose information to any source from which additional information is requested in the course of processing a claim, to the extent necessary to identify the individual whose claim is being adjudicated, inform the source of the purpose(s) of the request, and identify the type of information requested;

(3) To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter;

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) To disclose information which is necessary and relevant to the Department of Justice or to a court when the Government is party to a judicial proceeding before the court;

(6) To provide information to the National Archives and Records Administration for use in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908;

(7) To disclose information to officials of the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties;

(8) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; and

(9) To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

(10) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and electronic media.

RETRIEVABILITY:

By the names of the individuals on whom they are maintained.

SAFEGUARDS:

Lockable metal filing cabinets to which only authorized personnel have access. Automated databases are password protected.

RETENTION AND DISPOSAL:

Disposed of after closing of the case in accordance with General Records Schedule 1, Civilian Personnel Records, Category 7d.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

It is required that individuals submitting claims be provided a copy of the record under the claims process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting claims be provided a copy of the record under the claims process. However, after the action has been closed, an individual may request access to the official copy of the claim file by contacting the system manager. Individuals must provide the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment to their records to correct factual errors should contact the system manager. Individuals must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO.007

SYSTEM NAME:

General Correspondence Files—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Components of this record system are in the following offices within the Departmental Offices:

1. Office of Foreign Assets Control.
2. Office of Tax Policy.
3. Office of International Affairs.
4. Office of the Executive Secretariat.
5. Office of Legislative Affairs.
6. Office of Terrorism and Financial Intelligence.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress, U.S. Foreign Service officials, officials and employees of the Treasury Department, officials of municipalities and State governments, and the general public, foreign nationals, members of the news media, businesses, officials and employees of other Federal Departments and agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence and replies pertaining to the mission, function, and operation of the Department, tasking sheets, and internal Treasury memorandum.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The manual systems and/or electronic databases (*e.g.,* Treasury Automated Document System (TADS)) used by the system managers are to manage the high volume of correspondence received by the Departmental Offices and to accurately respond to inquiries, suggestions, views and concerns expressed by the writers of the correspondence. It also provides the Secretary of the Treasury with sentiments and statistics on various topics and issues of interest to the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(3) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Provide information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(6) Provide information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings, and

(7) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, file folders and magnetic media.

RETRIEVABILITY:

By name of individual or letter number, address, assignment control number, or organizational relationship.

SAFEGUARDS:

Access is limited to authorized personnel with a direct need to know. Rooms containing the records are locked after business hours. Some folders are stored in locked file cabinets in areas of limited accessibility except to employees. Others are stored in electronically secured areas and vaults. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Some records are maintained for three years, then destroyed by burning. Other records are updated periodically and maintained as long as needed. Some electronic records are periodically updated and maintained for two years after date of response; hard copies of those records are disposed of after three months in accordance with the NARA schedule. Paper records of the Office of the Executive Secretary are stored indefinitely at the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESSES:

1. Director, Office of Foreign Assets Control, U.S. Treasury Department, Room 2233, Treasury Annex, 1500 Pennsylvania Ave., NW., Washington, DC 20220.
2. Freedom of Information Act Officer, Office of Tax Policy, U.S. Treasury Department, Room 5037G–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.
3. Senior Director, International Affairs Business Office, U.S. Treasury Department, Room 4456–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.
4. Director, VIP Correspondence, Office of the Executive Secretariat, U.S. Treasury Department, Room 3419–MT, Washington, DC 20220.
5. Deputy to the Assistant Secretary, Office of Legislative Affairs, U.S. Treasury Department, Room 3464–MT, Washington, DC 20220.
6. Senior Resource Manager, Office of Terrorism and Financial Intelligence, U.S. Department of the Treasury, Room 4006, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Director, Disclosure Services (*see* "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500

Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Members of Congress or other individuals who have corresponded with the Departmental Offices, other governmental agencies (Federal, state and local), foreign individuals and official sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO.010

SYSTEM NAME:

Office of Domestic Finance, Actuarial Valuation System—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Office of Government Financing, Office of Policy and Legislative Review, 1120 Vermont Avenue, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries of the Foreign Service Retirement and Disability System and the Foreign Service Pension System. Covered employees are located in the following agencies: Department of State, Department of Agriculture, Agency for International Development, Peace Corps, and the Department of Commerce.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system is as follows: Active Records: Name; social security number; salary; category-grade; pay-plan; department-class; year of entry into system; service computation date; year of birth; year of resignation or year of death, and refund if any.

Retired Records: Same as actives; annuity; year of separation; cause of separation (optional, disability, deferred, etc.); years and months of service by type of service; marital status; spouse's year of birth; annuitant type; principal's year of death; number of children on annuity roll; children's years of birth and annuities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 4058 and 22 U.S.C. 4071h.

PURPOSE(S):

22 U.S.C. 4058 and 22 U.S.C. 4071h require that the Secretary of the Treasury prepare estimates of the annual appropriations required to be made to the Foreign Service Retirement and Disability Fund. The Secretary of the Treasury is also required, at least every five years, to prepare valuations of the Foreign Pension System and the Foreign Service Retirement and Disability System. In order to satisfy this requirement, participant data must be collected so that liabilities for the Foreign Service Retirement and Disability System and the Foreign Service Pension System can be actuarially determined.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Data regarding specific individuals is released only to the contributing agency for purposes of verification, and

(2) Other information may be disclosed to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored electronically.

RETRIEVABILITY:

Alphabetically.

SAFEGUARDS:

Access is restricted to select employees of the Office of Government Financial Policy. Passwords are required to access the data.

RETENTION AND DISPOSAL:

Records are retained on a multiple year basis in order to perform actuarial experience studies.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Policy and Legislative Review, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to records maintained in this system, seek to contest its content, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "notification procedure" above.

RECORD SOURCE CATEGORIES:

Data for actuarial valuation are provided by organizations responsible for pension funds and pay records, namely the Department of State and the National Finance Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .015

SYSTEM NAME:

Political Appointee Files—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Departmental Offices, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may possibly be appointed to political positions in the Department of the Treasury, consisting of Presidential appointees requiring Senate confirmation; non-career Senior Executive Service appointees; and Schedule C appointees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may consist of the following: Referral letters; White House clearance letters; information about an individual's professional licenses (if applicable); IRS results of inquiries; notation of National Agency Check (NAC) results (favorable or otherwise); internal memoranda concerning an individual; Financial Disclosure Statements (Standard Form 278); results of inquiries about the individual; Questionnaire for National Security Positions Standard Form 86; Personal Data Statement and General Counsel Interview sheets; published works including books, newspaper and magazine articles, and treatises by the

individual; newspaper and magazine articles written about or referring to the individual; and or articles containing quotes by the individual, and other correspondence relating to the selection and appointment of political appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302 and E.O. 10577.

PURPOSE(S):

These records are used by authorized personnel within the Department to determine a potential candidate's suitability for appointment to non-career positions within the Department of the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to:

(1) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(2) A Federal, state, local or foreign agency maintaining civil, criminal or other relevant enforcement information or other pertinent information which has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) Appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation, and

(7) To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence and forms in file folders. Records are also maintained in electronic media.

RETRIEVABILITY:

Information accessed by last name of individual and Social Security Number.

SAFEGUARDS:

Building employs security guards. Data is kept in locked file cabinets and is accessible to authorized personnel only. Electronic media is password protected.

RETENTION AND DISPOSAL:

Records are destroyed at the end of the Presidential administration during which the individual is hired. For non-selectees, records of individuals who are not hired are destroyed one year after the file is closed, but not later than the end of the Presidential administration during which the individual is considered.

SYSTEM MANAGER(S) AND ADDRESS:

White House Liaison, Department of the Treasury, Rm 3418, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be informed if they are named in this system or gain access to records maintained in the system must submit a written, signed request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Record Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Record Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are submitted by the individuals and compiled from interviews with those individuals seeking non-career positions. Additional sources may include the White House, Office of Personnel Management, Internal Revenue Service, Department of Justice and international, state, and local jurisdiction law enforcement components for clearance documents, and other correspondence and public record sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .060

SYSTEM NAME:

Correspondence Files and Records on Dissatisfaction—Treasury/DO.

SYSTEM LOCATION:

Office of Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and current Department employees who have submitted complaints to the Office of Human Resources Strategy and Solutions (HRSS) or whose correspondence concerning a matter of dissatisfaction has been referred to HRSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence dealing with former and current employee complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To maintain a record of correspondence related to inquiries filed with the Departmental Office of Human Resources Strategy and Solutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, state, and local, or foreign agencies responsible for

investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential civil or criminal law or regulation;

(2) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, and

(5) To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, file cabinets.

RETRIEVABILITY:

By bureau and employee name.

SAFEGUARDS:

Maintained in filing cabinet and released only to Office of Personnel staff or other Treasury officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department of the Treasury Directive 25–02, "Records Disposition Management Program" and the General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Capital Strategic Management, Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Persons inquiring as to the existence of a record on themselves may contact: Director, Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

RECORD ACCESS PROCEDURES:

Persons seeking access to records concerning themselves may contact: Office of Human Resources Strategy and Solutions, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records to correct factual error should contact the Director, Office of Human Resources Strategy and Solutions at the address shown in Access, above. They must furnish the following information: (a) Name; (b) employing bureau; (c) the information being contested; (d) the reason why they believe information is untimely, inaccurate, incomplete, irrelevant, or unnecessary.

RECORD SOURCE CATEGORIES:

Current and former employees, and/or representatives, employees' relatives, general public, Congressmen, the White House, management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .111

SYSTEM NAME:

Office of Foreign Assets Control Census Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Although most reporters in the Census in this system of records are not individuals, such censuses reflect some small number of U.S. individuals as holders of assets subject to U.S. jurisdiction which are blocked under the various sets of Treasury Department regulations involved.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of several censuses of U.S.-based, foreign-owned assets which have been blocked at any time since 1940 under Treasury Department regulations found under 31 CFR part 1, subpart B, Chapter V.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 22 U.S.C. 2370(a); 50 U.S.C. 1701 *et seq.;* and 31 CFR Ch. V.

PURPOSE(S):

This system of records is used to identify and administer assets of blocked foreign governments, groups or persons. Censuses are undertaken at various times for specific sanction programs to identify the location, type, and value of property frozen under OFAC administered programs. The information is obtained by requiring reports from all U.S. holders of blocked property subject to the reporting requirements. The reports normally contain information such as the name of the U.S. holder, the foreign account party, location of the property and a description of the type and value of the asset. In some instances, adverse claims by U.S. persons against the blocked property are also reported.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to appropriate state agencies which are concerned with or responsible for abandoned property;

(2) Disclose information to foreign governments in accordance with formal or informal international agreements;

(3) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Provide certain information to appropriate senior foreign-policy-making officials in the Department of State.

(6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses, in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena or in connection with criminal law proceedings when the United States or any agency or subdivision thereof is a party to any of the above proceedings and such information is determined to be arguably relevant to the proceeding, and

(7) To appropriate agencies, entities, and persons when (a) The Department

suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records stored on magnetic media and/or as hard copy documents.

RETRIEVABILITY:

By name of holder or custodian or owner of blocked property.

SAFEGUARDS:

Locked room, or in locked file cabinets located in areas in which access is limited to Foreign Assets Control employees. Computerized records are password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed. Records are retired to Federal Records Center or destroyed in accordance with established procedures.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Foreign Assets Control, Department of the Treasury, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in the system, must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of record sought; and (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Director, Disclosure Services (*See* "Record access procedures" below.)

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Custodians or other holders of blocked assets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .114

SYSTEM NAME:

Foreign Assets Control Enforcement Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control, Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have engaged in or who are suspected of having engaged in transactions and activities prohibited by Treasury Department regulations found at 31 CFR part 1, subpart B, chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to suspected or actual violations of relevant statutes and regulations administered by the Office of Foreign Assets Control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 50 U.S.C. 1701 et seq.; 22 U.S.C. 287(c); 22 U.S.C. 2370(a); and 31 CFR chapter V; Pub. L. 99–440, 100 Stat. 1086, as amended by Pub. L. 99–631, 100 Stat. 3515.

PURPOSE(S):

This system of records is used to document investigation and administrative action taken with respect to individuals and organizations suspected of violating statutes and regulations administered and enforced by the Office of Foreign Assets Control. Possible violations may relate to financial, commercial or other transactions with foreign governments, entities or special designated nationals. Suspected criminal violations are investigated primarily by the U.S. Customs Service. Non-criminal cases are pursued administratively for civil penalty consideration. This system is also used to generate statistical information on the number of investigative, criminal and civil cases upon which action has been taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to appropriate Federal agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license;

(2) Disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in response to a court order or in connection with criminal law proceedings when the United States or any agency or subdivision thereof is a party to any of the above proceedings and such information is determined to be arguably relevant to the proceeding;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, and

(7) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic media.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Folders in locked file cabinets are located in areas of limited accessibility. Computerized records are password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated and are maintained as long as necessary. When no longer needed, records are retired to Federal Records Center or destroyed in accordance with established procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

From the individual, from the Office of Foreign Assets Control investigations, and from other federal, state or local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

TREASURY/DO .118

SYSTEM NAME:

Foreign Assets Control Licensing Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control, Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for permissive and authorizing licenses under Treasury Department regulations found at 31 CFR part 1 subpart B, chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for Treasury licenses—together with related and supporting documentary material and copies of licenses issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 22 U.S.C. 2370(a); 22 U.S.C. 287(c); 50 U.S.C. 1701 *et seq.* 31 CFR chapter V; Pub. L. 99–440, 100 Stat. 1086, as amended by Pub. L. 99–631, 100 Stat. 3515.

PURPOSE(S):

This system of records contains requests from U.S. and foreign persons or entities for licenses to engage in commercial transactions, travel to foreign countries, to unblock property and bank accounts or to engage in other activities otherwise prohibited under economic sanctions administered by the Office of Foreign Assets Control. This system is also used during enforcement investigations, when applicable, and to generate information used in required reports to the Congress by the President on the number and types of licenses granted or denied under particular sanction programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) Disclose information to the Department of State, Commerce, Defense or other federal agencies, in connection with Treasury licensing policy or other matters of mutual interest or concern;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses, in the course of civil discovery, litigation, or settlement negotiations in response to a court order or in connection with criminal law proceedings when the United States or any agency or subdivision thereof is a party to any of the above proceedings and such information is determined to be arguably relevant to the proceeding;

(5) Disclose information to foreign governments in accordance with formal or informal international agreements;

(6) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains, and

(7) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic media.

RETRIEVABILITY:

The records are retrieved by license or letter number.

SAFEGUARDS:

Folders in locked filed cabinets are located in areas of limited accessibility. Computerized records are password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed. When no longer needed, records are retired to Federal Records Center or destroyed in accordance with established procedures.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in the system of records, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Director, Disclosure Services (*See* "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500

Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Applicants for Treasury Department licenses under regulations administered by the Office of Foreign Assets Control.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .144

SYSTEM NAME:

General Counsel Litigation Referral and Reporting System—Treasury/DO.

SYSTEM LOCATION:

U.S. Department of the Treasury, Office of the General Counsel, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties, plaintiff or defendant, in civil litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees. The system does not include information on every civil litigation or administrative proceeding involving the Department of the Treasury or its officers and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of a computer data base containing information related to litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 301.

PURPOSE(S):

The purposes of this system are: (1) To record service of process and the receipt of other documents relating to litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees, and (2) to respond to inquiries from Treasury personnel, personnel from the Justice Department and other agencies, and other persons concerning whether service of process or other documents have been received by the Department in a particular litigation or proceeding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a court order or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, and

(7) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The computerized records are maintained in computer data banks. Printouts of the data may be made.

RETRIEVABILITY:

The computer information is accessible by the name of the non-government party involved in the case, and case number and docket number (when available).

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel.

RETENTION AND DISPOSAL:

The computer information is maintained for up to ten years or more after a record is created.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) An identification of the record system; and (2) an identification of the category and type of records sought. This system contains records that are exempt under 31 CFR 1.36; 5 U.S.C. 552a(j)(2); and (k)(2). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Treasury Department Legal Division, Department of Justice Legal Division.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(d), (e)(1), (e)(3), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (*See* 31 CFR 1.36)

TREASURY/DO .149

SYSTEM NAME:

Foreign Assets Control Legal Files—Treasury/DO.

SYSTEM LOCATION:

U.S. Department of the Treasury, Office of the Chief Counsel (Foreign Assets Control), Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or who have been parties in litigation or other Matters involving the Office of Foreign Assets Control (OFAC) or involving statutes and regulations administered by the OFAC found at 31 CFR subtitle B, chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information and documents relating to litigation and other matters involving the OFAC or statutes and regulations administered by the OFAC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 301; 50 U.S.C. App. 5(b); 50 U.S.C. 1701 *et seq;* 22 U.S.C. 287(c); and other statutes relied upon by the President to impose economic sanctions.

PURPOSE(S):

These records are maintained to assist in providing legal advice to the OFAC and the Department of the Treasury regarding issues of compliance, enforcement, investigation, and implementation of matters related to OFAC and the statutes and regulations administered by the agency. These records are also maintained to assist in litigation related to OFAC and the statutes and regulations administered by the OFAC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Prosecute, defend, or intervene in litigation related to the OFAC and statutes and regulations administered by OFAC,

(2) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains, and

(6) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Folders in file cabinets and magnetic media.

RETRIEVABILITY:

The information is accessible by the name of the non-government party involved in the matter.

SAFEGUARDS:

Folders are in lockable file cabinets located in areas of limited public accessibility. Where records are maintained on computer hard drives, access to the files is password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide identification as set forth in 31 CFR Subpart C, Part 1, Appendix A, Section 8.

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Pleadings and other materials filed during course of a legal proceeding, discovery obtained pursuant to applicable court rules; materials obtained by Office of Foreign Assets Control action; material obtained pursuant to requests made to other Federal agencies; orders, opinions, and decisions of courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .190

SYSTEM NAME:

Office of Inspector General Investigations Management Information System—Treasury/DO.

SYSTEM LOCATION:

Office of Inspector General (OIG), Assistant Inspector General for Investigations and Counsel to the Inspector General, 740 15th St., NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of the Treasury and persons whose association with current and former employees relate to the alleged violations of the rules of ethical conduct for employees of the Executive Branch, the Department's supplemental standards of ethical conduct, the Department's rules of conduct, merit system principles, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) initiated at the discretion of the Office of Inspector General in the conduct of assigned duties. Investigations of allegations against OIG employees are managed by the Deputy Inspector General and the Counsel to the Inspector General; records are maintained in the Office of Counsel.

(B) Individuals who are: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants; parties who have been identified by the Office of Inspector General, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the Inspector General.

(C) Current and former senior Treasury and bureau officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct.

(B) Investigative files which include: (1) Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigations; (2) transcripts and documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or noncriminal records of individuals as they relate to the investigations; and (5) reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C.A. App.3; 5 U.S.C. 301; 31 U.S.C. 321.

PURPOSE(S):

The records and information collected and maintained in this system are used to (a) receive allegations of violations of the standards of ethical conduct for employees of the Executive Branch (5 CFR part 2635), the Treasury Department's supplemental standards of ethical conduct (5 CFR part 3101), the Treasury Department's rules of conduct (31 CFR part 0), the Office of Personnel Management merit system principles, or any other criminal or civil law; and to (b) prove or disprove allegations which the OIG receives that are made against Department of the Treasury employees, contractors and other individuals associated with the Department of the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation;

(2) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a court order or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(8) Provide information to the Office of Inspector General of the Department of Justice with respect to investigations involving the former Bureau of Alcohol, Tobacco and Firearms; and to the Office of Inspector General of the Department of Homeland Security with respect to investigations involving the Secret Service, the former Customs Service, and Federal Law Enforcement Training Center, for such OIGs' use in carrying out their obligations under the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3 and other applicable laws; and

(9) Provide information to other OIGs, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of Treasury OIG's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(10) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file jackets are maintained in a secured locked room. Electronic records are password protected; backup media are maintained in a locked room.

RETRIEVABILITY:

Paper: Alphabetically by name of subject or complainant, by case number, and by special agent name and/or employee identifying number. Electronic: by complainant, subject, victim, or witness case number, and by special agent name.

SAFEGUARDS:

Paper records and word processing media are maintained in locked safes and all access doors are locked when offices are vacant. Building has guard; entrance to building, elevators, and other spaces are all keycard-controlled. Automated records are controlled by computer security programs which limit access to authorized personnel who have a need for such information in the course of their duties. The records are available to Office of Inspector General personnel who have an appropriate security clearance on a need-to-know basis.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for 3 years at which time they are retired to the Federal Records Center, Suitland, Maryland, for temporary storage. In most instances, the files are destroyed when 10 years old. However, if the files

have significant or historical value, they are retained on-site for 3 years, then retired to the Federal Records Center for 22 years, at which time they are transferred to the National Archives and Records Administration for permanent retention. In addition, an automated investigative case tracking system is maintained on-site; the case information deleted 15 years after the case is closed, or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, 740 15th St., NW., Suite 500, Washington, DC 20220. For internal investigations: Counsel to the Inspector General, 740 15th St., NW., Suite 510, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S. C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual, or for contesting the contents of a record.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

See "Categories of individuals" above. This system contains investigatory material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/DO .191

SYSTEM NAME:

Human Resources and Administrative Records System.

SYSTEM LOCATION:

Office of Inspector General (OIG), headquarters and Boston Field office. (*See* appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Personnel system records contain OIG employee name, positions, grade and series, salaries, and related information pertaining to OIG employment; (2) Tracking records contain status information on audits, investigations and other projects; (3) Timekeeping records contain hours worked and leave taken; (4) Equipment inventory records contain information about government property assigned to employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended; (5 U.S.C. Appendix 3) 5 U.S.C. 301; and 31 U.S.C. 321.

PURPOSE(S):

The purpose of the system is to: (1) Manage effectively OIG resources and projects; (2) capture accurate statistical data for mandated reports to the Secretary of the Treasury, the Congress, the Office of Management and Budget, the Government Accountability Office, the Council of the Inspectors General on Integrity and Efficiency and other Federal agencies; and (3) provide accurate information critical to the OIG's daily operation, including employee performance and conduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records, which indicates, either by itself or in combination with other information, a violation or potential violation of law, whether civil or criminal, and whether arising by statute, regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local, or foreign agency or other public authority that investigates or prosecutes or assists in investigation or prosecution of such violation, or enforces or implements or assists in enforcement or implementation of the statute, rule, regulation or order.

(2) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency or other public authority, or to private sector (i.e., non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, which maintain civil, criminal, or other relevant enforcement records or other pertinent records, such as current licenses in order to obtain information relevant to an agency investigation, audit, or other inquiry, or relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government.

(3) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency or other public authority, or private sector (i.e., non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, if relevant to the recipient's hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government.

(4) A record from the system of records may be disclosed to any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate agency investigation, audit, or other inquiry.

(5) A record from the system of records may be disclosed to the Department of Justice when the agency or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(6) A record from the system of records may be disclosed in a proceeding before a court or adjudicative body, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a

party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(7) A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual.

(8) A record from the system of records may be disclosed to the Department of Justice and the Office of Government Ethics for the purpose of obtaining advice regarding a violation or possible violation of statute, regulation, rule or order or professional ethical standards.

(9) A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation.

(10) A record from the system of records may be disclosed in response to a court order issued by a Federal agency having the power to subpoena records of other Federal agencies if, after careful review, the OIG determines that the records are both relevant and necessary to the requesting agency's needs and the purpose for which the records will be used is compatible with the purpose for which the records were collected.

(11) A record from the system of records may be disclosed to a private contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.

(12) A record from the system of records may be disclosed to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury provided that the Grand Jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney has been delegated the authority to make such requests by the Attorney General, that she or he actually signs the letter specifying both the information sought and the law enforcement purposes served. In the case of a State Grand Jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted.

(13) A record from the system of records may be disclosed to a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action.

(14) A record from the system of records may be disclosed to an entity or person, public or private, where disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the United States Department of the Treasury, where such recovery will accrue to the benefit of the United States, or where disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of the programs or operations of the Department of the Treasury.

(15) A record from the system of records may be disclosed to a Federal, state, local or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by an agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and over payments owed to any agency and its components.

(16) A record from the system of records may be disclosed to a public or professional licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

(17) A record from the system of records may be disclosed to the Office of Management and Budget, the Government Accountability Office, the Council of the Inspectors General on Integrity and Efficiency and other Federal agencies for mandated reports, and

(18) Disclosures are not made outside of the Department, except to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debtor information may also be furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e) to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Most files are accessed by OIG employee name, employee identifying number, office, or cost center. Some records may be accessed by entering equipment or project information.

SAFEGUARDS:

Access is limited to OIG employees who have a need for such information in the course of their work. Offices are locked. A central network server is password protected by account name and user password. Access to records on electronic media is controlled by computer passwords. Access to specific system records is further limited and controlled by computer security programs limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and are retained as long as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management, 740 15th St. NW., Suite 510, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identifying number, dates of employment or similar information). Address inquiries to

Director, Disclosure Services (*see* "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORDS PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Current and former employees of the OIG.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A—Addresses of OIG Offices

Headquarters:

Department of the Treasury, Office of Inspector General, Office of the Assistant Inspector General for Management, 740 15th Street, NW., Suite 510, Washington, DC 20220.

Field Location:

Contact System Manager for addresses.

Department of the Treasury, Office of Inspector General, Office of Audit, Boston, MA 02110–3350.

TREASURY/DO .193

SYSTEM NAME:

Employee Locator and Automated Directory System—Treasury/DO.

SYSTEM LOCATION:

Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on all employees of the Department is maintained in the system if the proper locator card is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, bureau, office symbol, building, room number, home address and phone number, and person to be notified in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The Employee Locator and Automated Directory System is maintained for the purpose of providing current locator and emergency information on all DO employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Department, except to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and magnetic media.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

All records, including computer system and all terminals are located within secure space. Only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are kept as long as needed, updated periodically and destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Telephone Operator Services Branch, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

See "System manager" above.

RECORD ACCESS PROCEDURES:

See "System manager" above.

CONTESTING RECORD PROCEDURES:

See "System manager" above.

RECORD SOURCE CATEGORIES:

Information is provided by individual employees. Necessary changes made if requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .194

SYSTEM NAME:

Circulation System—Treasury.

SYSTEM LOCATION:

Department of the Treasury, Library, Room 1428–MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who borrow library materials or receive library materials on distribution. The system also contains records concerning interlibrary loans to local libraries which are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of items borrowed from the Treasury Library collection and patron records are maintained on central computer. Records are maintained by name of borrower, office locator information, and title of publication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Track circulation of library materials and their borrowers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) These records may be used to disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; and

(2) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Data can be retrieved from the system by borrower name or bar code number and publication title or its associated bar code number.

SAFEGUARDS:

Access to the system requires knowledge of password identification codes and protocols for calling up the data files. Access to the records is limited to staff of the Readers Services Branch who have a need-to-know the information for the performance of their duties.

RETENTION AND DISPOSAL:

Only current data are maintained on-line. Records for borrowers are deleted when employee leaves Treasury.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Librarian, Department of the Treasury, Room 1428–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Patron information records are completed by borrowers and library staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .196

SYSTEM NAME:

Security Information System—Treasury/DO.

SYSTEM LOCATION:

Components of this system are located in the following offices within the Departmental Offices: Office of Security, Room 3180 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Department of the Treasury officials who classify documents with a national security classification, *i.e.,* Top Secret, Secret, or Confidential.

(2) Each Department of the Treasury official, by name and position title, who has been delegated the authority to downgrade and declassify national security information and who is not otherwise authorized to classify a document at its present classification level.

(3) Each Department of the Treasury official, by name and position title, who has been delegated the authority for original classification of national security information, exclusive of officials specifically authorized original classification authority by Treasury Order 102–10.

(4) An alphabetical listing of Department of the Treasury employees who have valid security violations as a result of the improper handling, safeguarding, or storage of classified national security and sensitive but unclassified information.

(5) Department of the Treasury personnel concerned with classified national security and sensitive but unclassified use information who have participated in a security orientation program regarding the salient features of the security requirements and procedures for the handling and safeguarding of such information, and

(6) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following records are maintained by the Director of Security Programs: (1) Report of Authorized Downgrading and Declassification Officials, (2) Report of Authorized Classifiers, (3) Record of Security Violation, and (4) the Security Orientation Acknowledgment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 12958 as amended, dated April 17, 1995, as amended, and Office of Security Manual, TDP 71–10.

PURPOSE(S):

The system is designed to (1) Oversee compliance with Executive Order No. 12958 as amended and Departmental programming and implementation, (2) ensure proper classification of national security information, (3) record details of valid security violations and (4) assist in determining the effectiveness of information security programs affecting classified and sensitive but unclassified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be used to disclose information:

(1) To appropriate Federal agencies and for enforcing or implementing a statute, rule, regulation or order, and

(2) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard Copy paper files.

RETRIEVABILITY:

Manually filed and indexed by office or bureau, date, name of official and position title, where appropriate.

SAFEGUARDS:

Secured in security equipment to which access is limited to personnel with the need to know.

RETENTION AND DISPOSAL:

With the exception of the Record of Security Violation, which is maintained for a period of two years, and the Security Orientation Acknowledgment, the remaining records are destroyed and/or updated on an annual basis. Destruction is effected by shredding or other comparable means.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Security Programs, 3180 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records

maintained in this system, must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and types of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information) to the Director, Disclosure Services. (*See* "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The sources of the information are office and bureau employees of the Department of the Treasury. The information concerning any security violation is reported by Department of the Treasury security officials and Department of State security officials as concerns Treasury personnel attached to U.S. diplomatic posts or missions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .202

SYSTEM NAME:

Drug-Free Workplace Program Records—Treasury/DO.

SYSTEM LOCATION:

Records are located within the Office of Human Capital Strategic Management, Room 5224–MT, Department of the Treasury, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Departmental Offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees, drug test results, and related documentation concerning the administration of the Drug-Free Workplace Program within Departmental Offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100–71; 5 U.S.C. 7301 and 7361; 21 U.S.C. 812; Executive Order 12564, "Drug-Free Federal Workplace".

PURPOSE(S):

The system has been established to maintain records relating to the selection, notification, and testing of Departmental Offices' employees for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) these records may be disclosed to a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action, and

(2) to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and magnetic media.

RETRIEVABILITY:

Records are retrieved by name of employee, position, title, social security number, I.D. number (if assigned), or any combination of these.

SAFEGUARDS:

Records will be stored in secure containers, *e.g.,* safes, locked filing cabinets, etc. Access to such records is restricted to individuals having direct responsibility for the administration of the agency's Drug-Free Workplace Program. Procedural and documentary requirements of Public Law 100–71 and the Department of Health and Human Services Guidelines will be followed.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed by shredding, or, in case of magnetic media, erasure. Written records and test results may be retained up to five years or longer when necessary due to challenges or appeals of adverse action by the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Capital Strategic Management, Department of the Treasury, 1500 Pennsylvania Ave., NW., Room 5224–MT, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the attention of the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the attention of the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1, subpart C, appendix A.

CONTESTING RECORD PROCEDURES:

The Department of the Treasury rules for accessing records, for contesting contents, and appealing initial determinations by the individual concerned are published in 31 CFR part 1, subpart A, appendix A.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains; Departmental Offices employees involved in the selection and notification of individuals to be tested; contractor laboratories that test urine samples for the presence of illegal drugs; Medical Review Officers; supervisors and managers and other Departmental Offices official engaged in administering the Drug-Free Workplace Program; the Employee Assistance Program, and processing adverse actions based on drug test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .207

SYSTEM NAME:

Waco Administrative Review Group Investigation—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Individuals who were employees or former employees of the Department of the Treasury and its bureaus and persons whose associations with current and former employees relate to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas on February 28, 1993, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) developed in the course of the investigation.

(B) Individuals who were: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants who have been identified by the former Office of Enforcement, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the former Office of Enforcement.

(C) Members of the general public who provided information pertinent to the investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal misconduct pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

(B) Investigative files that include:

(1) Reports of investigations to resolve allegations of misconduct or violations of law and to comply with the President's specific directive for a fact finding report on the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigation;

(2) Transcripts and documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring;

(3) Reports from or to other law enforcement bodies;

(4) Prior criminal or noncriminal records of individuals as they relate to the investigations;

(5) Reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution;

(6) Videotapes of events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions;

(7) Audiotapes with transcripts of events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions;

(8) Photographs and blueprints pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; and

(9) Drawings, sketches, models portraying events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions.

PURPOSE(S):

The purpose of the system of records was to implement a data base containing records of investigation conducted by the Waco Administrative Review Group, and other relevant information with regard to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and, where appropriate, to disclose information to other law enforcement agencies that have an interest in the information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation;

(2) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information that has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a court order, where relevant and necessary, or in connection with criminal law proceedings;

(5) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) Provide a report to the President and the Secretary of the Treasury detailing the investigation and findings concerning the events leading to the former Bureau of Alcohol, Tobacco & Firearms' execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and

(7) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in binders and file jackets and all multi-source media information are maintained in locked offices with access, through the administrative documents and records control personnel for the Department, available to personnel with a need to know. Records will be maintained in locked offices during non-business hours. Records will be maintained in the Departmental Offices, in the main Treasury building and are subject to 24-hour security.

RETRIEVABILITY:

Alphabetically by name, and or by number, or other alpha-numeric identifiers.

SAFEGUARDS:

Records and word processing disks are maintained by administrative documents and records control personnel of the Treasury Department. All access doors are locked when office is vacant. The records are available on a need-to-know basis to Treasury personnel upon verification of the substance and propriety of the request.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for six years and indices to those files are stored on-site for ten years. The word processing disks will be retained indefinitely, and to the extent required they will be updated periodically to reflect changes and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices will be transferred to the Federal Records Center, Suitland, Maryland, for Storage and in most instances destroyed by burning, maceration or pulping when 20 years old. The files are no longer active.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury official prescribing policies and practices: Office of the Under Secretary for Enforcement, Room 4312–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart c, appendix A. Inquiries should be directed to the Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals who were witnesses; complainants; confidential or non-confidential informants; suspects; defendants, constituents of the Department of the Treasury, other Federal, State or local agencies and members of the public.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .209

SYSTEM NAME:

Personal Services Contracts (PCSs)—Treasury/DO.

SYSTEM LOCATION:

(1) Office of Technical Assistance, Department of the Treasury, 740 15th Street, NW., Washington, DC 20005.

(2) Procurement Services Division, Department of the Treasury, Mail stop: 1425 New York Ave., Suite 2100, 1500 Pennsylvania Ave, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been candidates or who have been awarded a personal services contract (PSC) with the Department of the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, demographic data, education, contracts, supervisory notes, personnel related information, financial, payroll and medical data and documents pertaining to the individual contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Support for Eastern European Democracy (SEED) Act of 1989 (Pub. L. 101–179), Freedom Support Act (Pub. L. 102–511), Executive Order 12703.

PURPOSE(S):

To maintain records pertaining to the awarding of personal services contracts to individuals for the provision of technical services in support of the SEED Act and the FSA, and which establish an employer/employee relationship with the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose:

(1) Pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(3) Information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, 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 Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) Information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains, and

(6) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made

to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on electronic media.

RETRIEVABILITY:

Retrieved by name of the individual contractor and contract number.

SAFEGUARDS:

Records are maintained in a secured vault with locked file cabinets with access limited to authorized personnel. Offices are locked during non-working hours with security provided on a 24-hour basis. Electronic media is password protected.

RETENTION AND DISPOSAL:

Records are periodically updated when a contract is modified. Contract records, including all biographical or other personal data, are retained for the contract period, with disposal after contract completion in accordance with the Federal Acquisition Regulation 4.805. Other records are retained for two years then are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Office of Technical Assistance, Department of the Treasury, 740 15th Street, NW., Washington, DC 20005.

(2) Director, Procurement Services Division, Department of the Treasury, Mail stop: 1425 New York Ave, Suite 2100, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access or seek to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedures" above.

RECORD SOURCE CATEGORIES:

Information is provided by the candidate, individual Personal tractor, and Treasury employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .214

SYSTEM NAME:

D.C. Pensions Retirement Records.

SYSTEM LOCATION:

Office of DC Pensions, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Electronic and paper records are also located at the District and bureaus of the Department, including the Bureau of the Public Debt in Parkersburg, WV. In addition, certain records are located with contractors engaged by the Department.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former police officers, firefighters, teachers, and judges.

b. Surviving spouses, children, and/or dependent parents of current and former police officers, firefighters, teachers, or judges.

c. Former spouses of current and former police officers, firefighters, teachers, or judges.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include, but is not limited to, identifying information such as: Name(s); contact information; Social Security number; employee identification number; service beginning and end dates; annuity beginning and end dates; date of birth; sex; retirement plan; base pay; average base pay; final salary; type(s) of service and dates used to compute length of service; military base pay amount; purchase of service calculation and amount; and/or benefit payment amount(s).

The types of records in the system may be:

a. Documentation comprised of service history/credit, personnel data, retirement contributions, and/or a refund claim upon which a benefit payment(s) may be based.

b. Medical records and supporting evidence for disability retirement applications and continued eligibility, and documentation regarding the acceptance or rejection.

c. Records submitted by a surviving spouse and/or a child(ren) in support of claims to a benefit payment(s).

d. Consent forms and other records related to the withholding of income tax from a benefit payment(s).

e. Retirement applications, including supporting documentation, and acceptance or denial of such applications.

f. Death claim, including supporting documentation, submitted by a surviving spouse, child(ren), former spouse, and/or beneficiary, that is required to determine eligibility for and receipt of a benefit payment(s), or denial of such claims.

g. Documentation of enrollment and/or change in enrollment for health and life insurance benefits/eligibility.

h. Designation(s) of a beneficiary(ies) for a life insurance benefit and/or an unpaid benefit payment.

i. Court orders submitted by former spouses in support of claims to a benefit payment(s).

j. Records relating to under- and/or over-payments of benefit payments and other debts arising from the responsibility to administer the retirement plans for District police officers, firefighters, teachers, and judges; and, records relating to other Federal debts owed by recipients of Federal benefit payments.

k. Records relating to bankruptcies, tax levies, and garnishments.

l. Records used to determine a total benefit payment and/or if the benefit payment is a District or Federal liability.

m. Correspondence received from current and former police officers, firefighters, teachers, and judges; including their surviving spouses, children, former spouses, dependent parents, and/or beneficiaries.

n. Records relating to time served on behalf of a recognized labor organization.

o. Records relating to benefit payment enrollment and/or change to enrollment for direct deposit to an individual's financial institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title XI, subtitle A, chapters 1 through 9, and subtitle C, chapter 4, subchapter B of the Balanced Budget Act of 1997 (as amended), Public Law 105–33.

PURPOSE(S):

These records may provide information on which to base determinations of (1) Eligibility for, and computation of, benefit payments; (2) direct deposit elections into a financial institution; (3) eligibility and premiums for health insurance and group life insurance; (4) withholding of income taxes; (5) under- or over-payments to recipients of a benefit payment, and for overpayments, the recipient's ability to repay the overpayment; (6) Federal payment made from the General Fund to the District of Columbia Pension Fund and the District of Columbia Judicial

Retirement and Survivors Annuity Fund; (7) impact to the Funds due to proposed Federal and/or District legislative changes; and (8) District or Federal liability for benefit payments to former District police officers, firefighters, and teachers, including survivors and dependents, who are receiving a Federal and/or District benefit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information in these records may be used:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

3. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

5. To disclose information to the National Archives and Records Administration for use in records management inspections and its role as an Archivist.

6. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when:

(A) The Department or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee;

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; or

(E) The Federal funds established by the Act to pay benefit payments is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department is deemed by the Department of Justice or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

7. To disclose information to contractors, subcontractors, financial agents, grantees, auditors, actuaries, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Department, including the District.

8. To disclose information needed to adjudicate a claim for benefit payments or information needed to conduct an analytical study of benefits being paid under such programs as: Social Security Administration's Old Age, Survivor, and Disability Insurance and Medical Programs; military retired pay programs; and Federal civilian employee retirement programs (Civil Service Retirement System, Federal Employees Retirement System, and other Federal retirement systems).

9. To disclose to the U.S. Office of Personnel Management (OPM) and to the District, information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage, or coordinate with contract carriers the benefit provisions of such coverage.

10. To disclose to health insurance carriers contracting with OPM to provide a health benefits plan under the Federal Employees Health Benefits Program or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

11. To disclose to any person possibly entitled to a benefit payment in accordance with the applicable order of precedence or to an executor of a deceased person's estate, information that is contained in the record of a deceased current or former police officer, firefighter, teacher, or judge to assist in properly determining the eligibility and amount of a benefit payment to a surviving recipient, or information that results from such determination.

12. To disclose to any person who is legally responsible for the care of an individual to whom a record pertains, or who otherwise has an existing, facially-valid Power of Attorney, including care of an individual who is mentally incompetent or under other legal disability, information necessary to assure application or payment of benefits to which the individual may be entitled.

13. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an individual covered by the system needed for enforcing child support obligations of such individual.

14. In connection with an examination ordered by the District or the Department under:

(A) Medical examination procedures; or

(B) Involuntary disability retirement procedures to disclose to the representative of an employee, notices, decisions, other written communications, or any other pertinent medical evidence other than medical evidence about which a prudent physician would hesitate to inform the individual; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative. The physician must be capable of explaining the contents of the medical record(s) to the individual and be willing to provide the entire record(s) to the individual.

15. To disclose information to any source from which the Department seeks additional information that is relevant to a determination of an individual's eligibility for, or entitlement to, coverage under the applicable retirement, life insurance, and health benefits program, to the extent necessary to obtain the information requested.

16. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

17. To disclose to an agency responsible for the collection of income taxes the information required by an agreement authorized by law to implement voluntary income tax withholdings from benefit payments.

18. To disclose to the Social Security Administration the names and Social Security numbers of individuals covered by the system when necessary to determine: (1) Their vital status as shown in the Social Security Master Records; and (2) whether retirees receiving benefit payments under the District's retirement plan for police officers and firefighters with post-1956 military service credit are eligible for or are receiving old age or survivors benefits under section 202 of the Social Security Act based upon their wages and self-employment income.

19. To disclose to Federal, State, and local government agencies information to help eliminate fraud and abuse in a benefits program administered by a requesting Federal, State, or local government agency; to ensure compliance with Federal, State, and local government tax obligations by persons receiving benefits payments; and/or to collect debts and overpayments owed to the requesting Federal, State, or local government agency.

20. To disclose to a Federal agency, or a person or an organization under contract with a Federal agency to render collection services for a Federal agency as permitted by law, in response to a written request from the head of the agency or his designee, or from the debt collection contractor, data concerning an individual owing a debt to the Federal Government.

21. To disclose, as permitted by law, information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce alimony or a child support obligation.

22. To disclose information necessary to locate individuals who are owed money or property by a Federal, State or local government agency, or by a financial institution or similar institution, to the government agency owing or otherwise responsible for the money or property (or its agent).

23. To disclose information necessary in connection with the review of a disputed claim for health benefits to a health plan provider participating in the Federal Employees Health Benefits Program or the health benefits program for employees of the District, and to a program enrollee or covered family member or an enrollee or covered family member's authorized representative.

24. To disclose information to another Federal agency for the purpose of effecting administrative or salary offset against a person employed by that agency, or who is receiving or eligible to receive benefit payments from the agency when the Department as a creditor has a claim against that person relating to benefit payments.

25. To disclose information concerning delinquent debts relating to benefit payments to other Federal agencies for the purpose of barring delinquent debtors from obtaining Federal loans or loan insurance guarantees pursuant to 31 U.S.C. 3720B.

26. To disclose to State and local governments information used for collecting delinquent debts relating to benefit payments.

27. To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

28. To disclose to a former spouse information necessary to explain how his/her former spouse's benefit was computed.

29. To disclose to a surviving spouse, surviving child, dependent parent, and/or legal guardian information necessary to explain how his/her survivor benefit was computed.

30. To disclose to a spouse or dependent child (or court-appointed guardian thereof) of an individual covered by the system, upon request, whether the individual (a) changed his/her election from a self-and-family to a self-only health and/or life insurance benefit enrollment, (b) changed his/her additional survivor benefit election, and/or (c) received a lump-sum refund of his/her retirement contributions.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in hard copy and in an electronic format, including (but not limited to) on magnetic tapes, disks, microfiche.

RETRIEVABILITY:

These records are retrieved by various combinations of name; date-of-birth; Social Security number; and/or an automatically assigned, system generated number of the individual to whom they pertain.

SAFEGUARDS:

Paper records are kept in lockable metal file cabinets or in a secured facility with access limited to those persons whose official duties require access. Data in electronic format is encrypted or password protected. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records on a claim for retirement, including salary and service history, survivor annuity elections, and tax and other withholdings are destroyed after 115 years from the date of the former police officer's, firefighter's, teacher's or judge's birth; or 30 years after the date of his/her death, if no application for benefits is received. If a survivor or former spouse receives a benefit payment, such record is destroyed after his/her death. All other records covered by this system may be destroyed in accordance with approved District and Department guidelines. Paper records are destroyed by shredding or burning. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of DC Pensions, U.S. Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its contents, should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social Security number.
d. Signature.
e. Contact information.

Individuals requesting amendment of their records must also follow the Department's Privacy Act regulations regarding verification of identity and amendment of records (31 CFR part 1 subpart C, appendix A).

RECORD ACCESS PROCEDURE:

See "Notification procedure," above.

CONTESTING RECORD PROCEDURE:

See "Notification procedure," above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.

b. District pay, leave, and allowance records.

c. Health benefits and life insurance plan systems records maintained by the Office of Personnel Management, the District, and health and life insurance carriers.

d. Federal civilian retirement systems.

e. Military retired pay system records.

f. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.

g. Official personnel folders.

h. The individual's co-workers and supervisors.

i. Physicians who have examined or treated the individual.

j. Surviving spouse, child(ren), former spouse(s), and/or dependent parent of the individual to whom the information pertains.

k. State courts or support enforcement agencies.

l. Credit bureaus and financial institutions.

m. Government Offices of the District of Columbia, including the DC Retirement Board.

n. The General Services Administration National Payroll Center.

o. Educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .216

SYSTEM NAME:

Treasury Security Access Control and Certificates Systems.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Treasury employees, contractors, media representatives, other individuals requiring access to Treasury facilities or to receive government property, and those who need to gain access to a Treasury DO cyber asset including the network, LAN, desktops and notebooks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for security/access badge, individual's photograph, fingerprint record, special credentials, allied papers, registers, and logs reflecting sequential numbering of security/access badges. The system also contains information needed to establish accountability and audit control of digital certificates that have been assigned to personnel who require access to Treasury DO cyber assets including the DO network and LAN as well as those who transmit electronic data that requires protection by enabling the use of public key cryptography. It also contains records that are needed to authorize an individual's access to a Treasury network.

Records may include the individual's name, organization, work telephone number, Social Security Number, date of birth, Electronic Identification Number, work e-mail address, username and password, country of birth, citizenship, clearance and status, title, home address and phone number, biometric data including fingerprint minutia, and alias names.

Records on the creation, renewal, replacement or revocation of digital certificates, including evidence provided by applicants for proof of identity and authority, sources used to verify an applicant's identity and authority, and the certificates issued, denied and revoked, including reasons for denial and revocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, and E.O. 9397 (SSN).

PURPOSE(S):

The purpose is to: Improve security to both Treasury DO physical and cyber assets; maintain records concerning the security/access badges issued; restrict entry to installations and activities; ensure positive identification of personnel authorized access to restricted areas; maintain accountability for issuance and disposition of security/access badges; maintain an electronic system to facilitate secure, on-line communication between Federal automated systems, between Federal employees or contractors, and/or the public, using digital signature technologies to authenticate and verify identity; provide a means of access to Treasury cyber assets including the DO network, LAN, desktop and laptops; and to provide mechanisms for non-repudiation of personal identification and access to DO sensitive cyber systems including but not limited to human resource, financial, procurement, travel and property systems as well as tax, econometric and other mission critical systems. The system also maintains records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for the purpose of transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to: (1) Appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(4) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(7) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906;

(8) Other Federal agencies or entities when the disclosure of the existence of the individual's security clearance is needed for the conduct of government business, and

(9) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has

been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as electronic media and paper records.

RETRIEVABILITY:

Records are retrieved by individual's name, social security number, electronic identification number and/or access/security badge number.

SAFEGUARDS:

Entrance to data centers and support organization offices is restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of like sensitivity. Access is limited to authorized employees. Paper records are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in a locked room.

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

RETENTION AND DISPOSAL:

The records on government employees and contractor employees are retained for the duration of their employment at the Treasury Department. The records on separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Departmental Offices:

a. Director, Office of Security Programs, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. Chief Information Officer, 1750 Pennsylvania Ave., NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject individual of the record, supervisors, other personnel documents, and non-Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .217

SYSTEM NAME:

National Financial Literacy Challenge—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Office of Financial Education, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system will be those high school students age 13 and older and their teachers who participate in the test.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include, for Challenge participants, the high schools' names and addresses; students' names and scores; high school names of award winners; teachers' names, teachers' business email addresses and business phone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 13455.

PURPOSE(S):

The records in this system will be used to identify students whose scores on the Challenge meet the guidelines for award recognition and to distribute the awards to the teachers, who in turn will distribute the awards to the students. Aggregate data and reports related to the program that may be generated and used for analysis will be in a form that is not individually identifiable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

These records may be used to disclose information to:

(1) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a court order, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(2) A congressional office in response to an inquiry made at the request of the individual (or the individual's parents or guardians) to whom the record pertains;

(3) A contractor or a sponsor, operating in conjunction with the Office of Financial Education to the extent necessary to present appropriate awards;

(4) Appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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, and

(5) These records may be used to disclose award winners to the participant's high school.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Students' scores will be retrievable by name, teacher, and school. Teacher data is retrievable by the name and contact information of the teacher. School information is retrievable by the name and location of the school.

RETENTION AND DISPOSAL:

Records will be destroyed at the earliest possible date consistent with applicable records retention policies.

SAFEGUARDS:

All official access to the system of records is on a need-to-know basis only, as authorized by the Office of Financial Education of the U.S. Treasury Department. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, will be utilized. Each user of computer systems containing records will have individual passwords (as opposed to group passwords) for which the user is responsible. Access to computerized records will be limited, through use of access codes, encryption techniques, and/or other internal mechanisms, to those whose official duties require access. Storage facilities will be secured by various means such as locked file cabinets with key entry.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Outreach, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to records maintained in this system, or seek to contest its content, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (*See* 31 CFR part 1, appendix A). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORDS ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORDS PROCEDURES:

See "Notification procedure" above.

RECORDS SOURCE CATEGORIES:

Student test takers; high school points of contact; and Department of the Treasury records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .218

SYSTEM NAME:

Home Affordable Modification Program Records—Treasury/DO.

SYSTEM LOCATION:

The Office of Financial Stability, Department of the Treasury, Washington, DC. Other facilities that maintain this system of records are located in: Urbana, MD, Dallas, TX, and a backup facility located in Reston, VA, all belonging to the Federal National Mortgage Association ("Fannie Mae"); and in McLean, VA, Herndon, VA, Reston, VA, Richardson, TX, and Denver, CO, facilities operated by or on behalf of the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Both Fannie Mae and Freddie Mac have been designated as Financial Agents for the Home Affordable Modification Program ("HAMP").

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information about mortgage borrowers that is submitted to the Department or its Financial Agents by loan servicers that participate in HAMP. Information collected pursuant to HAMP is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains loan-level information about individual mortgage borrowers (including loan records and financial records). Typically, these records include, but are not limited to, the individual's name, Social Security Number, mailing address, and monthly income, as well as the location of the property subject to the loan, property value information, payment history, and type of mortgage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) (the "EESA").

PURPOSE(S):

The purpose of this system of records is to facilitate administration of HAMP by the Department and its Financial Agents, including by enabling them to (i) collect and utilize information collected from mortgage loan servicers, including loan-level information about individual mortgage holders; and (ii) produce reports on the performance of HAMP, such as reports that concern loan modification eligibility and "exception reports" that identify certain issues that loan servicers may experience with servicing loans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court order where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(4) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to third parties during the course of a Department investigation as it relates to HAMP to the extent necessary to obtain information pertinent to that investigation;

(6) Disclose information to a consumer reporting agency to use in obtaining credit reports;

(7) Disclose information to a debt collection agency for use in debt collection services;

(8) Disclose information to a Financial Agent of the Department, its employees, agents, and contractors, or to a contractor of the Department, for the purpose of ensuring the efficient administration of HAMP and compliance with relevant guidelines, agreements, directives and requirements, and subject to the same or equivalent limitations applicable to Department's officers and employees under the Privacy Act;

(9) Disclose information originating or derived from participating loan servicers back to the same loan servicers as needed, for the purposes of audit,

quality control, and reconciliation and response to borrower requests about that same borrower;

(10) Disclose information to Financial Agents, financial institutions, financial custodians, and contractors to: (a) Process mortgage loan modification applications, including, but not limited to, enrollment forms; (b) implement, analyze and modify programs relating to HAMP; (c) investigate and correct erroneous information submitted to the Department or its Financial Agents; (d) compile and review data and statistics and perform research, modeling and data analysis to improve the quality of services provided under HAMP or otherwise improve the efficiency or administration of HAMP; or (e) develop, test and enhance computer systems used to administer HAMP; with all activities subject to the same or equivalent limitations applicable to Department's officers and employees under the Privacy Act;

(11) Disclose information to financial institutions, including banks and credit unions, for the purpose of disbursing payments and/or investigating the accuracy of information required to complete transactions pertaining to HAMP and for administrative purposes, such as resolving questions about a transaction;

(12) Disclose information to the appropriate Federal financial regulator or State financial regulator, or to the appropriate Consumer Protection agency, if that agency has jurisdiction over the subject matter of a complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(13) Disclose information and statistics to the Department of Housing & Urban Development and the Federal Housing Finance Agency to improve the quality of services provided under HAMP and to report on the program's overall execution and progress;

(14) Disclose information to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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;

(15) Disclose information to the U.S. Department of Justice ("DOJ") for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the use of such information by the DOJ is deemed by the Department to be relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The Department or any component thereof, including the Office of Financial Stability ("OFS");

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Department determines that litigation is likely to affect the Department or any of its components, including OFS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the system of records is stored in a transactional database and an operational data store. Information from the system will also be captured in hard-copy form and stored in filing cabinets managed by personnel working on HAMP.

RETRIEVABILITY:

Information about individuals may be retrieved from the system by reference including the mortgage borrower's name, Social Security Number, address, or loan number.

SAFEGUARDS:

Safeguards designed to protect information contained in the system against unauthorized disclosure and access include, but are not limited to: (i) Department and Financial Agent policies and procedures governing privacy, information security, operational risk management, and change management; (ii) requiring Financial Agent employees to adhere to a code of conduct concerning the aforementioned policies and procedures; (iii) conducting background on all personnel with access to the system of records; (iv) training relevant personnel on privacy and information security; (v) tracking and reporting incidents of suspected or confirmed breaches of information concerning borrowers; (vi) establishing physical and technical perimeter security safeguards; (vii) utilizing antivirus and intrusion detection software; (viii) performing risk and controls assessments and mitigation, including production readiness reviews; (ix) establishing security event response teams; and (x) establishing technical and physical access controls, such as role-based access management and firewalls.

Loan servicers that participate in HAMP (i) have agreed in writing that the information they provide to Treasury or to its Financial Agents is accurate, and (ii) have submitted a "click through" agreement on a Web site requiring the loan servicer to provide accurate information in connection with using the Program Web site. In addition, the Treasury's Financial Agents will conduct loan servicer compliance reviews to validate data collection controls, procedures, and records.

RETENTION AND DISPOSAL:

Information is retained in the system on back-up tapes or in hard-copy form for seven years, except to the extent that either (i) the information is subject to a litigation hold or other legal retention obligation, in which case the data is retained as mandated by the relevant legal requirements, (ii) or the Treasury and its financial agents need the information to carry out the Program. Destruction is carried out by degaussing according to industry standards. Hard copy records are shredded and recycled.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Assistant Secretary, Fiscal Operations and Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, to gain access to records maintained in this system, or to amend or correct information maintained in this system, must submit a written request to do so in accordance with the procedures set forth in 31 CFR 1.26–.27. Address such requests to: Director, Disclosure Services Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURE:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information about mortgage borrowers contained in the system of records is

obtained from loan servicers who participate in HAMP or developed by the Treasury and its Financial Agents in connection with HAMP. Information is not obtained directly from individual mortgage borrowers to whom the information pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .219

SYSTEM NAME:

TARP Standards for Compensation and Corporate Governance—Executive Compensation Information.

SYSTEM LOCATION:

Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Senior Executive Officers or "SEOs." SEOs of TARP recipients will be covered by the system. The term "SEO" means an employee of the TARP recipient who is a "named executive officer," as that term is defined by Instruction 1 to Item 402(a)(3) of Regulation S–K of the Federal securities laws. 17 CFR 229.402(a). A TARP recipient that is a "smaller reporting company," as that term is defined by Item 10 of Regulation S–K, 17 CFR 229.10, is required to identify SEOs consistent with the immediately preceding sentence. A TARP recipient that is a "smaller reporting company" must identify at least five SEOs, even if only three named executive officers are provided in the disclosure pursuant to Item 402(m)(2) of Regulation S–K, 17 CFR 229.402(m)(2), provided that no employee must be identified as an SEO if the employee's total annual compensation does not exceed $100,000 as defined in Item 402(a)(3)(1) of Regulation S–K. 17 CFR 229.402(a)(3)(1).

b. Most highly compensated employees. Most highly compensated employees of TARP recipients will be covered by the system. The term "most highly compensated employee" means the employee of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, for this purpose, a former employee who is no longer employed as of the first day of the relevant fiscal year of the TARP recipient is not a most highly compensated employee unless it is reasonably anticipated that such employee will return to employment with the TARP recipient during such fiscal year.

c. Other employees. Certain other employees of TARP recipients may be covered by the system in the event that the TARP recipient or the employee requests guidance from the Department with respect to the employee's compensation or the Department otherwise provides guidance with respect to the employee's compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include, but are not limited to, identifying information such as: name(s), employer; employee identification number, position, and quantitative and qualitative information with respect to the employee's performance.

The types of records in the system may be:

a. Comprehensive compensation data provided by the individual's employer for current and prior years.

b. Information relating to compensation plan design and documentation.

c. Company performance data relating to compensation plans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is authorized by 31 U.S.C. 321 as well as section 111 of the Emergency Economic Stabilization Act of 2008 ("EESA"), as amended by the American Recovery and Reinvestment Act of 2009 ("ARRA"). 12 U.S.C. 5221.

PURPOSE(S):

The Department of the Treasury collects this information from each TARP recipient in connection with the review of compensation payments and compensation structures applicable to SEOs and certain highly compensated employees. Information with respect to certain payments to highly compensated employees will also be reviewed in connection with a determination of whether such payments were inconsistent with the purposes of section 111 of EESA or TARP, or were otherwise contrary to the public interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating or prosecuting a violation of, or enforcing or implementing, a statute, rule, regulation, or order, where the Department becomes aware of a potential violation of civil or criminal law or regulation, rule or order.

2. To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual who is the subject of the record.

3. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction and Agency Touhy regulations are followed. *See* 31 CFR 1.8 *et seq.*

4. To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an Archivist.

5. To disclose information to the United States Department of Justice ("DOJ"), for the purpose of representing or providing legal advice to the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(A) The Department or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

6. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Department officers and employees.

7. To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the

security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise that 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 (c) the disclosure made to such agencies, entities, and persons is 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.

8. In limited circumstances, for the purpose of compiling or otherwise refining records that may be disclosed to the public in the form of summary reports or other analyses provided on a Department Web site.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in both an electronic format, including (but not limited to) on magnetic tapes, disks, microfiche, and hardcopy paper reports.

RETRIEVABILITY:

These records may be retrieved by various combinations of employer name, individual name, position and/or level of compensation.

SAFEGUARDS:

Data in electronic format is encrypted or password protected. Direct access is limited to employees within the Office of Financial Stability whose duties require access. The building where the records are maintained is locked after hours and has a 24-hour security guard. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

The records will be maintained indefinitely until a record disposition schedule submitted to the National Archives Records Administration has been approved.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Compliance, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its contents, should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.
b. Employer.
c. Signature.
d. Contact information.

[Individuals requesting amendment of their records must also follow the Department's Privacy Act regulations regarding verification of identity and amendment of records (31 CFR part 1 subpart C, appendix A).]

RECORD ACCESS PROCEDURE:

See "Notification procedure," above.

CONTESTING RECORD PROCEDURE:

See "Notification procedure,"' above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the individual's employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .301

SYSTEM NAME:

TIGTA General Personnel and Payroll.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005, field offices listed in Appendices A and B, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, and Transaction Processing Center, U.S. Department of Agriculture, National Finance Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to personnel actions and determinations made about TIGTA employees. These records contain data on individuals required by the Office of Personnel Management (OPM) and which may also be contained in the Official Personnel File (OPF). This system may also contain letters of commendation, recommendations for awards, awards, reprimands, adverse or disciplinary charges, and other records which OPM and TIGTA require or permit to be maintained. This system may include records that are maintained in support of a personnel action such as a position management or position classification action, a reduction-in-force action, and priority placement actions. Other records maintained about an individual in this system are performance appraisals and related records, expectation and payout records, employee performance file records, suggestion files, award files, financial and tax records, back pay files, jury duty records, outside employment statements, clearance upon separation documents, unemployment compensation records, adverse and disciplinary action files, supervisory drop files, records relating to personnel actions, furlough and recall records, work measurement records, emergency notification records, and employee locator and current address records. This system includes records created and maintained for purposes of administering the payroll system. Time-reporting records include timesheets and records indicating the number of hours by TIGTA employee attributable to a particular project, task, or audit. This system also includes records related to travel expenses and/or costs. This system includes records concerning employee participation in the mobile-workplace (telecommuting) program. This system also contains records relating to life and health insurance, retirement coverage, designations of beneficiaries, and claims for survivor or death benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, and 5 U.S.C. 301, 1302, 2951, 4506, Ch. 83, 87, and 89.

PURPOSE(S):

This system consists of records compiled for personnel, payroll and time-reporting purposes. In addition, this system contains all records created and/or maintained about employees as required by the Office of Personnel Management (OPM) as well as documents relating to personnel matters and determinations. Retirement, life, and health insurance benefit records are collected and maintained in order to administer the Federal Employee's Retirement System (FERS), Civil Service Retirement System (CSRS), Federal Employee's Group Life Insurance Plan, and, the Federal Employees' Health Benefit Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or

implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party of the litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to educational institutions for recruitment and cooperative education purposes;

(11) Provide information to a Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit;

(12) Provide information to a Federal, State, or local agency or to a financial institution as required by law for payroll purposes;

(13) Provide information to Federal agencies to effect inter-agency salary offset and administrative offset;

(14) Provide information to a debt collection agency for debt collection services;

(15) Respond to State and local authorities for support garnishment interrogatories;

(16) Provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgment;

(17) Provide information to a prospective employer of a current or former TIGTA employee;

(18) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger;

(19) Provide information to the Office of Workers' Compensation, Veterans Administration Pension Benefits Program, Social Security Old Age, Survivor and Disability Insurance and Medicare Programs, Federal civilian employee retirement systems, and other Federal agencies when requested by that program, for use in determining an individual's claim for benefits;

(20) Provide information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program;

(21) Provide information to hospitals and similar institutions to verify an employee's coverage in the Federal Employees' Health Benefits Program;

(22) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(23) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, paper records, and microfiche.

RETRIEVABILITY:

Name, Social Security Number, and/or claim number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, Nos. 1 and 2.

SYSTEM MANAGER(S) AND ADDRESS:

General Personnel Records—Assistant Inspector General for Mission Support/Chief Financial Officer. Time-reporting records: (1) For Office of Audit employees—Deputy Inspector General for Audit; (2) For Office of Chief Counsel employees—Chief Counsel; (3)

For Office of Investigations employees—Deputy Inspector General for Investigations; and(4) For Office of Mission Support/Chief Financial Officer employees—Assistant Inspector General for Mission Support/Chief Financial Officer—1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, is derived from information supplied by that individual, or is provided by Department of the Treasury and other Federal agency personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .302

SYSTEM NAME:

TIGTA Medical Records.

SYSTEM LOCATION:

(1) Health Improvement Plan Records—Office of Investigations, 1125 15th Street, NW., Washington, DC 20005 and field division offices listed in Appendix A; and, (2) All other records of: (a) Applicants and current TIGTA employees: Office of Mission Support/Chief Financial Officer, TIGTA, 1125 15th Street, NW., Washington, DC 20005 and/or Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328; and, (b) former TIGTA employees: National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for TIGTA employment; (2) Current and former TIGTA employees; (3) Applicants for disability retirement; and, (4) Visitors to TIGTA offices who require medical attention while on the premises.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Documents relating to an applicant's mental/physical ability to perform the duties of a position; (2) Information relating to an applicant's rejection for a position because of medical reasons; (3) Documents relating to a current or former TIGTA employee's mental/physical ability to perform the duties of the employee's position; (4) Disability retirement records; (5) Health history questionnaires, medical records, and other similar information for employees participating in the Health Improvement Program; (6) Fitness-for-duty examination reports; (7) Employee assistance records; (8) Injury compensation records relating to on-the-job injuries of current or former TIGTA employees; and, (9) Records relating to the drug testing program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301, 3301, 7301, 7901, and Ch. 81, 87 and 89.

PURPOSE(S):

To maintain records related to employee physical exams, fitness-for-duty evaluations, drug testing, disability retirement claims, participation in the Health Improvement Program, and worker's compensation claims. In addition, these records may be used for purposes of making suitability and fitness-for duty determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With the exception of Routine Use "(1)," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564 "Drug-Free Federal Work Place." Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

Records may be used to:

(1) Disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action;

(2) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(3) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when (a) the agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(6) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(7) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to Federal or State agencies responsible for administering Federal benefits programs and private contractors engaged in providing benefits under Federal contracts;

(11) Disclose information to an individual's private physician where medical considerations or the content of medical records indicate that such release is appropriate;

(12) Disclose information to other Federal or State agencies to the extent provided by law or regulation;

(13) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger;

(14) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(15) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, electronic media, and x-rays.

RETRIEVABILITY:

Records are retrievable by name, Social Security Number, date of birth and/or claim number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Health Improvement Program records—Deputy Inspector General for Investigations, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005; and, (2) All other records—Assistant Inspector General for Mission Support/Chief Financial Officer, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart c, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Medical personnel and institutions; (3) Office of Workers' Compensation personnel and records; (4) Military Retired Pay Systems Records; (5) Federal civilian retirement systems; (6) General Accounting Office pay, leave allowance cards; (7) OPM Retirement, Life Insurance and Health Benefits Records System and Personnel Management Records System; (8) Department of Labor; and, (9) Federal Occupation Health Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .303

SYSTEM NAME:

TIGTA General Correspondence.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005, and field offices listed in Appendices A and B.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of correspondence; and, (2) Persons upon whose behalf the correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received by TIGTA and responses generated thereto; and, (2) Records used to respond to incoming correspondence. Special Categories of correspondence may be included in other systems of records described by specific notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

This system consists of correspondence received by TIGTA from individuals and their representatives, oversight committees, and others who conduct business with TIGTA and the responses thereto; it serves as a record of in-coming correspondence and the steps taken to respond thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(9) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3, and

(10) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives Records Administration. TIGTA is in the process of requesting approval for a record retention schedule for electronic records maintained in this system. These electronic records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Mission Support/Chief Financial Officer, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt sources of information include: (1) Initiators of the correspondence; and (2) Federal Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/DO .304

SYSTEM NAME:

TIGTA General Training Records.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005; Federal Law Enforcement Training Center (FLETC), Glynco, GA 31524.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) TIGTA employees; and, (2) Other Federal or non-Government individuals who have participated in or assisted with training programs as instructors, course developers, or interpreters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Course rosters; (2) Student registration forms; (3) Nomination forms; (4) Course evaluations; (5) Instructor lists; (6) Individual Development Plans (IDPs); (7) Counseling records; (8) Examination and testing materials; (9) Payment records; (10) Continuing professional education requirements; (11) Officer safety files and firearm qualification records; and, (12) Other training records necessary for reporting and evaluative purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301 and Ch. 41, and Executive Order 11348, as amended by Executive Order 12107.

PURPOSE(S):

These records are collected and maintained to document training received by TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the training request or requirements and/or in the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(11) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Name, Social Security Number, course title, date of training, and/or location of training.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

(1) For records concerning Office of Investigations employees—Deputy Inspector General for Investigations; (2) For records concerning Office of Audit employees—Deputy Inspector General for Audit; (3) For Office of Chief Counsel employees—Chief Counsel; and, (4) For Office of Mission Support/Chief Financial Officer employees—Assistant Inspector General for Mission Support/Chief Financial Officer—1125 15th Street, NW., Room 700A, Washington, DC, 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; and, (2) Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .305

SYSTEM NAME:

TIGTA Personal Property Management Records.

SYSTEM LOCATION:

Office of Information Technology, TIGTA 1125 15th, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning personal property assigned to TIGTA employees including descriptions and identifying information about the property, custody receipts, property passes, maintenance records, and other similar records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301, and 41 CFR Subtitle C Ch. 101 and 102.

PURPOSE(S):

The purpose of this system is to maintain records concerning personal property, including but not limited to, computers and other similar equipment, motor vehicles, firearms and other law enforcement equipment, communication equipment, computers, fixed assets, credit cards, telephone calling cards, credentials, and badges assigned to TIGTA employees for use in their official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) The agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(11) To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Indexed by name and/or identification number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules, Nos. 4 and 10.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Mission Support/Chief Financial Officer, Office of Mission Support/Chief Financial Officer, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Treasury personnel and records; (3) Vehicle maintenance facilities; (4) Property manufacturer; and, (5) Vehicle registration and licensing agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .306

SYSTEM NAME:

TIGTA Recruiting and Placement Records.

SYSTEM LOCATION:

Office of Mission Support/Chief Financial Officer, 1125 15th Street, NW., Washington, DC 20005 and/or Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for employment; and, (2) Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Application packages and Resumes; (2) Related correspondence; and, (3) Documents generated as part of the recruitment and hiring process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301 and Ch. 33, and Executive Orders 10577 and 11103.

PURPOSE(S):

The purpose of this system is to maintain records received from applicants applying for positions with TIGTA and relating to determining eligibility for employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) The agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the recruitment, hiring, and/or placement determination and/or during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Disclose information to officials of Federal agencies for purposes of consideration for placement, transfer, reassignment, and/or promotion of TIGTA employees;

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(12) To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Records are indexed by name, Social Security Number, and/or vacancy announcement number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access disposal.

RETENTION AND DISPOSAL:

Records in this system are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Mission Support/Chief Financial Officer, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(k)(5) and (k)(6).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Office of Personnel Management; and, (3) Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records in this system have been designated as exempt from 5 U.S.C. 552a (c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) pursuant to 5 U.S.C. 552a (k)(5) and (k)(6). *See* 31 CFR 1.36.

TREASURY/DO .307

SYSTEM NAME:

TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.

SYSTEM LOCATION:

Office of Mission Support/Chief Financial Officer, TIGTA 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests, (2) Appeals, (3) Complaints, (4) Letters or notices to the subject of the record, (5) Records of hearings, (6) Materials relied upon in making any decision or determination, (7) Affidavits or statements, (8) Investigative reports, and, (9) Documents effectuating any decisions or determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app 3 and 5 U.S.C. 301, Ch. 13, 31, 33, 73, and 75.

PURPOSE(S):

This system consists of records compiled for administrative purposes concerning personnel matters affecting current, former, and/or prospective TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Diclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and General Accounting Office in order to obtain legal and/or policy guidance;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(12) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Indexed by the name of the individual and case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subjects of a background investigation, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Mission Support/Chief Financial Officer, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the records; (2) Treasury personnel and records; (3) Witnesses; (4) Documents relating to the appeal, grievance, or complaint; and, (5) EEOC, MSPB, and other similar organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may contain investigative records that are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (*See* 31 CFR 1.36.)

TREASURY/DO .308

SYSTEM NAME:

TIGTA Data Extracts.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street N.W., Washington, DC 20005, Office of Mission Support/Chief Financial Officer, 4800 Buford Highway, Chamblee, GA 30341, and Office of Investigations, Strategic Enforcement Division, 550 Main Street, Cincinnati, OH 45202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) Individuals who have filed, are required to file tax returns, or are included on tax returns, forms, or other information filings; (3) Entities who have filed or are required to file tax returns, IRS forms, or information filings as well as any individuals listed on the returns, forms and filings; and, (4) Taxpayer representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data extracts from various databases maintained by the Internal Revenue Service consisting of records collected in performance of its tax administration responsibilities as well as records maintained by other governmental agencies, entities, and public record sources. This system also contains information obtained via TIGTA's program of computer matches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

This system consists of data extracts from various electronic systems of records maintained by governmental agencies and other entities. The data extracts generated by TIGTA are used for audit and investigative purposes and are necessary to identify and deter fraud, waste, and abuse in the programs and operations of the Internal Revenue Service (IRS) and related entities as well as to promote economy, efficiency, and integrity in the administration of the internal revenue laws and detect and deter wrongdoing by IRS and TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(11) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has

been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, Taxpayer Identification Number, and/or employee identification number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

TIGTA is in the process of requesting approval of a new record retention schedule concerning the records in this system of records. These records will not be destroyed until TIGTA receives approval from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Mission Support/Chief Financial Officer, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (*See* 31 CFR 1.36.)

TREASURY/DO .309

SYSTEM NAME:

TIGTA Chief Counsel Case Files.

SYSTEM LOCATION:

Office of Chief Counsel, TIGTA, 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS:

Parties to and persons involved in litigations, actions, personnel matters, administrative claims, administrative appeals, complaints, grievances, advisories, and other matters assigned to, or under the jurisdiction of, the Office of Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Memoranda, (2) Complaints, (3) Claim forms, (4) Reports of Investigations, (5) Accident reports, (6) Witness statements and affidavits, (7) Pleadings, (8) Correspondence, (9) Administrative files, (10) Case management documents, and (11) Other records collected or generated in response to matters assigned to the Office of Chief Counsel.

PURPOSE(S):

This system contains records created and maintained by the Office of Chief Counsel for purposes of providing legal service to TIGTA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to, or necessary to, the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purposes of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and General Accounting Office;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(12) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply and/or by case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of a background investigation, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval for a record retention schedule for electronic records maintained in this system. These electronic records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of Treasury personnel and records, (2) The subject of the record, (3) Witnesses, (4) Parties to disputed matters of fact or law, (5) Congressional inquiries, and, (6) Other Federal agencies including, but not limited to, the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunities Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5)(e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C.552a(j)(2) and (k)(2). (*See* 31 CFR 1.36.)

TREASURY/DO .310

SYSTEM NAME:

TIGTA Chief Counsel Disclosure Branch Records.

SYSTEM LOCATION:

Office of Chief Counsel, Disclosure Branch, TIGTA, 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Requestors for access and amendment pursuant to the Privacy Act of 1974, 5 U.S.C. 552a; (2) Subjects of requests for disclosure of records; (3) Requestors for access to records pursuant to 26 U.S.C. 6103; (4) TIGTA employees who have been subpoenaed or requested to produce TIGTA documents or testimony on behalf of TIGTA in judicial or administrative proceedings; (5) Subjects of investigations who have been referred to another law enforcement authority; (6) Subjects of investigations who are parties to a judicial or administrative proceeding in which testimony of TIGTA employees or production of TIGTA documents has been sought; and, (7) Individuals initiating correspondence or inquiries processed or controlled by the Disclosure Section.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests for access to and/or amendment of records, (2) Responses to such requests, (3) Records processed and released in response to such requests, (4) Processing records, (5) Requests or subpoenas for testimony, (6)

Testimony authorizations, (7) Referral letters, (8) Documents referred, (9) Record of disclosure forms, and (10) Other supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 552a, 26 U.S.C 6103, and 31 CFR 1.11.

PURPOSE(S):

The purpose of this system is to enable compliance with applicable Federal disclosure laws and regulations, including statutory record-keeping requirements. In addition, this system will be utilized to maintain records obtained and/or generated for purposes of responding to requests for access, amendment, and disclosure of TIGTA records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing, or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) The agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration.

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(10) To appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) the disclosure made to such agencies, entities, and persons is 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or electronic media.

RETRIEVABILITY:

Name of the requestor, name of the subject of the investigation, and/or name of the employee requested to produce documents or to testify.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

TIGTA is in the process of requesting approval for a record retention schedule for records maintained in this system. These records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of Treasury personnel and records, (2) Incoming requests, and (3) Subpoenas and requests for records and/or testimony.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may contain records that are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2),(e)(3),(e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (*See* 31 CFR 1.36.)

TREASURY/DO .311

SYSTEM NAME:

TIGTA Office of Investigations Files.

SYSTEM LOCATION:

National Headquarters, Office of Investigations, 1125 15th Street, NW., Washington, DC 20005 and Field Division offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) The subjects of complaints received by TIGTA; (3) Persons who have filed complaints with TIGTA; (4) Confidential informants; and (5) TIGTA Special Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, and other exhibits and documents collected during an investigation; (2) Status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) Complaints or requests to investigate; (4) General case materials and documentation including, but not limited to, Chronological Case Worksheets (CCW), fact sheets, agent work papers, Record of Disclosure forms, and other case management documentation; (5) Subpoenas and evidence obtained in response to a subpoena; (6) Evidence logs; (7) Pen registers; (8) Correspondence; (9) Records of seized money and/or property; (10) Reports of laboratory examination, photographs, and evidentiary reports; (11) Digital image files of physical evidence; (12) Documents generated for purposes of TIGTA's undercover activities; (13) Documents pertaining to the identity of confidential informants; and (14) Other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by TIGTA and collected as part of investigations conducted by TIGTA's Office of Investigations. This system also includes investigative material compiled by the IRS's Office of the Chief Inspector, which was previously maintained in the following systems of records: Treasury/IRS 60.001–60.007 and 60.009–60.010.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, 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 Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(10) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3; and,

(12) Disclose information to complainants, victims, or their representatives (defined for purposes here to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated

and, if the subject has exhausted all reasonable appeals, any action taken.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Some of the records in this system are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval of new records schedules concerning all records in this system of records. Records not currently covered by an approved record retention schedule will not be destroyed until TIGTA receives the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Investigations, Office of Investigations, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records, complainants, witnesses, governmental agencies, tax returns and related documents, subjects of investigations, persons acquainted with the individual under investigation, third party witnesses, Notices of Federal Tax Liens, court documents, property records, newspapers or periodicals, financial institutions and other business records, medical records, and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (*See* 31 CFR 1.36)

Appendix A—Office of Investigations, TIGTA

Field Division SAC Offices

Treasury IG for Tax Administration, 401 West Peachtree St., Atlanta, GA 30308.

Treasury IG for Tax Administration, 200 W. Adams, Chicago, IL 60606.

Treasury IG for Tax Administration, 4050 Alpha Rd., Dallas, TX 75244–4203.

Treasury IG for Tax Administration, 600 17th St., Denver, CO 80202.

Treasury IG for Tax Administration, 201 Varick Street, New York, NY 10014.

Treasury IG for Tax Administration, 1301 Clay Street, Oakland, CA 94612.

Treasury IG for Tax Administration, New Carrollton Federal Bldg., 5000 Ellin Road, Lanham, MD 20706.

Treasury IG for Tax Administration, 12119 Indian Creek Court, Beltsville, MD 20705.

Appendix B—Audit Field Offices, TIGTA

Treasury IG for Tax Administration, 310 Lowell Street, Andover, MA 01812.

Treasury IG for Tax Administration, 401 W. Peachtree St., Atlanta, GA 30308–3539.

Treasury IG for Tax Administration, Atlanta Service Center, 4800 Buford Highway, Chamblee, GA 30341.

Treasury IG for Tax Administration, 3651 South Interstate 35, Austin, TX 78741.

Treasury IG for Tax Administration, 31 Hopkins Plaza, Fallon Federal Building, Baltimore, MD 21201.

Treasury IG for Tax Administration, 1040 Waverly Ave, Holtsville, NY 11742.

Treasury IG for Tax Administration, 200 W Adams, Chicago, IL 60606.

Treasury IG for Tax Administration, Peck Federal Office Bldg, 550 Main Street, Room 5028, Cincinnati, OH 45201.

Treasury IG for Tax Administration, 4050 Alpha Road, Dallas, TX 75244.

Treasury IG for Tax Administration, 600 17th Street, Denver, CO 80202.

Treasury IG for Tax Administration, 197 State Route 18 South, East Brunswick NJ 08816.

Treasury IG for Tax Administration, Fresno Service Center, 5045 E. Butler Stop 11, Fresno, CA 93888.

Treasury IG for Tax Administration, 7850 SW 6th Court, Plantation, FL 33324.

Treasury IG for Tax Administration, 333 West Pershing Road, Kansas City, MO 64131.

Treasury Inspector General for Tax Administration—Audit, 24000 Avila Road, Laguna Niguel, CA 92677.

Treasury IG for Tax Administration, 312 East First Street, Los Angeles, CA 90012.

Treasury IG for Tax Administration, 5333 Getwell Rd, Memphis, TN 38118.

Treasury IG for Tax Administration, 201 Varick Street, Room 1054, New York, NY 10014.

Treasury IG for Tax Administration, 1160 West 1200 South, Ogden, Utah 84201.

Treasury IG for Tax Administration, Federal Office Building, 600 Arch Street, Philadelphia, PA 19106.

Treasury IG for Tax Administration, Philadelphia Service Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19154.

Treasury IG for Tax Administration, 915 2nd Avenue, Seattle, WA 98174.

Treasury IG for Tax Administration, 1222 Spruce, St. Louis, MO 63103.

Treasury IG for Tax Administration, 92 Montvale Avenue, Stoneham, MA 02180.

Treasury IG for Tax Administration, Ronald Dellums Federal Bldg., 1301 Clay Street, Oakland, CA 94612.

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Federal Register

Tuesday,
April 20, 2010

Part III

Department of Housing and Urban Development

24 CFR Part 202

Federal Housing Administration: Continuation of FHA Reform; Strengthening Risk Management Through Responsible FHA-Approved Lenders; Final Rule

Department of Housing AND Urban Development

24 CFR Part 202

[Docket No. FR 5356–F–02]

RIN 2502–AI81

Federal Housing Administration: Continuation of FHA Reform; Strengthening Risk Management Through Responsible FHA-Approved Lenders

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule with request for comments.

SUMMARY: This final rule adopts changes pertaining to the approval of mortgage lenders by the Federal Housing Administration (FHA) that are designed to strengthen FHA by improving its management of risk. This final rule increases the net worth requirement for FHA-approved mortgagees. The increase, the first since 1993, is adopted to ensure that FHA-approved mortgagees are sufficiently capitalized for the financial transactions occurring, and concomitant risks present, in today's economy. This final rule also provides for elimination of the FHA approval process for loan correspondents. Loan correspondents will no longer be approved participants in FHA programs. Loan correspondents, however, will continue to have the opportunity to participate in FHA programs as third-party originators (TPOs) through sponsorship by FHA-approved mortgagees, as is currently the case, or through application to be approved as an FHA-approved mortgagee. In eliminating FHA's approval of loan correspondents, FHA-approved mortgagees assume full responsibility to ensure that a sponsored loan correspondent adheres to FHA's loan origination and processing requirements. Finally, this final rule updates FHA's regulations to incorporate criteria specified in the Helping Families Save Their Homes Act of 2009 (HFSH Act) designed to ensure that only entities of integrity are involved in the origination of FHA-insured loans.

HUD also takes the opportunity afforded by this final rule to solicit comment on whether to adopt additional net worth requirements for FHA-approved mortgagees that originate multifamily mortgages of $25 million or more.

DATES: *Effective Date:* May 20, 2010.

Comment Due Date: As provided in section V. of the preamble, HUD is soliciting comment on whether to adopt additional net worth requirements for FHA-approved mortgagees that originate multifamily mortgages of $25 million or more. Comments on this issue are due on or before May 20, 2010. This is the only issue for which HUD solicits comment.

ADDRESSES: Interested persons are invited to submit comments in response to issue identified in section V of the preamble to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–1515 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The Proposed Rule

In September 2009, FHA announced plans to implement a set of policy changes designed to enhance FHA's risk management functions. The announcement preceded completion of an independent actuarial study to be submitted to Congress and which was expected to show FHA's capital reserve ratio dropping below the congressionally mandated threshold of 2 percent.[1] The changes announced in September 2009 were prompted by recognition of the need to put in place measures that would immediately commence strengthening FHA's reserves and, for the long term, better manage risk. The changes that FHA announced in September 2009 included the policy changes submitted for public comment in HUD's proposed rule published in the **Federal Register** on November 30, 2009 (74 FR 62521).

HUD proposed the following policy changes in its November 30, 2009, proposed rule:

1. *Increasing the Net Worth Requirements for FHA-Approved Mortgagees.* HUD proposed to increase the net worth requirements for current FHA-approved mortgagees, including investing mortgagees, and applicants seeking FHA approval as mortgagees from $250,000 to $2.5 million over a period of 3 years. The proposed rule provided that within one year of the

[1] HUD released its independent actuarial study on November 13, 2009. The study reported that FHA sustained significant losses from loans insured prior to 2009, and that FHA's capital reserve ratio had fallen below the congressionally mandated level of 2 percent. The capital reserve ratio generally reflects the reserves available (after paying expected claims and expenses) as a percentage of the current portfolio, to address unexpected losses. The report can be found at: *http://www.hud.gov/offices/hsg/fhafy09annualmanagementreport.pdf.*

effective date of the final rule, which would follow the November 30, 2009, proposed rule, supervised and nonsupervised mortgagees and investing mortgagees would be required to have a minimum net worth of $1 million, of which at least 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.[2] Mortgagees would be required to comply with the minimum net worth requirement of $2.5 million within 3 years of the effective date of the final rule, with at least 20 percent of such net worth consisting of liquid assets.

In proposing to increase the net worth requirements of approved mortgagees, the November 30, 2009, proposed rule noted that the net worth requirements of FHA-approved mortgagees had not been increased since 1993. HUD advised that the increases were not only necessary adjustments for inflation, but would help ensure that FHA-approved mortgage lenders, including investing mortgagees, are sufficiently capitalized to meet the potential needs associated with the financial services they provide.

2. *Limiting Approval to Mortgagees.* In the November 30, 2009, rule, HUD proposed to limit FHA's approval only to mortgagees that underwrite loans and can perform any origination and/or servicing function and can also own FHA-insured loans. Loan correspondents, in contrast to mortgagees, perform any origination function except underwriting, and cannot service or own FHA-insured mortgage loans. HUD did not propose to alter the approval process of investing mortgagees and governmental institutions, as addressed in 24 CFR 202.9 and 202.10.

In proposing to limit FHA's approval to the mortgagee charged with underwriting, servicing, or owning a loan, HUD advised that it is the mortgage lender with the greatest control over the mortgage loan that should be subject to FHA's rigorous lender approval and oversight processes, and bear the greatest degree of responsibility and liability for the mortgage loan obtained by the mortgage borrower and insured by FHA. In the November 30, 2009, proposed rule, HUD advised that loan correspondents would continue to have the opportunity to participate in the origination of FHA mortgage loans as third-party originators (TPOs) through association with an FHA-approved mortgagee, as is currently the arrangement, but TPOs would no longer be subject to the FHA lender approval process. HUD also advised that since HUD would no longer be approving loan correspondents, and in acknowledgement and anticipation that loan correspondents would continue to be involved in the origination of FHA-insured mortgage loans through sponsorship, FHA-approved mortgagees would assume full responsibility to ensure that their sponsored TPOs adhere to FHA origination and processing requirements.

Responsibility for actions of TPOs is not a new responsibility for FHA-approved mortgagees. HUD's current regulations in 24 CFR 202.8(b)(7) provide that: "Each sponsor shall be responsible to the Secretary for the actions of its loan correspondent lenders or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible." The present regulations in 24 CFR 202.8(b)(6) provide that: "Each sponsor must obtain approval of its loan correspondent lenders or mortgagees from the Secretary." It is the obligation to obtain approval of loan correspondents/TPOs from FHA that, under this final rule, mortgagees will no longer have to meet. However, in being relieved of the responsibility to obtain prior approval from FHA of the TPOs that it would like to sponsor, the mortgagee assumes responsibility that sponsored TPOs meet FHA's requirements regarding loan origination and processing as found in relevant statutes, regulations, HUD handbooks, and mortgagee letters. Failure of the TPO to comply with these requirements may result in FHA seeking sanctions against the sponsoring FHA-approved mortgagee.

The proposed rule provided that, upon promulgation of the final rule, entities that are already approved by FHA as loan correspondents would not be permitted to renew their loan correspondent status or automatically convert their approval to mortgagee, and only FHA-approved mortgagees would be allowed to request FHA case numbers. However, a loan correspondent would be eligible to apply to FHA to obtain approval as a mortgagee.

3. *Ineligibility to Participate in Origination of FHA–Insured Loans.* The November 30, 2009, rule proposed to codify criteria specified in section 203 of the HFSH Act that precludes any lending entity not approved or authorized by the Secretary from participating in FHA programs, and also prohibits participation by an entity if the entity is currently: Suspended, debarred, or under limited denial of participation; under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence, or fitness to meet the responsibilities of an approved mortgagee; subject to unresolved findings of a HUD investigation, or engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility; convicted of, or has pled guilty or *nolo contendere* to, a felony related to participation in the real estate or mortgage loan industry; in violation of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act (Title V of Division A of Public Law 110–289, approved July 30, 2008) (SAFE Act); or in violation of any other requirement established by the Secretary.

Implementation of the criteria in section 203 of the HFSH Act did not require rulemaking, and the November 30, 2009, proposed rule noted that the statutory restrictions were in effect upon enactment of the HFSH Act.[3]

4. *Use of HUD Registered Business Name and Business Changes.* The November 30, 2009, rule also proposed to codify the statutory requirement presented in section 203 of the HFSH Act that directs FHA-approved mortgagees to use their HUD-registered business names in all advertisements and promotional materials related to FHA programs. HUD-registered business names include any alias or "doing business as" (DBA) on file with FHA. In addition to codifying this statutory requirement, the November 30, 2009, rule also proposed to codify the requirements specified in FHA's Strengthening Counterparty Risk Management Mortgagee Letter, issued September 18, 2009, and found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm.* This Mortgagee Letter directed FHA-approved mortgagees to maintain copies

[2] Supervised mortgagees are financial institutions that are members of the Federal Reserve System, and financial institutions whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA). Examples of supervised mortgagees are banks, savings associations, and credit unions. Nonsupervised mortgagees are non-depository financial entities that have as their principal activity the lending or investment of funds in real estate mortgages. Investing mortgagees are organizations, including charitable or not-for-profit institutions or pension funds, which are not approved as another type of institution and that invest funds under their own control. (See definitions of these terms at 24 CFR 202.6(a), 202.7(a), and 202.9(a), respectively.)

[3] These criteria were announced by the Mortgagee Letter entitled "Strengthening Counterparty Risk Management," issued September 18, 2009, and can be found as document number 09–31 at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm.*

of all advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used for advertisement purposes.

The November 30, 2009, rule also proposed to codify the requirement in section 203 of the HFSH Act that requires mortgagees to notify FHA if individual employees of the lender are subject to any sanction or other administrative action. In incorporating this requirement, the November 30, 2009, rule noted that HUD was also proposing to codify its existing requirements pertaining to notification to FHA of business changes, such as changes in legal structure, which are currently found in HUD Handbook 4060.1, REV–2, Chapters 2 and 6.

The amendments proposed by the November 30, 2009, proposed rule are discussed in more detail in the November 30, 2009, **Federal Register** at 74 FR 62522 through 62528.

II. This Final Rule—Policies Adopted

In consideration of issues raised by the commenters and HUD's own further consideration of issues related to this final rule, HUD is making the following changes at the final rule stage:

Net Worth Requirements for Applicants for Approval To Participate in FHA Single Family or Multifamily Programs and for FHA-Approved Mortgagees: 2010 to 2011

The following net worth requirements are effective on May 20, 2010, for new applicants for FHA approval to participate in FHA single-family or multifamily programs, and effective on May 20, 2011, for all approved supervised and nonsupervised lenders and mortgagees, and all approved investing lenders and mortgagees with FHA approval as of May 20, 2010:

• *Applicants for FHA Approval and Existing Non-Small Business Approved Lenders and Mortgagees.* An applicant for FHA approval or an approved lender or mortgagee that exceeds the size standards for its industry classification as established by the Small Business Administration (SBA) at 13 CFR 121.201, Sector 52 (Finance and Insurance), Subsector 522 (Credit Intermediation and Related Activities) shall have a net worth of not less than $1,000,000, of which no less than 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

• *Existing Small Business Approved Lenders and Mortgagees.* An approved lender or mortgagee that meets the SBA size standards for its industry classification shall have a net worth of not less than $500,000, of which no less than 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary. The net worth requirements for small business lenders and mortgagees remain applicable as long as the mortgagee continues to meet the SBA size standard for a small business. If, based on the audited financial statement prepared at the end of its fiscal year and provided to HUD at the commencement of the new fiscal year, a small business lender or mortgagee no longer meets the SBA size standard of a small business, the mortgagee shall meet the net worth requirements for a non-small business mortgagee by the last day of the fiscal year in which the audited financial statements were submitted.

Net Worth Requirements for Applicants for Approval To Participate in FHA Single Family or Multifamily Programs and FHA-Approved Mortgagees: 2013 and After

The following net worth requirements are effective on May 20, 2013, for new applicants for FHA approval to participate in FHA single-family or multifamily programs, for all approved supervised and nonsupervised lenders and mortgagees, and for all FHA-approved investing lenders and mortgagees:

• *Single Family Mortgagees.* Irrespective of size, all FHA-approved mortgagees and applicants for approval to participate in FHA single family programs shall have a net worth of $1 million, plus an additional net worth of one percent of the total volume in excess of $25 million of FHA single family insured mortgages originated, underwritten, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of $2.5 million. No less than 20 percent of the mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

• *Multifamily Mortgagees.* Irrespective of size, all existing FHA-approved mortgagees and applicants for approval to participate in FHA multifamily programs shall have a minimum net worth of $1 million. For those multifamily mortgagees that also engage in multifamily mortgage servicing, an additional net worth of one percent of the total volume in excess of $25 million of FHA multifamily mortgages originated, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of $2.5 million, is required. For multifamily mortgagees that do not perform multifamily mortgage servicing, an additional net worth of one half of one percent of the total volume in excess of $25 million of FHA multifamily mortgages originated during the prior fiscal year, up to a maximum required net worth of $2.5 million, is required. No less than 20 percent of the mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

• *Single Family and Multifamily Mortgagees.* Irrespective of size, all existing FHA-approved mortgagees and applicants for approval to participate in both FHA single family and multifamily programs must meet the net worth requirements for a single family mortgagee. Therefore, if a mortgagee is a participant in both the multifamily and single family programs, it is required to meet the greater net worth requirements for single family mortgagees.

Elimination of FHA Approval of Loan Correspondents

The final rule limits the FHA approval process to mortgagees, but provides that all loan correspondents approved as of the date of the effective date of this final rule will maintain their approval through December 31, 2010. Commencing 30 days following publication of this rule, FHA will no longer approve new applicants for approval as loan correspondents.

Processing and Closing a Loan

The final rule clarifies that, as a result of HUD's elimination of the FHA approval process for loan correspondents, the requirements regarding Principal-Authorized Agent relationships will also change. Mortgage loans originated through Principal-Authorized Agent relationships will be permitted to close in either party's name. However, to participate in such relationships, both the Principal and Authorized Agent must be approved as Direct Endorsement lenders under 24 CFR 203.3. Further, for mortgage loans originated under the relationship, the Principal must originate and the Authorized Agent must underwrite, and their actions must be recorded as such in FHA Connection (FHA's Computer Home Underwriting Mortgage System).

Nonsubstantive Technical Changes

In addition, HUD has taken the opportunity afforded by this final rule to make several nonsubstantive changes to the proposed rule for purposes of clarity. For example, HUD has removed paragraph (c) of the definition of "Lender or title I lender" at § 202.2 to remove a reference to loan correspondents.

III. Two Issues Under Consideration

As discussed in more detail later in this preamble, HUD is reviewing two issues for further consideration, and taking public comment on one of the issues.

First, HUD will further consider the prohibition on a TPO closing a loan in its own name. This final rule provides, as did the proposed rule, that a TPO may not close a loan in its name, and HUD is not considering withdrawing this prohibition in this final rule. However, HUD will further examine this issue. Until and unless HUD announces a change to this prohibition, the prohibition for currently FHA-approved loan correspondents (that subsequently will become TPOs) closing any FHA-insured mortgages in their own names will be applicable commencing January 1, 2011. Currently FHA-approved loan correspondents may continue to close FHA-insured mortgages in their own name through December 31, 2010.

Second, HUD is considering requiring FHA-approved mortgagees that originate multifamily mortgages of $25 million or more to retain as additional net worth 50 basis points (0.5%) of the fee income resulting from such loans, in addition to their required net worth as set forth in this rule, up to a maximum of $5 million. This provision is intended to ensure sufficient mortgagee capitalization to compensate for the increased risk posed by such high cost projects. HUD is specifically taking public comment on this issue for a period of 30 days, and asks commenters to follow the public comment instructions in the **ADDRESSES** section of this preamble, above. This is the only issue for which HUD solicits comment.

IV. Discussion of Public Comments

By the close of the public comment period on the November 30, 2009, proposed rule, on December 30, 2009, HUD had received 207 public comments. Comments were received from a variety of industry participants, including large direct endorsement FHA lenders, FHA loan correspondents, trade associations representing participants in the mortgage industry, and other interested parties such as law firms, certified public accountants, and individuals. In addition, the Office of Advocacy, of SBA, commented on the discussion of its impact on small businesses. All public comments can be found in the preamble to the rule, at *http://www.regulations.gov.*

A. The Comments, Generally

The majority of the comments supported the goals of the November 30, 2009, rule, but differed with or opposed HUD's proposed methods of implementation of the rule. For instance, many commenters supported the elimination of loan correspondent approval but expressed concerns about the proposed means of implementing this provision and its possible impact on loan origination activities, including concerns that borrowers would be affected by the absence of FHA approval and oversight of loan correspondents. Similarly, commenters generally supported FHA's intention to increase net worth requirements for mortgagees, but were not in agreement with the level to which HUD proposed to increase these requirements, or the timing of the increase. Other commenters sought postponement of any changes to lender/loan correspondent requirements until the housing market recovered. They stated this was not the time for HUD to make such "sweeping" changes to its relationships with the industry. Other commenters requested changes to policies that were not proposed in the November 30, 2009, proposed rule, such as changes to down payment requirements, yield spread premiums, and the Home Valuation Code of Conduct. These changes were not addressed in the November 30, 2009, proposed rule and are therefore outside the scope of this rulemaking.

B. Specific Issues Raised by Commenters

The following presents the key issues raised by the public comments and HUD's response to these issues.

Timing of FHA's Policy Changes

Comment: Commenters stated that this rule, combined with the new Real Estate Settlement Procedures Act (RESPA) disclosures, will result in the demise of the mortgage lending industry, other than big banks, and, by favoring large financial institutions, will limit the recovery of the housing market through the growth engine of small business. Commenters stated that changes to the current FHA system will further burden the weak housing market by adding more people to the ranks of the unemployed and risking foreclosure of their homes. Commenters stated that the current market is becoming stable and such sweeping action is unnecessary.

HUD Response: HUD recognizes that the housing market remains in stress and that the FHA programs are a key element in sustaining economic recovery. However, the downturn in the housing market has not been without consequences to FHA. Consistent with its proactive role in previous economic crises, FHA once again positioned itself in this current crisis to quickly respond to the needs of homeowners in distress and qualified homebuyers without access to credit. As a result, the volume of FHA insurance increased as private sources of mortgage finance retreated from the market. The pace of growth in FHA's portfolio over such a short period of time, combined with continued housing price declines, defaults by homeowners, and home foreclosures has had an adverse impact on FHA, as evidenced by the reduction in FHA's capital reserve ratio reported in the independent actuarial study recently submitted to Congress.[4] FHA cannot continue to be a stabilizing force in the mortgage market if FHA's own condition is not stable and strong. Although the timing of implementation of these measures may not be ideal, they cannot and should not be delayed. Replenishing FHA's capital reserves as quickly as possible is essential to ensuring that FHA remains available to respond to needs in the housing market. Additionally, as discussed below in HUD's response to specific comments raised about net worth requirements and the elimination of loan correspondents, the changes adopted by this final rule are not as sweeping as some commenters declare.

FHA's Role in the Housing Market

Comment: Commenters stated that the changes proposed to be implemented represent a major redefinition of the way FHA monitors and sources its business. Commenters stated that the policy changes would reduce the competency and selectivity of FHA originators precisely at such a time when it is necessary to improve the quality of loan originators. Commenters stated that FHA's proposals are at odds with other of the Administration's proposals pertaining to the financial/housing markets, which would increase, not decrease, regulatory oversight. Commenters stated that a reduction of regulatory oversight will make FHA-insured loans vulnerable to involvement by entities that do not have the experience and competency that is traditionally found in FHA-insured mortgage loan participants, experience and competency required by FHA regulations, which will create more problems for FHA and borrowers of FHA-insured loans. Commenters stated that by favoring the larger mortgage lenders, FHA's changes in policies will result in less competition, less choice, and harm to consumers.

[4] See footnote 1.

HUD Response: Through the policy changes adopted in this final rule, FHA is not abandoning its traditional role in the housing market. The changes adopted are designed to ensure that FHA remains financially stable and strong, and that, as a result of the availability of FHA insurance, mortgage lenders are able to offer more affordable mortgage loan terms as they always have through FHA mortgage insurance programs.

FHA is not retreating from regulatory oversight. As further discussed below, the focus of FHA-approval on mortgage lenders that underwrite and own mortgage loans reflects recognition that these are the entities that control the decision to extend a mortgage loan to a borrower, including the assessment of the mortgage borrower's ability to repay the mortgage loan, and therefore, should be the entities subject to FHA's regulatory oversight and requirements for sufficient capitalization. It is HUD's position that the policy changes implemented by this rule promote better regulatory oversight by focusing FHA's resources on oversight of the entities with the greatest degree of control over an FHA-insured mortgage loan. Furthermore, the SAFE Act and other recent initiatives have provided a uniform and reliable method of tracking loan originator licensing and compliance. As noted earlier in this preamble and further discussed below, FHA-approved mortgagees now have, and have always had, responsibility and liability for the performance of sponsored loan correspondents. The final rule merely shifts to a sponsoring mortgagee the threshold assessment of a loan correspondent's qualifications to participate in FHA-insured loan transactions as a component part of the eligibility of the mortgage loan for FHA insurance.

Increase in Net Worth Requirements

Comment: The majority of those commenting on the proposed net worth increase expressed the view that $1 million was an acceptable level of required net worth for lenders, although some commenters requested a delay in the effective date of the increase beyond the one-year period proposed by HUD and until such time as it could be said that the economy had sufficiently recovered. Among those commenters supporting the increase to $1 million, the majority of them, however, stated that the total increase in required net worth, to a level of $2.5 million, was excessive. Commenters stated that a net worth of $2.5 million would favor only the largest financial institutions, and eliminate the possibility of smaller mortgage lenders being able to obtain approval as FHA-approved mortgagees. Commenters stated that the increase in net worth would only be passed on to the borrowers by mortgage lenders charging higher fees.

Some commenters suggested that net worth requirements be increased by different amounts, ranging from $500,000 to tiered requirements based on origination or lending volume, or by a Consumer Price Index (CPI) indicator. Other commenters suggested that the proposed timeframe of 3 years in which to comply with this new requirement was unrealistic. Other commenters stated that there should be no need to align FHA with Fannie Mae and Freddie Mac, particularly given the serious financial problems of those government-sponsored enterprises. A few commenters noted that the net worth requirements imposed by Ginnie Mae have not been raised for some time, and that Ginnie Mae was allegedly in better financial condition than either Fannie Mae or Freddie Mac.

Some commenters submitted that an increase in the net worth was not the appropriate solution to enhance mortgage lender responsibility and performance. Commenters stated that no correlation had been shown between higher net worth and mortgage lender performance. Other commenters advised that net worth for FHA-approved mortgagees is actually higher than the $250,000 cited by HUD, because HUD also requires lenders to maintain net worth of one percent of funded loans. Other commenters suggested alternatives to increasing net worth such as establishing borrower FICO® requirements (a credit scoring system developed by the Fair Isaac Corporation), instituting required mortgagee internal controls, assessing a lender's track record before raising net worth, increasing FHA educational requirements, stepping up enforcement, and increased prosecution of fraud cases. Commenters also expressed the view that mortgagees engaged solely in multifamily and Home Equity Conversion Mortgage ("HECM" or reverse mortgage) lending should not be held to the same requirements as single family mortgagees due to the differences in business models and products. One commenter recommended grandfathering existing mortgagee's/servicer's multifamily portfolios and making the net worth increase prospective for new insurance commitments applied for after the effective date of the rule.

A few commenters stated that credit unions face unique problems in meeting increased capital requirements, because credit unions do not have access to capital markets and can increase their net worth only by cutting expenses or increasing their net income.

HUD Response: In proposing an increase in net worth requirements of FHA-approved mortgagees, HUD strives to balance two components of FHA's mission: (1) To operate with a high degree of public and fiscal accountability, and (2) to stabilize housing credit markets in times of economic disruption. HUD recognizes that raising net worth requirements in the midst of current economic conditions may present some challenges for businesses in this sector. While the Nation's economy, and the mortgage and real estate industries in particular, currently face difficulties, it is just these difficulties, and the potential risks that accompany them, that necessitate FHA taking prudent action to protect its insurance funds. An increase in net worth is essential to ensure the stability of FHA mortgagees, especially given how low the current net worth requirements are; net worth requirements that were established in 1993 and not raised since that date.

Additionally, the increase in net worth requirements does not ignore the fact that small mortgage lenders with lower capital reserves can and do originate quality loans. The fact remains, however, that the net worth level required by FHA prior to this final rule was established almost 20 years ago, and that passage of time is significant. Ensuring appropriate capitalization of firms engaged in lending activities is a fundamental principle of sound business regulation. Although many of FHA's program participants engage in responsible and diligent lending practices, effective underwriting and quality control procedures alone do not guarantee the continued financial viability of a lending entity. Therefore, requiring appropriate capitalization of FHA program participants is an essential baseline by which FHA can measure the soundness of its program participants.

With respect to commenters' statements about Ginnie Mae not having raised net worth requirements, Ginnie Mae raised its net worth requirements for new applicant single family issuers in 2008. Additionally, the higher net worth requirements imposed by Fannie Mae and Freddie Mac were not the business practices that were reported to contribute to their financial difficulties.

While HUD's position remains that an increase in net worth requirements is essential, it has revised the proposed rule to mitigate the potential economic burden on current participants in the

FHA single family and multifamily mortgage insurance programs and avoid disrupting their continued ability to provide FHA mortgage insurance. Although new applicants for FHA approval that do not currently participate in the single family or multifamily programs would be required to comply with the new net worth requirements commencing on the effective date of this final rule, currently approved program participants would have one year from the effective date of the rule to comply with the net worth increase.

As already noted in Section II of this preamble, in response to commenters' concerns and as a result of further consideration of the net worth proposal by HUD, this final rule provides FHA-approved mortgagees that meet SBA's standards for classification as a small business an even more gradual transition period to meet the new net worth requirements. While HUD believes that a net worth of $1 million is prudent and appropriate for mortgagees, the Department very much values its existing relationships with FHA-approved small business mortgagees and realizes that the one year time frame for compliance with the increase in required net worth may have proven prohibitive for some of these firms. In recognition of this reality, FHA has determined that a more gradual increase in the required net worth for small business mortgagees is appropriate. Unlike new applicants for FHA approval, these mortgagees already possess unique knowledge and competency with regard to FHA products and have demonstrated their responsibility and reliability in the exercise of FHA activities. Therefore, due to the mutually beneficial relationships that exist between FHA and these small business mortgagees, HUD believes it is appropriate to take measures to permit their continued participation in FHA programs, while simultaneously taking steps to appropriately manage FHA's counterparty risks.

Additionally, as described in Section II of this preamble, this final rule recognizes the key distinctions between the single family and multifamily business models, and this final rule provides net worth requirements that HUD determined are appropriate for single family and multifamily mortgagees. As noted in Section III of this preamble, HUD is considering requiring FHA-approved mortgagees that process multifamily mortgages of $25 million or more to retain a portion of their fee income from such transactions as additional net worth, and to increase the maximum required net worth for these mortgage lenders. These mortgages present higher risk to the multifamily mortgagees, and consequently to FHA, and the higher net worth better protects both the mortgagees and FHA against such increased potential liability. HUD will take comments on this single issue for the next 30 days, as provided in Section V of this preamble.

With respect to credit unions, HUD believes that the changes made at this final rule stage alleviate the concerns expressed by credit union commenters. Following the initial increase in required net worth within one year following the effective date of this final rule, mortgagees will be granted an additional 2 years (after the first-year increase) in which to accumulate the required incremental net worth based on volume in excess of $25 million of FHA single family insured mortgages originated, underwritten, purchased, and/or serviced during the prior fiscal year.

Elimination of FHA Approval of Loan Correspondents

Comment: Some commenters opposed FHA elimination of loan correspondent approval. Commenters suggested that FHA continue to approve, set requirements for, and monitor loan correspondents. Commenters suggested that in addition to continuing loan correspondent approval, FHA should increase its approval requirements for loan correspondents as an alternate means of strengthening its risk management. Commenters raised concerns about administrative difficulties that would arise through elimination of loan correspondent approval and that such difficulties would hinder effective program operations. Commenters stated that mortgagees will incur significant costs in employing and training new staff to process and close additional loans from correspondents, because mortgagees would not be able to handle correspondent functions on their own.

Other commenters stated that elimination of loan correspondent approval would cause undue stress for mortgage lenders as they struggle to maintain compliance by their sponsored TPOs. Further, commenters expressed concern that mortgage lenders will inconsistently enforce standards, and this will ultimately be more costly than compliance with existing FHA requirements. In addition, a commenter noted that eliminating loan correspondent approval and certification increases risk to the insurance fund by opening the door to many new correspondents and the inherent conflict of interest sponsors will have between monitoring compliance and closing loans.

HUD Response: HUD appreciates and carefully considered the issues raised by commenters, but HUD maintains its position that the elimination of FHA approval of loan correspondents is prudent for FHA and efficient for both FHA and mortgage lenders. Limiting approval to mortgagees reflects the recognition that the mortgagee, by underwriting, servicing, or owning a loan, is the most critical lending party to a mortgage transaction. It is the mortgagee that determines whether a borrower qualifies for the mortgage for which the borrower applied, and, therefore, determines the risk of lending money to the borrower. This is the most critical determination of the mortgage process. Accordingly, it is appropriate that FHA's approval process and oversight be focused on mortgagees, the parties to the loan transaction that pose the greatest risk to HUD.

As noted earlier in this preamble, FHA-approved mortgagees currently have, and have always had, significant responsibility and liability for actions of sponsored loan correspondents. HUD's regulations have long provided that each sponsoring mortgagee shall be responsible for the actions of its loan correspondent lenders or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible (see 24 CFR 202.8(b)(7)).

HUD further defined the quality control requirements of a sponsoring mortgagee in its Mortgagee Approval Handbook (HB 4060.1 REV2 Ch. 7), by requiring sponsoring mortgagees to provide for a review of mortgage loans originated and sold to it by each of its loan correspondents. As part of this review, sponsors determine the appropriate percentage of mortgage loans to review based on volume, past experience, and other factors. Sponsors are required to document their methodologies and the results of these reviews. In addition, all mortgagees/sponsors must identify patterns of early defaults by location, program, loan characteristic, loan correspondent, etc. Mortgagees/sponsors may use HUD's Neighborhood Watch Early Warning System to identify patterns. Mortgagees/sponsors must identify commonalities among participants in the mortgage origination process to learn the extent of their involvement in problem cases. Mortgages and loans involving appraisers, loan officers, processors, underwriters, etc., who have been

associated with problems must be included in the review sample. Accordingly, HUD's existing regulations reflect the responsibilities to be fulfilled by FHA-approved mortgagees, which are responsibilities that should be assumed by any lender, given the discretion and control that lenders have over the loans they underwrite.

The additional responsibility that HUD will require of sponsoring FHA-approved mortgagees through this final rule is minimal. Since mortgagees are already responsible for ensuring that FHA requirements are met for mortgage loans originated by loan correspondents, HUD believes it is appropriate for mortgagees to continue doing so for TPOs. A mortgagee will be subject to sanctions (e.g., civil money penalties) should it fail in its responsibility to ensure that mortgage loans presented to FHA for endorsement, or those that the mortgagee endorses for insurance under the FHA Lender Insurance process, comply with processing and origination requirements. HUD's position is that, given the existing sponsor relationships between mortgagees and loan correspondents, mortgagees will continue to be able to undertake a threshold determination of a TPO's qualifications. Moreover, making sponsors responsible for this oversight actually relieves loan correspondents from the administrative burden of FHA's lender approval and recertification processes.

Commenters raised concerns that elimination of approval of loan correspondents will result in mortgagees incurring significant costs in employing and training new staff to process and close mortgage loans. It is HUD's view, after careful consideration, that approved mortgagees will continue to rely upon loan correspondents with whom they have worked for years and who have demonstrated to sponsoring mortgagees their competency, compliance with applicable requirements, and integrity in their participation in the origination of FHA-insured mortgage loans. HUD believes that it would be contrary to current and financially sound business practices for approved mortgagees to sever ties with experienced loan correspondents with whom they have had a positive relationship for years, and have to hire and train new staff to perform correspondent functions.

With respect to concerns that were raised about the integrity of TPOs without FHA approval, and the possibility of borrowers being exposed to unscrupulous loan originators, HUD believes that recent changes to mortgage lending licensing and regulatory requirements provide additional safeguards that did not exist when FHA established its lender-approval requirements. Specifically, the SAFE Act and the Nationwide Mortgage Licensing System have created standards that govern mortgage lending activities for loan officers and loan origination entities, and systems for tracking compliance with applicable mortgage lending laws. Further, recent changes in regulations for RESPA and the Good Faith Estimate have strengthened requirements to combat fraud and have improved disclosure of information to borrowers. These new or improved mechanisms to protect the public from inappropriate lender practices are in addition to state and local regulations and requirements governing mortgage lending practices. It should also be noted that the HFSH Act expanded HUD's authority to impose civil money penalties upon entities and individuals to include non-FHA-approved entities and their employees or representatives. HUD will judiciously use this new authority in conjunction with the changes enacted under this final rule.

While this final rule proceeds to adopt the proposal to eliminate approval of loan correspondents, as provided in Section II of this preamble, HUD emphasizes that currently approved loan correspondents as of the effective date of this final rule may continue to act as FHA-approved loan correspondents through December 31, 2010, and loan correspondents are eligible to apply for approval as an FHA-approved mortgagee.

FHA Approval of HECM Loan Correspondents Is Required by Law

Comment: Commenters stated that HUD's November 30, 2009, proposed rule overlooked changes in statutory language made to section 255 of the National Housing Act (NHA), by the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008), which provide that only FHA-approved entities may participate in the home equity conversion mortgage (HECM) program. The commenters state that section 2122 of the HERA provides that "All parties that participate in the origination of a mortgage to be insured under this section shall be approved by the Secretary." The commenters state that section 203 of the HFSH Act provides: "Any person or entity that is not approved by the Secretary to serve as a mortgagee, as such term is defined in subsection (c)(7) of the NHA shall not participate in the origination of an FHA-insured loan except as authorized by the Secretary." The commenters state that the language amending section 255 of the National Housing Act does not contain the phrase "except as authorized by the Secretary" that is included in section 203 of the HFSH Act. The commenters state that to comply with the HERA language, HUD must continue to approve and monitor loan correspondents engaged in HECM originations.

HUD Response: The commenters identify a perceived contradiction between section 203(b) of the HFSH Act and section 2122(a)(9) of HERA, both pertaining to approval by the Secretary of HUD of parties engaged in the origination of FHA-insured mortgages. HUD appreciates the question posed by the commenters but, for the following reasons, disagrees with their analysis of the two statutory provisions in question.

As noted by the commenters, the HERA amendments to section 255 of the National Housing Act require that mortgage lenders participating in the origination of HECM mortgages must be "approved by the Secretary." Subsequent to enactment of HERA in July 2008, the HFSH Act was enacted on May 20, 2009. While the HERA changes to section 255 were limited to the origination of HECM mortgages, the HSFH amendments to section 202 of the National Housing Act more broadly encompass the origination of all single family mortgages insured by FHA, including those insured under the HECM program. Section 203(b) of HFSH also requires HUD approval of mortgage lenders participating in the origination of FHA-insured mortgages, "except as authorized by the Secretary." This statutory exception to the approval requirement signifies that Congress intended to provide FHA with the authority to permit some limited participation by TPOs, which otherwise will not be FHA-approved mortgagees in the FHA mortgage insurance programs (including the HECM program), as provided for under this final rule.

Rather than putting forth contradictory instructions from Congress, as the commenters assert, HUD views the statutory mortgagee approval requirements of sections 203 and 255 of the National Housing Act as being reconcilable. The statutory change to section 255 recognizes that the beneficiaries of the HECM program—elderly homeowners—are vulnerable to unscrupulous players in the lending market that target the elderly with overpriced or unneeded financial products. By specifying that mortgage lenders must be "approved by the Secretary," Congress did not restrict the Secretary's ability to "authorize" TPO

participation in the origination of HECM mortgages under section 202 of the NHA. Instead, HUD has determined that Congress emphasized the need of FHA to take steps to protect elderly borrowers, who may lack the sophistication of the mortgage marketplace. FHA has addressed this need by allowing only mortgage lenders with professional and financial competency and integrity to participate in the origination of HECM mortgages. The provisions of this final rule regarding the relationship of sponsoring mortgagees and TPOs are consistent with the congressional intent of safeguarding HECM borrowers underlying the HERA statutory language. As discussed previously in this preamble, FHA-approved mortgagees have had, prior to this rulemaking, significant responsibility for actions of sponsored TPOs. As a result of this ongoing relationship between the sponsoring mortgagee and TPO, the sponsoring mortgagee is in a better position than FHA to immediately detect deficiencies with TPO performance and to remedy those deficiencies. Accordingly, HUD will look to FHA-approved sponsoring mortgagees to ensure that HECM mortgage loans are properly originated, and each sponsor shall be responsible to FHA for the actions of its loan correspondent lenders or mortgagees in originating HECM loans or mortgages.

Additional Guidance Requested Concerning Mortgagee Oversight of TPOs

Comment: Commenters requested additional guidance regarding requirements of FHA-approved mortgagees for the approval, monitoring, and liability for actions of the TPOs they sponsor. Some commenters requested that FHA establish minimum approval guidelines for TPO approval by a sponsoring mortgagee. Others asked for clarification about the extent of monitoring required by mortgagees for the TPOs they sponsor, and of the specific TPO actions or violations for which mortgagees will be liable. Other commenters noted that lenders would be unable to perform the regulatory function that HUD performs in monitoring TPOs. Commenters stated that FHA should continue to monitor "mini-eagles" and others directly. Other commenters expressed concern about the elimination of audits of loan correspondents, which serve an important function.

HUD Response: HUD will not establish FHA requirements related to sponsor approval of TPOs. To do so defeats the aforementioned efficiency and improved risk management that HUD is striving to achieve. By focusing approval solely on lenders that underwrite loans, HUD's approval process should yield improved results in ensuring that only responsible lenders of integrity and competence are FHA-approved lenders. Such lenders will ensure that their employees and the TPOs that they sponsor are individuals and entities of integrity and competence. While, as noted in the response to a preceding comment, FHA-approved mortgagees will now make the initial determination of TPO qualifications, and not FHA, this assessment should not differ significantly from the manner in which FHA-approved mortgagees hire loan officers and appoint officials in their organizations. Moreover, sponsoring mortgagees have the authority to establish oversight requirements to monitor the ongoing performance and financial capacity of their TPOs, as the mortgagees may determine appropriate, including the submission of audited financial statements from sponsored TPOs.

To the extent that mortgagees seek guidance from HUD on how best to determine if TPOs adhere to FHA's processing and origination requirements and are eligible to participate in the origination of FHA-insured mortgage loans, HUD recommends that mortgagees develop and implement measures such as the following: (1) Procedures to verify TPO compliance with all federal, state, and local requirements that govern their activities; (2) procedures to verify TPO compliance with the requirements of the SAFE Act; (3) procedures to ensure that TPOs are not suspended, debarred, or under a limited denial of participation (LDP), in HUD's Credit Alert Interactive Voice Response System, or on the Federal Government's Excluded Parties list; (4) institutional guidelines and systems for establishing and maintaining relationships with TPOs; (5) procedures that govern the performance of due diligence; (6) systems for monitoring loan quality and performance for each sponsored TPO; (7) procedures for addressing potential problems with TPO operations, business practices, or customer service, and clearly articulated remedial processes for instances when such problems occur; (8) enhanced quality control plans and procedures that ensure appropriate evaluation of TPO originations; (9) ongoing renewal processes to ensure that TPOs continue to meet the mortgagee's approval standards; and (10) procedures for evaluating the financial capacity of TPOs. These are only recommendations on HUD's part, and no doubt many mortgagees already have such procedures, protocols, and systems in place.

Although not a change from existing requirements, it is nevertheless important to reiterate that mortgagees may not knowingly or willingly conduct business with TPOs that are not in compliance with all laws and regulations that govern their practices. If a mortgagee becomes aware of TPO noncompliance with any provision of law or regulation, FHA requires that the mortgagee cease sponsoring FHA loans on behalf of the TPO in question and proceed accordingly with regard to notifying HUD of such occurrences. Mortgagees that continue to engage with such entities will be held responsible for such activities by HUD. Moreover, HUD will hold mortgagees accountable for FHA loan origination and processing violations committed by TPOs.

Processing a Loan in Name of FHA-Approved Mortgagee

Comment: Some commenters requested that HUD permit non-FHA-approved TPOs to process a loan and close it in the entity's own name, and not that of the FHA-approved mortgagee. The commenters stated that the removal of this authority would yield a number of adverse impacts for TPOs, including impacts on state licensing and regulatory matters and TPO funding arrangements. Some commenters expressed concern that the elimination of processing authority would limit TPO revenues, and would present a significant administrative burden for mortgagees.

HUD Response: HUD has not revised the rule in response to these comments, but as noted earlier in this preamble and discussed at the end of this response, HUD is further considering this issue. Section 203(b)(1) of the National Housing Act (12 U.S.C. 1709(b)(1)) requires that a mortgage "[h]ave been made to, and be held by, a mortgagee approved by the Secretary" in order to be eligible for FHA mortgage insurance. Accordingly, only FHA-approved mortgagees may close mortgage loans in their names (that is, using the statutory terminology, have the mortgage "made to" the FHA-approved mortgagee). Since FHA will no longer be approving loan correspondents, TPOs will be statutorily prohibited from closing FHA-insured mortgage loans in their own names; however, TPOs may continue to close such mortgages in the name of their sponsoring FHA-approved mortgagees. Further, only the sponsoring FHA-

approved mortgagee may submit the loan to FHA for insurance endorsement.

HUD emphasizes that currently approved TPOs (loan correspondents) as of the effective date of this final rule may continue to act as FHA-approved TPOs and close FHA-insured mortgages in their name through December 31, 2010. Loan correspondents are also eligible to apply for approval as an FHA-approved mortgagee.

As noted earlier in this preamble, HUD will further consider this issue, but unless such change is made, currently FHA-approved loan correspondents (that subsequently will become TPOs), commencing on January 1, 2011, may no longer close FHA-insured mortgages in their own names, although they may continue to do so through December 31, 2010.

Third-Party Originators Should Be Permitted To Access and Utilize FHA Connection

Comment: Commenters expressed concern about the inability of TPOs to access and utilize the FHA Connection system for loans they originate. These commenters advised that the data input and other tasks performed by TPOs in FHA Connection were an important part of the services they provide to mortgagees.

HUD Response: HUD information technology security requirements do not permit non-FHA-approved entities to access or utilize FHA Connection. Therefore, only FHA-approved mortgagees will be authorized to utilize this system to carry out necessary processes associated with a loan transaction. However, as explained in Mortgagee Letter 2004–31, which remains applicable, FHA Connection's Business-to-Government (FHAC B2G) Specification "allows lenders to transmit data directly from their own internal loan processing systems to FHA without re-keying data into the FHA Connection or functional equivalent." This functionality allows TPOs to input data into a sponsoring mortgagee's loan origination system, as may be permitted by the sponsoring mortgagee, which will then carry out FHA Connection tasks via an automated process. Such practices will enable TPOs to continue to provide important loan processing services to mortgagees. Additional information regarding FHAC B2G can be found in the "FHA Connection Business to Government User's Guide" at *http://www.hud.gov/offices/hsg/sfh/f17c/b2g.pdf.*

Tracking TPO Performance Through Single Family Neighborhood Watch

Comment: Commenters suggested that HUD continue to track TPO performance through the Single Family Neighborhood Watch (Neighborhood Watch) system. The commenters were concerned that with the removal of loan correspondent approval, the ability to analyze performance data for sponsored TPOs would be eliminated. These commenters requested that TPO tracking in Neighborhood Watch continue.

HUD Response: FHA will make available to sponsoring mortgagees aggregate comparison TPO performance data at a national level. HUD anticipates that mortgagees will use this data in carrying out their responsibilities under this final rule to monitor the performance of their TPOs on an ongoing basis. The information will be available to FHA-approved mortgagees by accessing Neighborhood Watch through their FHA Connection account.

Geographic Limitations on Originations

Comment: Commenters requested clarification regarding the impact of this rule on FHA's "Areas Approved for Business." The commenters expressed concern that the rule would result in geographic limitations on originations.

HUD Response: When conducting retail and direct lending originations, FHA-approved mortgagees must continue to comply with the existing Single Family Origination Lending Areas (Areas Approved for Business or AAFB), as outlined in HUD Handbook 4155.2, Section12.E.2. FHA-approved mortgagees must also continue to be licensed to perform loan origination in each state in which they desire to originate FHA loans. For purposes of wholesale origination, FHA-approved mortgagees may underwrite loans originated in any state in which they are permitted by the state to do so, and in which the originating TPO is permitted to conduct mortgage origination activities. Hence, a mortgagee's wholesale AAFB consists of all states in which it sponsors a TPO that meets the applicable requirements for loan origination of that state and in which the mortgagee is permitted by the state to underwrite mortgage loans and sponsor TPOs.

Principal-Authorized Agent Relationship

Comment: Commenters requested clarification of possible impacts, or lack thereof, of this rule on Principal-Authorized Agent relationships.

HUD Response: For FHA-insured loans, the Principal-Authorized Agent Relationship provides FHA-mortgagees with flexibility in the origination of FHA-insured single family loans in situations where the FHA-approved mortgagee seeks to collaborate with another FHA-approved mortgagee. Through this flexibility, FHA-approved mortgagees may offer diversified loan products or programs because of the ability to team with firms that may have more expertise in specialized areas.

As a result of HUD's elimination of the FHA approval process for loan correspondents, the requirements regarding Principal-Authorized Agent relationships will also change. Loans originated through Principal-Authorized Agent relationships will be permitted to close in either party's name. However, to participate in this relationship, both the Principal and Authorized Agent must be approved as Direct Endorsement lenders under 24 CFR 203.3. Further, for loans insured under the relationship, the Principal must originate and the Authorized Agent must underwrite, and the relationship must be recorded as such in FHA Connection (FHA's Computer Home Underwriting Mortgage System).

Rulemaking Issues

Abbreviated Comment Period

Comment: Several commenters objected to the reduced comment period for the proposed rule. One of the commenters objected on the grounds that the regulatory amendments constitute major changes to FHA's regulatory structure that may affect the taxpayer. Another commenter wrote that the reduced comment period gave the impression that HUD wanted to "push through" the changes. One commenter suggested that HUD issue a revised proposed rule for additional public comment.

HUD Response. As more fully discussed in the preamble to the November 30, 2009, proposed rule, the regulatory changes proposed in November would largely conform to HUD's regulations to recent statutory requirements and update FHA business practices to current industry standards. Although HUD acknowledges that streamlining FHA's approval process to mortgagees is not an insignificant change, as discussed in the November 30, 2009, proposed rule and the preamble to this final rule, the elimination of approval of loan correspondents does not mean that these entities are barred from participation in FHA programs. The expectation is that they will continue to participate as they always have, through sponsorship by FHA-approved

mortgagees, and can avail themselves of that benefit without the necessity or burden of having to go through the FHA lender approval process. Additionally, as noted already in this preamble, loan correspondents may apply for approval as FHA-approved mortgagees. In the case of the changes to conform HUD's regulations to the explicit statutory restrictions on loan origination contained in the HFSH Act, HUD does not have authority to modify these requirements in response to comment.

Given the narrow scope of the changes proposed in HUD's November 30, 2009, final rule, HUD remains of the position that 30 days was a sufficient period for public comment—a determination that is supported by more than 200 public comments received, the thoughtfulness of the comments, and the support provided in suggesting alternatives.

Unfunded Mandate

Comment: One commenter wrote that this rule imposes unreimbursed costs on the private sector and may be an unfunded mandate. The commenter stated that according to the numbers provided in the proposed rule itself, 68 percent of the 13,831 FHA-approved lending entities are approved correspondents, i.e., approximately 9,405. HUD's rule shifts the oversight of these 9,405 loan correspondents to FHA's approved mortgage lenders. This commenter stated that if HUD's proposal meets the definition of an unfunded mandate, HUD may be required to have the Congressional Budget Office identify and estimate its costs, which the commenter states has not been done.

HUD Response. The commenter is incorrect in asserting that this rule imposes an unfamiliar and economically burdensome mandate on FHA-approved mortgagees. While it is correct that the rule would make FHA-approved mortgagees responsible for ensuring that their TPOs adhere to FHA loan origination and processing requirements, the rule does not mandate that sponsors adopt any specific new oversight protocols or bear new economic costs. The responsibility to ensure that TPOs that originate mortgage loans under a sponsorship relationship with mortgagees are responsible, knowledgeable, competent, and have integrity is, or should be, common and prudent business practice. In this regard, loan correspondents already provide their sponsoring mortgagees with data regarding their performance, and sponsoring mortgagees currently review the operations and performance of their loan correspondents as a good business practice.

Continued participation in the FHA-insurance programs as approved mortgagees by present participants is voluntary. Section 101 of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) (UMRA) specifically excludes conditions for receipt of federal assistance and duties arising from participation in a voluntary federal program from the definition of "federal private sector mandate" subject to the requirements of UMRA. Accordingly, the commenter is also incorrect, as a matter of law, that the rule imposes an unfunded mandate.

Legal Authority for Rule

Comment: Some commenters questioned HUD's statutory authority to terminate approval and to delegate to lenders this governmental authority to approve and oversee loan correspondents. One commenter wrote that the rule ignores the HFSH Act, which requires all loan originators and loan origination companies to register and become licensed. Several commenters wrote that the rule appears to contradict the statutory requirements for HUD's Home Equity Conversion Mortgage (HECM) program in 12 U.S.C. 1715z–20(n)(2), which, according to the commenters, requires all parties that participate in the origination of a HECM mortgage to be approved by the Secretary. Other commenters wrote that under the rule private companies must be empowered to conduct not only the normal quality-control audits, but also site audits and reviews, as well as financial audits and reviews, including auditing whether each person who originates a mortgage is an employee of the mortgagee or correspondent and has payroll taxes properly deducted. The commenter questioned whether such authority can be granted to a private company.

HUD Response. The concerns expressed by these commenters, such as the HECM issue, and the perceived abdication of regulatory oversight, have already been addressed in this preamble. However, HUD emphasizes that it is not delegating its rulemaking authority and regulatory functions to nongovernmental entities. Rather, through this rulemaking, FHA is limiting the type of entity that will be an FHA-approved mortgagee. This limitation is consistent with FHA's authority under the National Housing Act. Additionally, HUD is not asking FHA-approved mortgagees to perform a regulatory function, but rather to undertake the type of due diligence, vetting, and oversight of any party that the lender employs or relies upon for functions related to its FHA lending activities. As stated in the proposed rule, such responsibility rests more appropriately with the FHA-approved mortgagee rather than with FHA.

The final rule is also consistent with the HFSH Act, the rulemaking authority provided to the Secretary to carry out the FHA programs under section 211 of the National Housing Act (12 U.S.C. 1715b), as well as the general rulemaking authority conferred to the Secretary of HUD under section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Economic Impact of Rule

Comment: Commenters raised questions and concerns regarding the economic impacts of the regulatory changes and, in particular, the potential impact on small lending institutions. Several of the commenters wrote the economic impacts of the rule would exceed $100 million and, therefore, that the rule should be classified as an "economically significant" regulatory action under Executive Order 12866 regarding "Regulatory Planning and Review." Other commenters focused on the costs that would be borne by lenders to comply with the new requirements, such as the updating of systems and compliance with state licensing requirements. Commenters stated that HUD underestimated the significance of these costs. Other commenters stated that HUD ignored the negative impact that the loss of simply being able to post "FHA approval" will have on the business of loan correspondents.

HUD Response. HUD recognizes that the changes being implemented by this final rule will not be without costs, but as fully addressed in the analysis provided in HUD's November 30, 2009, proposed rule, HUD maintains that such changes will not result in an annual impact on the economy of $100 million or more. HUD recognizes that the increase in net worth requirements must be addressed by lenders, but as provided in the economic analysis in the proposed rule, the majority of FHA-approved lenders already meet the $1 million net worth requirement, and HUD is allowing sufficient time for those FHA-approved lenders that currently do not meet this requirement to be able to achieve this level. As noted earlier in this preamble, the final rule not only maintains the proposed rule's timetable of one calendar year to achieve the initial $1 million net worth requirement and 2 additional calendar years beyond the first year to achieve the additional volume-based net worth requirements, but allows even more

time for mortgagees that meet SBA's definition of a small business, and recognizes the key distinctions between single family and multifamily mortgagees.

With respect to the elimination of approval of loan correspondents, loan correspondents will be relieved of the costs associated with the formal process of FHA approval, and will retain their loan correspondent approval through December 31, 2010. This extension of their current FHA approval provides loan correspondents with additional time to seek FHA approval as an approved mortgagee or confirm the continuation of existing relationships with sponsoring mortgagees. As has been stated in this preamble, it is HUD's expectation that trusting and profitable relationships between sponsoring mortgagees and sponsored loan correspondents will continue.

While TPOs will no longer be permitted to advertise that they are "FHA Approved," they will be allowed to state that they are authorized to originate FHA products. HUD believes that the ability of TPOs to advertise the availability of FHA products will mitigate any adverse impacts of the removal of the specific "FHA Approved" verbiage from TPO advertising.

V. Public Comment Solicitation on Additional Net Worth Requirements for Originators of Multifamily Mortgages of $25 Million or More

HUD is soliciting comment on a proposal to require FHA-approved mortgagees that originate multifamily mortgages of $25 million or more to retain as additional net worth 50 basis points (0.5%) of the fee income resulting from such loans in addition to their required net worth as set forth in this rule, up to a maximum of $5 million. This is the only issue for which HUD solicits comment, and HUD will not consider comments submitted on other aspects of this final rule. Comments on this issue must be submitted in accordance with the **ADDRESSES** section of this preamble, above.

VI. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). This final rule, as was the case with the proposed rule, has been determined to be a "significant regulatory action," as defined in section 3(f) of the Order, but not economically significant, as provided in section 3(f)(1) of the Order. The analysis of this rulemaking provided in HUD's November 30, 2009, proposed rule (74 FR 62525–62527) continues to support that this rule is not economically significant. Additionally, HUD's decision to modify the requirements for increased net worth to accommodate small business concerns and the distinctions between single family and multifamily mortgagees, combined with the removal of potential barriers to TPO revenue generation, further confirms HUD's assessment that this rule will not have an annual impact on the economy of $100 million or more. The reasons for HUD's determination are as follows:

A. Increased Net Worth Requirements

1. *Current Mortgagee Net Worth.* Because loan correspondent approval will be eliminated via this rule, an analysis of the impact of increased net worth requirements is limited to a review of data for approved mortgagees. Further, FHA does not presently collect audited financial statements from supervised institutions. As a result, it is not possible to determine if any of these entities will be unable to meet the increased net worth requirements. Based upon the fact that supervised institutions must meet much higher capital standards established by federal banking regulators, it is very unlikely that any supervised firms will fail to meet the higher net worth threshold. As a proxy, FHA analyzed Ginnie Mae net worth data for its supervised lenders and discovered that none of these lenders had a net worth below FHA's increased requirement. In fact, the average net worth of this cohort was $2.4 billion.

As of November 30, 2009, the number of the most recent accepted audit submission by nonsupervised mortgagees for renewal of FHA lender approval totals 1,297. A clear majority of these approved nonsupervised mortgagees (754, or 58 percent of the total) currently already have a net worth greater than $1 million. It should also be noted that of presently approved *loan correspondents,* 137 have a current net worth greater than $1 million.

2. *Cost of Increased Net Worth Requirement for Mortgagees.* The enactment of the proposed rule would present two options to mortgagees that currently possess a net worth below the proposed $1 million requirement: (1) Increase their net worth from the current $250,000 to between $1 million and $2.5 million, 20 percent of which must be held in liquid assets; or (2) relinquish their status as an FHA-approved mortgagee and continue conducting FHA business as a third-party originator by initiating a sponsorship relationship with an approved mortgagee. The actual economic impact of the proposed rule is the opportunity cost of option 1 and the lost revenue and additional costs associated with option 2.

For mortgagees that choose the first option, this final rule will require them to increase their net worth from the current $250,000 to between $1 million and $2.5 million, 20 percent of which must be held in liquid assets. Thus, each approved mortgagee will be required to increase its liquid asset holdings from $50,000 to between $200,000 and $500,000. The calculated cost of this provision equals the opportunity cost [5] of the money held in liquid assets; i.e., the amount they could have earned in otherwise nonliquid accounts.

This method of calculating the opportunity cost of the rule assumes that moneys distributed as shareholder income will be invested by owners in other yield-bearing investments. Such a supposition may or may not be accurate, but provides a "best case scenario" for owner decision making, and therefore, the highest potential opportunity cost resulting from the rule. At the very least, if owners do not invest distributed income in yield-bearing investments, this rule is expected to result in a loss of personal income through an increase in the firm's retained earnings.

Table 1 below calculates the opportunity cost of this increase to existing FHA-approved mortgagees. Based on data from FHA's Lender Assessment Sub-System (LASS),[6] 36 single family mortgagees have a net worth equal to $250,000, 233 mortgagees have a net worth between $250,000 and $500,000, 274 mortgagees have a net worth between $500,000 and $1 million, 363 mortgagees have a net worth between $1 million and $2.5 million, and 391 mortgagees have a net worth of greater than $2.5 million. Column B lists the average net worth of the mortgagees in each category. Column C subtracts the average net worth from the new requirement, which was calculated based on each mortgagee's total annual single family volume. Column D then calculates the average increase in liquid assets per

[5] Opportunity cost is the value of the next best alternative. In this case, if mortgagees were not required to hold additional funds as liquid assets, the next best alternative would be a higher yielding nonliquid asset.

[6] This data is comprised of accepted audits received in the LASS system in support of the applications by currently approved nonsupervised mortgagees for renewal of FHA approval.

mortgagee, equal to 20 percent of the increase in net worth.

For multifamily mortgagees that do not also originate FHA single family mortgages, four mortgagees have a net worth equal to $250,000, 10 mortgagees have a net worth between $250,000 and $500,000, 12 mortgagees have a net worth between $500,000 and $1 million, 12 mortgagees have a net worth between $1 million and $2.5 million, and 22 mortgagees have a net worth of greater than $2.5 million.

The cost of this provision totals the opportunity cost of holding the amount shown in Column D in liquid assets, rather than investing it in other potentially higher-yielding investments. The opportunity cost is therefore calculated as the difference between the average market rate of return and the risk-free interest rate. The average market rate is represented by the real annualized return of the S&P 500 between 1990 and 2008, which equals 4.5 percent. The risk-free interest rate is the average 10-year U.S. Treasury rate between 1990 and 2008, which equals 2.7 percent. The difference between these two rates equals 1.8 percent. Finally, the average opportunity cost of the increase in the net worth requirement per mortgagee, shown in Column E, was multiplied by the number of mortgagees in each category to calculate the total cost of the net worth requirement imposed by this regulation. As shown in Table 1, the opportunity cost of holding the additional funds in liquid assets totals $1,668,627.

Costs to mortgagees of meeting the higher minimum net worth requirements beyond those associated with the opportunity cost of liquid assets are not included in Table 1 because it is anticipated that the nonliquid increase in net worth would be met largely by changing the title of existing assets held by mortgagees' owners from individual holdings to holdings of the firm. Thus, increasing the minimum net worth requirement does not itself create an economic effect. FHA does acknowledge, however, that for transfers of non-cash assets there may be transaction costs associated with such transfers. Nevertheless, it is not possible to quantify these costs because it is impossible to know the types of assets that may be transferred and the number of mortgagees that would choose this method of asset reassignment to achieve a higher required net worth.

TABLE 1—CALCULATION OF OPPORTUNITY COST TO FHA-APPROVED MORTGAGEES

Net worth	Number of mortgagees (A)	Average net worth (B)	Average required increase in net worth (C)	Average increase in liquid assets (D) = (C)*20%	Average opportunity cost (E) = (D)*1.8%	Aggregate opportunity cost (F) = (A)*(E)
A: Calcuation of Opportunity Cost to SF FHA-Approved Mortgagees						
$250K	36	$250,000	$821,580	$164,316	$2,958	$106,477
$250K–$500K	233	344,237	717,824	143,565	2,584	602,111
$500K–$1M	274	706,911	493,486	98,697	1,777	486,775
$1M–$2.5M	363	1,535,246	252,322	50,464	908	329,734
>$2.5M	391	164,007,911				
Total SF	1,297					1,525,097
B: Calculation of Opportunity Cost to MF-Only FHA-Approved Mortgagees						
$250K	4	250,000	864,938	172,988	3,114	12,455
$250K–$500K	10	355,183	937,407	187,481	3,375	33,747
$500K–$1M	12	660,627	552,090	110,418	1,988	23,850
$1M–$2.5M	12	1,585,506	39,655	7,931	143	1,713
>$2.5M	22	40,374,682				71,765
Total MF-Only	60					143,530
Total Costs						1,668,627

For mortgagees that choose option 2, the functional impact of the option would be the loss of income from those aspects of the FHA mortgage lending process they would no longer be permitted to perform and the added costs they would be required to pay to their sponsor for processing [7] and underwriting.

There are four primary ways in which a lender can receive income from the mortgage business: (1) Origination fees, (2) servicing release premiums, (3) servicing fees, and (4) income derived from securitization. Origination fees are largely determined by the marketplace and are not currently regulated by FHA. The FHA industry average for servicing release premiums is between 75 to 100 basis points of a loan's unpaid principal balance at the time of sale. Average annual servicing fee of an FHA loan is 30 basis points on the unpaid principal balance. Income derived from securitization will not be considered because a mortgagee must meet the higher net worth already required by Ginnie Mae, Fannie Mae, and Freddie Mac in order to participate in the respective securitization programs. FHA analyzed the origination patterns of the mortgagees that would be affected over a recent 2-year period. HUD notes that the vast majority of lenders reviewed do not service a mortgage portfolio but rather sell their mortgages to aggregators.

As is seen in Table 2 below, of the 543 lenders with a net worth less than the proposed $1 million, 355 have originated at least one loan in the 2-year sample period. Since the affected mortgagees still would be permitted to

[7] Sponsoring mortgagees may choose whether or not to permit their sponsored TPOs to perform processing functions. Therefore, some TPOs may still receive processing income. The calculations of lost revenue used in this analysis assume the loss of all processing revenues for mortgagees that relinquish their FHA approval and become TPOs.

originate FHA loans for a fee and would be entitled to income streams derived from servicing release premiums, the only economic impact would be from the costs these lenders pay to FHA-approved lenders for the processing and underwriting of the mortgages sold. Table 2 calculates the economic impact if all lenders opted to relinquish their FHA approval and operate via a relationship with an FHA-approved mortgagee.

TABLE 2—CALCULATION OF OPPORTUNITY COST TO FHA-APPROVED MORTGAGEES FOR LIQUID HOLDINGS

	Total number of lenders	Lenders w/originations in 2-yr period	Avg number of yearly originations	Avg number of orig/lender	Avg Loan * processing fee/lender	Aggregate loan processing fee
>$250K <$1M	543	355	87,455	246	$49,270	$17,491,000

* FHA estimates a $200 charge per loan for processing fees.

B. Elimination of FHA Approval of Loan Correspondents

1. *Loan correspondents.* Loan correspondents currently face two costs as FHA-approved lenders. First, they are required to submit audited financial statements and pay a renewal fee annually. In addition, they must also meet a net worth requirement of up to $250,000,[8] of which 20 percent must be held in liquid assets. As a result, loan correspondents that choose to continue participating in FHA programs as TPOs may presumably be able to utilize the capital retained in net worth for other purposes, and may not have to submit audited financial statements for approval by a sponsoring mortgagee.[9] If no sponsoring mortgagees required a minimum net worth for their sponsored TPOs, this could release $574,938,000 [10] of capital currently retained by loan correspondents as net worth for uses in other ways. If no sponsoring mortgagees require the submission of audited financial statements by TPOs, this could yield a savings to loan correspondents of approximately $68,445,000.[11]

These savings are offset by the fact that 44 states plus the District of Columbia impose bonding or net worth requirements that will continue to apply to brokers, and that the minimum requirements of 12 states exceed those of FHA. It should be noted that the shift from the loan correspondent business model to the TPO model may require some TPOs to acquire a different type of state licensing, which would yield additional costs to these lenders. Because the requirements governing lenders vary across states, as do the licensing fees and associated costs, it is not possible to derive an actual or estimated cost for changes to TPO licensing, but it is a factor that must be taken into consideration when evaluating the impact of this rule on loan correspondents.

2. *FHA-approved mortgagees.* The majority of FHA-approved mortgagees engage in wholesale lending whereby they underwrite and endorse loans originated by outside FHA-approved loan correspondents. It is reasonable to expect that such relationships will continue. FHA mortgagees with wholesale loan operations are already required to monitor the performance of loans which are acquired from mortgage brokers and loan correspondents. They are currently held responsible for the underwriting and credit decisions made on loans acquired from brokers. Lenders use a variety of methods to track and monitor the performance of loans purchased from brokers and correspondents, including broker scorecards. Thus, requiring mortgagees to perform oversight of the non-FHA approved TPOs with which they partner should in essence be a codification of practices that are already the norm for prudent mortgagees. Although the costs of oversight may increase slightly, given the current practices of mortgagees to monitor the performance of loan correspondents with which they partner, the increase in these costs to lenders from the implementation of this regulation is expected to be minimal.

In addition to the costs associated with the ongoing monitoring and oversight of sponsored TPOs, it may also be assumed that some mortgagees will establish their own minimum criteria with which to vet potential TPOs seeking sponsorship. There will obviously be a cost to the mortgagee to evaluate potential candidates for sponsorship. However, because it is impossible to know how many mortgagees will employ such processes, the extensiveness of the requirements and evaluations used by mortgagees to analyze candidates, and the actual cost to a mortgagee for such activities, it is not possible for HUD to quantify the total costs to mortgagees of vetting potential TPOs. Nevertheless, HUD does acknowledge that costs will be incurred for these processes.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. At the proposed rule stage, HUD certified that this rule, if issued in final, would not have a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act. HUD continues to stand by its findings on this issue. (See 74 FR 62528.)

The Office of Advocacy of the Small Business Administration (SBA–OA) expressed concern that the rule as proposed would adversely affect a large number of small businesses and encouraged HUD to conduct an Initial Regulatory Flexibility Analysis to further explore the impact of the rule upon such entities. SBA–OA was concerned specifically with the

[8] The current net worth requirement for loan correspondents is $63,000 plus an additional $25,000 for each registered branch up to a maximum of $250,000.

[9] Because sponsoring mortgagees are permitted to establish their own standards for approval of sponsored TPOs, it is impossible to definitively calculate a savings resulting from the elimination of FHA requirements for loan correspondents.

[10] Based upon FHA's current minimum required net worth for loan correspondents of $63,000, multiplied by the total number of approved loan correspondents, 9,126.

[11] Based upon an average cost to loan correspondents of $7,500 for the compilation of audited financial statements, multiplied by the total number of approved loan correspondents, 9,126.

proposed increase to FHA's net worth requirements and the operational limitations that may be experienced by TPOs resulting from the elimination of loan correspondent approval. Of the 1,297 approved nonsupervised mortgagees that renewed their FHA approval during the sample period of December 1, 2008, to November 20, 2009, 888 mortgagees, or 68.5 percent, met the SBA specifications for classification as a small business. Of these 888 mortgagees, 379 (42.7 percent of the total) already have a net worth in excess of $1 million and 629 (70.8 percent of the total) already have a net worth in excess of at least $500,000. Accordingly, a significant majority of currently approved small business nonsupervised mortgagees either already have a net worth of $1 million or greater, or are well on their way to complying with the new requirement. The remaining 259 small business nonsupervised mortgagees with a net worth of less than $500,000 constitute a small minority of 7.8 percent of the total number of approved mortgagees. While HUD determined that the proposed rule, if implemented without change at the final rule stage, would not have a significant economic impact on a substantial number of small entities, HUD nevertheless appreciated the small entity impact concerns expressed by commenters, and, as already discussed several times in the preamble to this final rule, this final rule provides for a more gradual transition to new net worth requirements for lenders that meet SBA's definition of a small business.

SBA–OA also expressed concern that small lender correspondents (to which HUD refers to in this preamble as TPOs) may lose income as a result of the loss of FHA approval. However, as HUD noted in the preamble to the proposed rule and in this preamble to the final rule, the changes to the lender approval process do not prevent participation by entities that have been involved in FHA programs. Rather, the rule limits the actual approval process to those entities that underwrite, service, or own FHA-insured mortgages. Loan correspondents and other TPOs may continue to be involved in FHA loan origination by working with FHA-approved mortgagees.

While HUD information technology security requirements do not permit non-FHA approved entities to access the FHA Connection, HUD's Business to Government Specification permits TPOs to utilize their sponsoring mortgagees' loan origination systems to perform many loan origination processes conducted in the FHA Connection. Further, all TPOs will continue to have access to all FHA training and information resources. Therefore, with these additional changes made at the final rule stage, TPOs will continue to have access to the tools and resources necessary to participate in the origination of FHA-insured loans, and any remaining impacts upon TPO revenues will be extremely minimal.

In developing this final rule, HUD gave careful consideration to the concerns expressed by small entity commenters, and by SBA–OA on the behalf of small entities, and has made changes to address these concerns while maintaining the important policy changes needed to responsibly manage risk to FHA.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to the eligibility of those entities that may be approved as FHA-approved lenders. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number is 14.183.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble above, HUD amends 24 CFR part 202 as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 1. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

■ 2. In § 202.2, revise the definitions of "*Lender or Title I lender*", and "*Mortgagee or Title II mortgagee,*" to read as follows:

§ 202.2 Definitions.

* * * * *

Lender or Title I lender means a financial institution that:

(a) Holds a valid Title I Contract of Insurance and is approved by the Secretary under this part as a supervised lender under § 202.6, a nonsupervised lender under § 202.7, an investing lender under § 202.9, or a governmental or similar institution under § 202.10; or

(b) Is under suspension or held a Title I contract that has been terminated but remains responsible for servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans.

* * * * *

Mortgagee or Title II mortgagee means a mortgage lender that is approved to participate in the Title II programs as a supervised mortgagee under § 202.6, a nonsupervised mortgagee under § 202.7, an investing mortgagee under § 202.9, or a governmental or similar institution under 202.10.

* * * * *

■ 3. In § 202.3, revised paragraphs (a) introductory text, (a)(1), and (a)(3) to read as follows:

§ 202.3 Approval status for lenders and mortgagees.

(a) *Initial approval.* A lender or mortgagee may be approved for participation in the Title I or Title II programs upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary.

(1) Approval is signified by:

(i) The Secretary's agreement that the lender or mortgagee is considered approved under the Title I or Title II programs, except as otherwise ordered by the Mortgagee Review Board or an officer or subdivision of the Department to which the Mortgagee Review Board has delegated its power, unless the lender or mortgagee voluntarily relinquishes its approval;

(ii) Consent by the lender or mortgagee to comply at all times with the general approval requirements of § 202.5, and with additional requirements governing the particular class of lender or mortgagee for which it was approved as described under subpart B at §§ 202.6 through 202.10; and

(iii) Under the Title I program, the issuance of a Contract of Insurance constitutes an agreement between the Secretary and the lender and which governs participation in the Title I program.

* * * * *

(3) *Authorized agents.* A mortgagee approved under §§ 202.6, 202.7, or 202.10 as a nonsupervised mortgagee, supervised mortgagee, or governmental or similar institution approved as a Direct Endorsement mortgagee under 24 CFR 203.3 may, with the approval of the Secretary, designate a nonsupervised or supervised mortgagee with Direct Endorsement approval under 24 CFR 203.3 as authorized agent for the purpose of underwriting loans. The application for mortgage insurance may be submitted in the name of the FHA-approved mortgagee or its designated authorized agent under this paragraph.

* * * * *

■ 4. Revise § 202.5 to read as follows:

§ 202.5 General approval standards.

To be approved for participation in the Title I or Title II programs, and to maintain approval, a lender or mortgagee shall meet and continue to meet the general requirements of paragraphs (a) through (n) of this section (except as provided in § 202.10(b)) and the requirements for one of the eligible classes of lenders or mortgagees in §§ 202.6 through 202.10.

(a) *Business form.* (1) The lender or mortgagee shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership. A partnership must meet the requirements of paragraphs (a)(1)(i) through (iv) of this section.

(i) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(ii) One general partner must be designated as the managing general partner. The managing general partner shall comply with the requirements of paragraphs (b), (c), and (f) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lenders or property improvement or manufactured home lenders, and must have exclusive authority to deal directly with the Secretary on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(iii) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All insured mortgages and Title I loans held by the partnership shall be transferred to a lender or mortgagee approved under this part prior to the termination of the partnership. The partnership shall be specifically authorized to continue its existence if a partner withdraws.

(iv) The Secretary must be notified immediately of any amendments to the partnership agreement that would affect the partnership's actions under the Title I or Title II programs.

(2) *Use of business name.* The lender or mortgagee must use its HUD-registered business name in all advertisements and promotional materials related to FHA programs. HUD-registered business names include any alias or "doing business as" (DBA) on file with FHA. The lender or mortgagee must keep copies of all print and electronic advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used to advertise.

(3) *Non-FHA-approved entities.* A lender or mortgagee that accepts a loan application from a non-FHA-approved entity must confirm that the entity's legal name and Tax ID number are included in the FHA loan origination system record for the subject loan. The loan to be insured by FHA must be underwritten by the FHA-approved lender or mortgagee.

(b) *Employees.* The lender or mortgagee shall employ competent personnel trained to perform their assigned responsibilities in consumer or mortgage lending, including origination, servicing, and collection activities, and shall maintain adequate staff and facilities to originate and service mortgages or Title I loans, in accordance with applicable regulations, to the extent the mortgagee or lender engages in such activities.

(c) *Officers.* All employees who will sign applications for mortgage insurance on behalf of the mortgagee or report loans for insurance shall be corporate officers or shall otherwise be authorized to bind the lender or mortgagee in the origination transaction. The lender or mortgagee shall ensure that an authorized person reports all originations, purchases, and sales of Title I loans or Title II mortgages to the Secretary for the purpose of obtaining or transferring insurance coverage.

(d) *Escrows.* The lender or mortgagee shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under loans or insured mortgages on account of ground rents, taxes, assessments, and insurance charges or premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, except as otherwise provided in writing by the Secretary.

(e) *Servicing.* A lender shall service or arrange for servicing of the loan in accordance with the requirements of 24 CFR part 201. A mortgagee shall service or arrange for servicing of the mortgage in accordance with the servicing responsibilities contained in subpart C of 24 CFR part 203 and in 24 CFR part 207, with all other applicable regulations contained in this title, and with such additional conditions and requirements as the Secretary may impose.

(f) *Business changes.* The lender or mortgagee shall provide prompt notification to the Secretary, in such form as prescribed by the Secretary, of:

(1) All changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business; and

(2) Any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, loan originator, of the lender or mortgagee, or the lender or mortgagee itself, that is subject to one or more of the sanctions in paragraph (j) of this section.

(g) *Financial statements.* The lender or mortgagee shall furnish to the Secretary a copy of its annual audited financial statement within 90 days of its fiscal year end, furnish such other information as the Secretary may

request, and submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

(h) *Quality control plan.* The lender or mortgagee shall implement a written quality control plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding loan or mortgage origination and servicing.

(i) *Fees.* The lender or mortgagee, unless approved under § 202.10, shall pay an application fee and annual fees, including additional fees for each branch office authorized to originate Title I loans or submit applications for mortgage insurance, at such times and in such amounts as the Secretary may require. The Secretary may identify additional classes or groups of lenders or mortgagees that may be exempt from one or more of these fees.

(j) *Ineligibility.* For a lender or mortgagee to be eligible for FHA approval, neither the lender or mortgagee, nor any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the lender or mortgagee shall:

(1) Be suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424 or 24 CFR part 25, or under similar procedures of any other federal agency;

(2) Be indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the lender or mortgagee to participate in the Title I or Title II programs;

(3) Be subject to unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;

(5) Be convicted of, or have pled guilty or *nolo contendere* to, a felony related to participation in the real estate or mortgage loan industry:

(i) During the 7-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(6) Be in violation of provisions of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 (12 U.S.C. 5101 *et seq.*) or any applicable provision of state law; or

(7) Be in violation of any other requirement established by the Secretary.

(k) *Branch offices.* A lender may, upon approval by the Secretary, maintain branch offices for the origination of Title I or Title II loans. A branch office of a mortgagee must be registered with the Department in order to originate mortgages or submit applications for mortgage insurance. The lender or mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

(l) *Conflict of interest and responsibility.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration, approved by the Secretary, may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(m) *Reports.* Each lender and mortgagee must submit an annual certification on a form prescribed by the Secretary. Upon application for approval and with each annual recertification, each lender and mortgagee must submit a certification that it has not been refused a license and has not been sanctioned by any state or states in which it will originate insured mortgages or Title I loans. In addition, each mortgagee shall file the following:

(1) An audited or unaudited financial statement, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20 percent of its net worth, and until the mortgagee demonstrates an operating profit for 2 consecutive quarters or until the next recertification, whichever is the longer period; and

(2) A statement of net worth within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership, or any transfer of control to a federal or state supervisory agency.

(n) *Net worth*—(1) *Applicability.* The requirements of this section apply to approved supervised and nonsupervised lenders and mortgagees under § 202.6 and § 202.7, and approved investing lenders and mortgagees under § 202.9. For ease of reference, these institutions are referred to as "approved lenders and mortgagees" for purposes of this section. The requirements of this section also apply to applicants for FHA approval under §§ 202.6, 202.7, and 202.9. For ease of reference, these entities are referred to as "applicants" for purposes of this section.

(2) *Phased-in net worth requirements for 2010 and 2011*—(i) *Applicants.* Effective on June 21, 2010, applicants shall comply with the net worth requirements set forth in paragraphs (n)(2)(iii) of this section.

(ii) *Approved mortgagees.* Effective on May 20, 2011, each approved lender or mortgagee with FHA approval as of May 20, 2010 shall comply with the net worth requirements set forth in paragraphs (n)(2)(iii) or (n)(2)(iv) of this section, as applicable.

(iii) *Net worth requirements for non-small businesses.* Each approved lender or mortgagee that exceeds the size standard for its industry classification established by the Small Business Administration at 13 CFR 121.201 Sector 52 (Finance and Insurance), Subsector 522 (Credit Intermediation and Related Activities) shall have a net worth of not less than $1,000,000, of which no less than 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(iv) *Net worth requirements for small businesses.* Each approved lender or mortgagee that meets the size standard for its industry classification established by the Small Business Administration at 13 CFR 121.201 Sector 52 (Finance and Insurance), Subsector 522 (Credit Intermediation and Related Activities) shall have a net worth of not less than $500,000, of which no less than 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary. If, based on the audited financial statement prepared at the end of its fiscal year and provided to HUD at the commencement of the new fiscal year, an approved lender or mortgagee no longer meets the Small Business Administration size standard for its industry classification, the approved lender or mortgagee shall meet the net worth requirement set forth in paragraph (n)(2)(iii) of this section for a non-small business approved lender or mortgagee by the last day of the fiscal year in which the audited financial statements were submitted.

(3) *Net worth requirements for 2013 and subsequent years.* Effective May 20, 2013:

(i) Irrespective of size, each applicant and each approved lender or mortgagee, for participation solely under the FHA single family programs, shall have a net worth of not less than $1 million, plus an additional net worth of one percent of the total volume in excess of $25 million of FHA single family insured mortgages originated, underwritten,

purchased, or serviced during the prior fiscal year, up to a maximum required net worth of $2.5 million. No less than 20 percent of the applicant's or approved lender or mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(ii) *Multifamily net worth requirements.* Irrespective of size, each applicant for approval and each approved lender or mortgagee for participation solely under the FHA multifamily programs shall have a minimum net worth of not less than $1 million. For those multifamily approved lenders or mortgagees that also engage in mortgage servicing, an additional net worth of one percent of the total volume in excess of $25 million of FHA multifamily mortgages originated, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of $2.5 million, is required. For multifamily approved lenders or mortgagees that do not perform mortgage servicing, an additional net worth of one half of one percent of the total volume in excess of $25 million of FHA multifamily mortgages originated during the prior fiscal year, up to a maximum required net worth of $2.5 million, is required. No less than 20 percent of the applicant's or approved lender's or mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(iii) *Dual participation net worth requirements.* Irrespective of size, each applicant for approval and each approved lender or mortgagee that is a participant in both FHA single-family and multifamily programs must meet the net worth requirements as set forth in paragraph (n)(3)(i) of this section.

■ 5. Revise § 202.6 to read as follows:

§ 202.6 Supervised lenders and mortgagees.

(a) *Definition.* A supervised lender or mortgagee is a financial institution that is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A supervised mortgagee may submit applications for mortgage insurance. A supervised lender or mortgagee may originate, purchase, hold, service or sell loans or insured mortgages, respectively.

(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, a supervised lender or mortgagee shall meet the following requirements:

(1) *Net worth.* The net worth requirements appear in § 202.5(n).

(2) *Notification.* A lender or mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

(3) *Fidelity bond.* A Title II mortgagee shall have fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or have alternative insurance coverage, approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

■ 6. Revise § 202.8 to read as follows:

§ 202.8 Sponsored third-party originators; Continued approval of loan correspondents through December 31, 2010.

(a) *Definitions—Sponsor.* (1) With respect to Title I programs, a sponsor is a lender that holds a valid Title I Contract of Insurance and meets the net worth requirement for the class of lender to which it belongs.

(2) With respect to Title II programs, a sponsor is a mortgagee that holds a valid origination approval agreement, is approved to participate in the Direct Endorsement program, and meets the net worth requirement for the class of mortgagee to which it belongs.

(3) Each sponsor shall be responsible to the Secretary for the actions of its sponsored third-party originators or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible. If specific knowledge is required, the Secretary will presume that a sponsor has knowledge of the actions of its sponsored third-party originators or mortgagees in originating loans or mortgages and the sponsor is responsible for those actions unless it can rebut the presumption with affirmative evidence.

Sponsored third-party originator. A third-party originator does not hold a Title I Contract of Insurance or Title II Origination Approval Agreement and may not purchase or hold loans but is authorized to originate Title I direct loans or Title II mortgage loans for sale or transfer to a sponsor or sponsors, as defined in this section, which holds a valid Title I Contract of Insurance or Title II Origination Approval Agreement and is not under suspension, subject to the sponsor determining that the third-party originator has met the eligibility criteria of paragraph (b) of this section.

(b) *Eligibility to originate loans to be insured by FHA.* A non-approved third-party originator may originate loans to be insured by FHA, provided:

(1) The third-party originator is working with and through an FHA-approved lender or mortgagee; and

(2) The third-party originator or an officer, partner, director, principal, manager, supervisor, loan processor, or loan originator of the third-party originator has not been subject to the sanctions or administrative actions listed in § 202.5(j), as determined and verified by the FHA-approved lender or mortgagee.

(c) *Continued approval of loan correspondents through December 31, 2010.* A loan correspondent (as that term was defined under the version of this section in effect immediately before May 20, 2010) with FHA approval as of May 20, 2010 will maintain its FHA approval through December 31, 2010.

§ 202.9 [Amended]

■ 7. In § 202.9, remove the last sentence of paragraph (a).

■ 8. Revise § 202.11 to read as follows:

§ 202.11 Title I.

(a) *Types of administrative action.* In addition to termination of the Contract of Insurance, certain sanctions may be imposed under the Title I program. The administrative actions that may be applied are set forth in 24 CFR part 25. Civil money penalties may be imposed against Title I lenders and mortgagees pursuant to 24 CFR part 30.

(b) *Grounds for action.* Administrative actions shall be based upon both the grounds set forth in 24 CFR part 25 and as follows:

(1) Failure to properly supervise and monitor dealers under the provisions of part 201 of this title;

(2) Exhaustion of the general insurance reserve established under part 201 of this title;

(3) Maintenance of a Title I claims/loan ratio representing an unacceptable risk to the Department; or

(4) Transfer of a Title I loan to a party that does not have a valid Title I Contract of Insurance.

■ 9. Revise § 202.12(a)(1) to read as follows:

§ 202.12 Title II.

(a) *Tiered pricing*—(1) *General requirements*—(i) *Prohibition against excess variation.* The customary lending practices of a mortgagee for its single family insured mortgages shall not provide for a variation in mortgage charge rates that exceed 2 percentage points. A variation is determined as provided in paragraph (a)(6) of this section.

(ii) *Customary lending practices.* The customary lending practices of a

mortgagee include all single family insured mortgages originated by the mortgagee, including those funded by the mortgagee or purchased from the originator, if the requirements of the mortgagee have the effect of leading to a violation of this section by the originator.

(iii) *Basis for permissible variations.* Any variations in the mortgage charge rate up to two percentage points under the mortgagee's customary lending practices must be based on actual variations in fees or cost to the mortgagee to make the mortgage loan, which shall be determined after accounting for the value of servicing rights generated by making the loan and other income to the mortgagee related to the loan. Fees or costs must be fully documented for each specific loan.

* * * * *

Dated: April 9, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–8837 Filed 4–19–10; 8:45 am]

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Federal Register

Tuesday,
April 20, 2010

Part IV

Securities and Exchange Commission

17 CFR Part 242

Proposed Amendments to Rule 610 of Regulation NMS; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–61902; File No. S7–09–10]

RIN 3235–AK62

Proposed Amendments to Rule 610 of Regulation NMS

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to Rule 610 under the Securities Exchange Act of 1934 ("Exchange Act") relating to access to quotations in listed options as well as fees for such access. The proposed rule would prohibit an exchange from imposing unfairly discriminatory terms that inhibit efficient access to quotations in a listed option on its exchange and establish a limit on access fees that an exchange would be permitted to charge for access to its best bid and offer for listed options on its exchange.

DATES: Comments should be received on or before June 21, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. S7–09–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–09–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also 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 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jennifer Colihan, Special Counsel, at (202) 551–5642; Edward Cho, Special Counsel, at (202) 551–5508; or Brian O'Neill, Special Counsel, at (202) 551–5643, Division of Trading and Markets ("Division"), Commission, 100 F Street, NE., Washington, DC 20549–6628.

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I. Introduction

The Commission is proposing to strengthen the national market system for listed options by: (1) Prohibiting the imposition of unfairly discriminatory terms by a national securities exchange that inhibit efficient access to quotations in a listed option on its exchange; and (2) establishing a limit on the amount a national securities exchange would be permitted to charge to access the best bid or offer for listed options on its exchange. These proposed amendments would make the requirements for access to the listed options exchanges comparable to the requirements for access to markets that trade NMS stocks.[1] Further, they would address concerns expressed by certain market participants regarding access to options exchanges.[2]

A. Background

In 1975, Congress determined that the "linking of all markets" through communications and data processing facilities would "foster efficiency; enhance competition; increase the information available to brokers, dealers, and investors; facilitate the offsetting of investors' orders; and contribute to the best execution of investors' orders."[3] As such, Congress directed the Commission, through the enactment of Section 11A of the Exchange Act, to facilitate the establishment of a national market system ("NMS") to link together the multiple individual markets that trade securities. Congress intended the Commission to take advantage of opportunities created by new data processing and communications technologies to preserve and strengthen the securities markets.

As previously recognized by the Commission, for the NMS to fulfill its statutory objectives, fair and efficient access to each of the individual markets that participate in the NMS is essential.[4] One of the statutory NMS objectives, for example, is to assure the practicability of brokers executing investors' orders in the best market.[5] Another is to assure the efficient execution of securities transactions.[6] Neither of these objectives can be achieved if brokers cannot fairly and efficiently route orders to execute against the best quotations, wherever such quotations are displayed in the NMS.[7]

The Commission believes that intermarket price protection is essential in a marketplace such as that for listed options where multiple exchanges trade the same securities.[8] For this reason, the Commission in 1999 ordered the exchanges to jointly develop an NMS linkage plan for listed options.[9] The first such NMS plan, which began operation in 2002 ("2002 Linkage Plan"), included a requirement that its participant exchanges avoid trading through[10] better priced quotations displayed on other options exchanges and disseminated pursuant to the Options Price Reporting Authority Plan ("OPRA Plan"), as well as a mechanism by which

[1] *See* 17 CFR 242.610.

[2] *See infra* Section I.B and notes 34–40 and accompanying text.

[3] *See* Section 11A(a)(1)(D) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(D).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("NMS Adopting Release") at 37538.

[5] *See* Section 11A(a)(1)(C)(iv) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C)(iv).

[6] *See* Section 11A(a)(1)(C)(i) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C)(i).

[7] *See* NMS Adopting Release, *supra* note 4, at 37548.

[8] Eight exchanges currently offer options trading facilities and another exchange is anticipated to begin operations shortly. *See* Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (order approving C2 Options Exchange's application for registration as a national securities exchange).

[9] *See* Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999).

[10] A "trade-through" was defined as a transaction in an options series at a price that is inferior to the NBBO, but shall not include a transaction that occurs at a price that is one minimum quoting increment inferior to the NBBO provided a Linkage Order is contemporaneously sent to each Participant disseminating the NBBO for the full size of the Participant's bid (offer) that represents the NBBO. *See* Section 2(29) of the 2002 Linkage Plan. "NBBO" was defined as the national best bid and offer in an options series calculated by a Participant. *See* Section 2(18) of the 2002 Linkage Plan.

participating exchanges could seek satisfaction if an order was traded through.[11] In August 2009, the options exchanges implemented a new NMS plan ("Plan"),[12] approved by the Commission, which specifically requires that each participating exchange establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trading through better priced quotations displayed on other options exchanges and disseminated pursuant to the OPRA Plan ("trade-throughs").[13] Rule 608(c) of Regulation NMS requires the options exchanges to comply with the terms of the Plan and to enforce compliance with the Plan by their members and persons associated with their members, absent reasonable justification or excuse.[14] Further, each exchange adopted rules to implement the Plan that prohibit members from effecting trade-throughs, subject to certain enumerated exceptions.[15] The approach to trade-throughs under the Plan is similar to that taken by the Commission under Rule 611 of Regulation NMS, which requires that a trading center establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the execution of trades at prices inferior to protected quotations in NMS stocks displayed by other trading centers, subject to applicable exceptions.[16]

To satisfy the requirements of the trade-through provisions of the Plan and the exchanges' rules [17] (collectively referred to as "Trade-Through Rules"), an options exchange with a best bid or best offer that is inferior to another exchange's best quotation may choose to handle a pending incoming marketable order by: (1) Cancelling the order; (2) routing the order to another exchange displaying a better price; [18] or (3) providing an opportunity for its members, on their own behalf or on behalf of other market participants, to "step up" and trade with the order at a price at least equal to the better displayed price on an away exchange.[19]

In addition, broker-dealers have a duty of best execution.[20] A broker-dealer must carry out a regular and rigorous review of the quality of the options markets to evaluate its best execution policies, including the determination as to which options market it routes customer order flow.[21] The protection against trade-throughs undergirds the broker-dealer's duty of best execution by helping ensure that customer orders are not executed at prices inferior to the best quotations, but does not supplant or diminish the broker-dealer's responsibility for achieving best execution, including its duty to evaluate the execution quality of markets to which it routes customer orders.[22]

These regulatory obligations mean that broker-dealers responsible for routing customer orders, as well as customers making their own order-routing decisions, must have fair and efficient access to the best displayed quotations to achieve best execution of those orders, and the exchanges themselves must have the ability to execute orders against the displayed quotations of other exchanges.[23] Moreover, the benefits of intermarket price protection could be compromised if exchanges were able to charge substantial fees for accessing their quotations.[24]

Further, the Exchange Act authorizes the Commission to adopt rules assuring the fairness and usefulness of quotation information.[25] The wider the disparity in the level of fees among the different exchanges, the less useful and accurate are the displayed prices. For example, if two options exchanges displayed quotations to sell an option for $10.00 per contract, one exchange offer could

[11] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving 2002 Linkage Plan). The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

[12] This new Plan was designed, in part, to apply the Regulation NMS price-protection provisions to the options exchanges. *See* letter from Michael J. Simon, International Securities Exchange LLC ("ISE"), to Nancy M. Morris, Secretary, Commission, dated September 12, 2007, at 2–3.

[13] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) ("Plan Approval Order") and Section 5(a) of the Plan. A "trade-through" is defined in this new Plan as a transaction in an option series, either as principal or agent, at a price that is inferior to the best bid or offer in an option series that is displayed by an exchange, and is disseminated pursuant to the OPRA Plan. *See* Sections 2(1), 2(6), 2(14), 2(17), and 2(21) of the Plan.

[14] *See* 17 CFR 242.608(c).

[15] *See, e.g.,* ISE Rule 1901, NYSE Arca, Inc. ("NYSE Arca") Rule 6.94, and NASDAQ OMX PHLX, Inc. ("Nasdaq OMX Phlx") Rule 1084. Prior to the adoption of the new Plan, the options exchanges had in place rules addressing trade-throughs as required under the 2002 Linkage Plan. The exchanges revised these rules following the adoption of the new Plan to reflect the trade-through requirements in the new Plan.

[16] 17 CFR 242.611(a). To be protected, a quotation must be immediately and automatically accessible. *See* 17 CFR 242.600(b)(58) (defining the term "protected quotation" as any protected bid or protected offer); *see also* 17 CFR 242.600(b)(57). The term "protected bid" or "protected offer" means a quotation in an NMS stock that is displayed by an automated trading center, is disseminated pursuant to an effective national market system plan, and is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc.

[17] *See* Section 5(a) of the Plan; *see also, e.g.,* ISE Rule 1901, NYSE Arca Rule 6.94 and Nasdaq OMX Phlx Rule 1084.

[18] To implement the choice of routing to another exchange to access a better-priced quotation, the options exchanges currently use private routing arrangements that provide for indirect access to quotations displayed by a particular options exchange through the members of that exchange. The Commission has stated its belief that the use of private linkages for routing will allow the exchanges to take advantage of new technology that allows for efficient routing and executions, and will give the exchanges greater flexibility for order handling. *See* Plan Approval Order, *supra* note 13, at 39364. The options exchanges complied with the requirements of the prior linkage plan by utilizing a stand alone system ("centralized hub") to send and receive specific order types. The centralized hub was a centralized data communications network that electronically linked the options exchanges to one another. The Options Clearing Corporation ("OCC") operated the centralized hub. *See id.*

[19] The Commission separately has proposed changes to Rule 602 of Regulation NMS that may affect these electronic "step-up" mechanisms, if adopted. *See* Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632, 48633 (September 23, 2009) (File No. S7–21–09) ("Flash Order Proposal"). *See infra* notes 72–75 and accompanying text.

[20] A broker-dealer has a legal duty to seek to obtain best execution of customer orders. *See, e.g., Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.,* 135 F.3d 266, 269–70, 274 (3d Cir.), cert. denied, 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq,* Securities Exchange Act Release No. 40900 (Jan. 11, 1999) (settled case) (citing *Sinclair v. SEC,* 444 F.2d 399 (2d Cir. 1971); *Arleen Hughes, 27 SEC 629, 636 (1948), aff'd sub nom. Hughes v. SEC,* 174 F.2d 969 (D.C. Cir. 1949)). *See also Order Execution Obligations,* Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) ("Order Handling Rules Release"). A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws. *See* Order Handling Rules Release, 61 FR at 48322. *See also* Newton, 135 F.3d at 270. The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, *i.e.,* at the best reasonably available price. *Newton,* 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution—order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n.2 (citing Payment for Order Flow, Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934, 52937–38 (Oct. 13, 1993) (Proposed Rules)). *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988). *See also* Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006, 55008–55009 (November 2, 1994) ("Approval of Payment for Order Flow Final Rules"). *See also* NMS Adopting Release, *supra* note 4, at 37537 (discussing the duty of best execution).

[21] *See* Securities Exchange Act Release No. 49175 (February 3, 2004), 69 FR 6124, 6128 (February 9, 2004) ("Options Concept Release"). *See also* NMS Adopting Release, *supra* note 4, at 37538.

[22] *See* NMS Adopting Release, *supra* note 4, at 37538.

[23] *See id.* at 37539.

[24] *See id.* at 37544.

[25] *See* Section 11A(c)(1)(B) of the Exchange Act, 15 U.S.C. 78k–1(c)(1)(B).

be accessible for a total price of $10.00 per contract plus a $0.50 per contract access fee, while the second exchange might not charge any such access fee. What appeared in the consolidated data stream to be identical quotations would in fact not be identical in terms of all-in costs. The Commission recognizes that there may be different ways to achieve the objective of fair and useful quotations. One approach is to limit the extent to which the all-in price for those who access quotations can vary from the displayed price by limiting fees for accessing those quotations, as proposed here in Rule 610(c)(2).[26]

An access fee limit also creates more transparency in the cost of accessing quoted prices. Currently, there are so many different fees across options exchanges, across different categories of options participants, and across different product types, that it is not easy to estimate the total cost of executing against a quotation for a particular transaction. An access fee cap would provide clearer information on the maximum cost for accessing quoted prices. The Commission recognizes, however, that although a cap on access fees would promote the fairness and usefulness of displayed quotations and transparency in the cost of assessing quoted prices, there may be other fees assessed that would not be included in the proposed cap on access fees.

B. Overview of Current Options Market Structure

In the listed options market, all orders are currently executed on registered national securities exchanges. Options exchanges have, to date, adopted one of two general business models. An exchange using the first model—referred to as the "Make or Take" model—incents market participants to quote aggressively by providing a rebate to an order or quotation displayed on its exchange when such order or quotation is executed. This rebate is funded through the fee charged to the order that executed against the displayed order or quotation. The difference between the fee charged for accessing the order or quotation and the rebate is revenue to the exchange.

NYSE Arca was the first options exchange to implement the Make or Take transaction fee model.[27] The introduction of the Make or Take model followed the reduction of the quoting increment in certain options in 2007.[28] As of February 1, 2010, market participants could represent trading interest in penny increments in options series in 211 specified classes. These classes represent approximately 69.5 percent of trading volume. By August 2, 2010, 361 classes will be included in the Minimum Quoting Increment Pilot Program, representing approximately 88.1 percent of trading volume during February 2010.[29]

On an exchange with a "Make or Take" fee model, broker-dealers representing customer orders must pay a "Take" fee to access a displayed quotation on that exchange. In contrast, on an exchange without that fee model, broker-dealers generally are not assessed a similar fee when a customer order is executed. This distinction brought attention to the issue of whether, and to what extent, access fees impact fair and efficient access to displayed quotations in listed options.

Exchanges using the second model—referred to as the "Broker Payment" model—generally charge no or low fees for the execution of customers' orders.[30] However, these exchanges often charge other types of fees on a per-transaction basis. For example, most options exchanges charge a surcharge or "royalty" fee for executions in certain index option classes.[31] Many exchanges also charge a payment for order flow or "marketing" fee to market makers that trade with customer orders on the exchange.[32] The exchange then makes the proceeds from such fees available to

[26] *See* NMS Adopting Release, *supra* note 4, at 37545 (stating that for quotations to be fair and useful there must be some limit on the extent to which the true price for those who access quotations can vary from the displayed price).

[27] *See* Securities Exchange Act Release No. 55223 (February 1, 2007), 72 FR 6306 (February 9, 2007) (SR–NYSEArca–2007–07). The NASDAQ Options Market LLC ("NOM") also uses a "Make or Take" fee model for certain options classes. *See* The NASDAQ Options Market: Execution and Routing Fees (available at *http://www.nasdaqtrader.com/content/ProductsServices/PriceList/nasdaq_options_pricing.pdf*) (current as of December 1, 2009).

[28] On January 26, 2007, the then-existing six options exchanges implemented a pilot program to quote certain options series in thirteen classes in one-cent increments ("Minimum Quoting Increment Pilot Program"). The NASDAQ Stock Market LLC ("Nasdaq") became a participant in the Minimum Quoting Increment Pilot Program on March 31, 2008, when it commenced trading on NOM, and BATS Exchange, Inc. ("BATS") became a participant in the Minimum Quoting Increment Pilot Program on February 26, 2010 when it commenced trading on BATS Options Exchange Market. Since 2007, the Minimum Quoting Increment Pilot Program has been extended and expanded several times. *See, e.g.,* Securities Exchange Act Release Nos. 56276 (August 17, 2007), 72 FR 47096 (August 22, 2007) (SR–CBOE–2007–98); 56567 (September 27, 2007), 72 FR 56396 (October 3, 2007) (SR–Amex–2007–96); 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–Nasdaq–2008–026); 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR–NYSEArca–2009–44); and 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2004–44).

[29] The source of the data is OptionsMetrics, LLC ("OptionsMetrics"). The data used for the estimates corresponds to February 2010. By August 2010, the Minimum Quoting Increment Pilot Program will incorporate 150 additional classes. Those classes will be incorporated according to volume levels on the month before the expansion. For the current approximation, Commission staff projected which classes would be added by August 2010 using volume data corresponding to February 2010.

[30] Exchanges that use the "Broker Payment" model also generally give priority to customer orders at the best price over other orders or quotations at that price. After customer orders are executed, the rules of "Broker Payment" options exchanges dictate how the remainder of an incoming order is allocated against resting non-customer orders or quotations. ISE, for example, requires that priority be given to public customer orders, and provides for pro-rata allocation among non-customer orders and quotations. *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11395 (March 2, 2000) (order approving the registration of the International Securities Exchange LLC as a national securities exchange ("ISE Exchange Approval")). Exchanges that use a "Broker Payment" model do not give priority to orders from certain customers who are "professional" customers under exchange rules. *See* Securities Exchange Act Release Nos. 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR–ISE–2006–26); 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR–CBOE–2009–078); and 61802 (March 3, 2010) (SR–Phlx–2010–05). "Professional" customers are treated on ISE, the Chicago Board Options Exchange, Incorporated ("CBOE"), and Nasdaq OMX Phlx in the same manner as a broker-dealer for purposes of specified order execution rules, including priority rules. Under these exchange rules, "Professional" customers participate in ISE's, CBOE's, and Nasdaq OMX Phlx's allocation processes on equal terms with broker-dealers, *i.e.,* they do not receive priority over broker-dealers in the allocation of orders on the exchange. Several exchanges have, however, begun to charge transaction fees to certain customers identified in exchange rules as "professionals." *See* Securities Exchange Act Release Nos. 59287 and 61198.

[31] *See* BOX Fee Schedule, at 1 (available at *http://www.bostonoptions.com/pdf/BOX_Fee_Schedule.pdf*) (current as of January 2010); CBOE Fee Schedule, at 1 (available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*) (current as of February 2, 2010); ISE Fee Schedule, at 6 (available at *http://www.ise.com/assets//documents//Options Exchange//legal/fee/fee_schedule.pdf*) (current as of January 8, 2010); NYSE Amex Fee Schedule, at 3 (available at *http://www.nyse.com/pdfs/NYSE_Amex_Options_Fee_Schedule01.04.10.pdf*) (current as of January 4, 2010); NYSE Arca Fee Schedule, at 6 (available at *http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf*) (current as of January 8, 2010); and Nasdaq OMX Phlx Fee Schedule, at 5 (available at *http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf*) (current as of February 24, 2010).

[32] *See* CBOE Fee Schedule, at 2 (available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*) (current as of February 2, 2010); ISE Fee Schedule, at 6 (available at *http://www.ise.com/assets//documents//Options Exchange//legal/fee/fee_schedule.pdf*) (current as of January 8, 2010); NYSE Amex Fee Schedule, at 3 (available at *http://www.nyse.com/pdfs/NYSE_Amex_Options_Fee_Schedule01.04.10.pdf*) (current as of January 4, 2010); NYSE Arca Fee Schedule, at 6 (available at *http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf*) (current as of January 8, 2010); and Nasdaq OMX Phlx Fee Schedule, at 6 (available at *http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf*) (current as of February 24, 2010).

the proceeds from such fees available to collectively fund payment for order flow to brokers directing order flow to the exchange.[33]

In July 2008 the Commission received a Petition for Rulemaking to Address Excessive Access Fees in the Options Markets from Citadel Investment Group, L.L.C. ("Citadel Petition").[34] In the Citadel Petition, Citadel petitions the Commission to engage in rulemaking to limit the "Take" fees that options exchanges may charge non-members to obtain access to quotations to $0.20 per contract. NYSE Arca also filed a proposal in July 2008 to raise its "Take" fee for certain classes. Specifically, NYSE Arca submitted a proposed rule change for immediate effectiveness that raised its "Take" fee charged to members for certain designated Minimum Quoting Increment Pilot Program issues from $0.45 per contract to $0.55 per contract, and raised the corresponding credit in those same issues from $0.30 per contract to $0.40 per contract for market makers, and from $0.25 per contract to $0.35 per contract for electronically executed broker-dealer and customer orders.[35] The Commission requested comment on the issue of access fees when it published NYSE Arca's proposal for comment.[36]

The Commission has received several comment letters in response to its request for comment on the NYSE Arca proposed rule change and to the Citadel Petition, which discuss the issue of access fees and imposing a cap on such fees.[37] The Commission also received several comment letters in response to a proposal to amend Rule 602 of Regulation NMS to effectively ban marketable "flash orders" in NMS securities that discuss the issue of access fees in listed options.[38] Commenters on the Flash Order Proposal expressed concern that eliminating flash orders on the options exchanges would increase direct costs associated with executing customers' listed options orders.[39] The absence of a limit on fees that an options exchange can charge for accessing its quotation was one reason commenters said that banning flash orders would be more detrimental to listed options customers than to cash equity customers.[40] These concerns about the absence of a limit on access fees on the listed options exchanges echo the comments received in response to the Citadel Petition and NYSE Arca's proposal. These comments were considered in developing this proposal and are discussed below.

II. Proposed Amendments to Rule 610(a)

Access to displayed quotations, particularly the best quotations of an exchange or association, is vital for the smooth functioning of intermarket trading.[41] Brokers responsible for routing their customers' orders, as well as investors that make their own order-routing decisions, must have fair and efficient access to the best displayed quotations of all options exchanges to achieve best execution of those orders. In addition, options exchanges themselves must have the ability to route orders for execution against the displayed quotations of other exchanges. Indeed, the concept of intermarket protection against trade-throughs is premised on the ability of options exchanges to trade with, rather than trade through, the quotations displayed by other options exchanges.[42]

Currently, Rule 610(a) furthers the goal of fair and efficient access to quotations primarily by prohibiting a national securities exchange or national securities association from imposing unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the national securities exchange or national securities association to any quotations in an NMS stock[43] displayed by the exchange or association.[44] This anti-discrimination standard is designed to support indirect access by persons to quotations in NMS stocks through members, and is

[33] *See, e.g.,* Nasdaq OMX Phlx Fee Schedule, at 6, 15 (available at *http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf*) (current as of February 24, 2010). *See also infra* note 109 and accompanying text.

[34] *See* letter from John C. Nagel, Managing Director & Deputy General Counsel, Citadel, to Nancy M. Morris, Secretary, Commission, dated July 15, 2008 (available at *http://www.sec.gov/rules/petitions/2008/petn4-562.pdf*).

[35] These Pilot issues included: AAPL, CSCO, DIA, MSFT, IWM, QQQQ, RIMM, XLF, SPY, YHOO. *See* Securities Exchange Act Release No. 58295 (August 4, 2008), 73 FR 46681 (August 11, 2008) (SR–NYSEArca–2008–75).

[36] Concurrently, NYSE Arca filed a proposed rule change to increase the fee charged to orders received through the then-existing options linkage in certain Minimum Quoting Increment Pilot Program issues from $0.45 to $0.55 per contract. *See* SR–NYSEArca–2008–76. The Commission has not published this proposed rule change for notice and comment. Pending Commission action on SR–NYSEArca–2008–76, NYSE Arca has stated that it will not implement its fee changes included in SR–NYSEArca–2008–75.

[37] Letters received in response to SR–NYSEArca–2008–75: *See* letters from John C. Nagel, Managing Director and Deputy General Counsel, Citadel, to Nancy M. Morris, Secretary, Commission, dated July 23, 2008 ("Citadel Letter"); Stephen Schuler and Daniel Tierney, Managing Members, Global Electronic Trading Company to Florence E. Harmon, Acting Secretary, Commission, dated September 2, 2008 ("GETCO Letter"); Christopher Nagy, Managing Director, Order Routing Sales and Strategy, TD Ameritrade, Inc. to Florence E. Harmon, Acting Secretary, Commission, dated September 9, 2008 ("TD Ameritrade Letter"); and Robert R. Bellick, Managing Director, Wolverine to Nancy M. Morris, Secretary, Commission, dated September 10, 2008 ("Wolverine Letter") (available at *http://www.sec.gov/comments/sr-nysearca-2008-75/nysearca200875.shtml*).

Letter received in response to the Citadel Petition: *See* letter from Lawrence Leibowitz, Group Executive Vice President and Head of Global Execution and Technology, NYSE Euronext, to Florence E. Harmon, Acting Secretary, Commission, dated September 3, 2008 ("NYSE Euronext Letter") (available at *http://www.sec.gov/comments/4-562/4-562.shtml*).

Letters received in response to both the Citadel Petition and SR–NYSEArca–2008–75: *See* letters from David M. Battan, Executive Vice President, Interactive Brokers Group LLC, to Florence Harmon, Acting Secretary, Commission, dated September 8, 2008 ("IB Letter"); and William Easley, Vice Chairman, Boston Options Exchange ("BOX") to Florence E. Harmon, Acting Secretary, Commission, dated September 11, 2008 ("BOX Letter") (available at *http://www.sec.gov/comments/sr-nysearca-2008-75/nysearca200875.shtml*).

Letters received in response to SR–NYSEArca–2009-44, which proposed to expand the number of classes eligible to participate in the Minimum Quoting Increment Pilot: *See* letters from Christopher Nagy, Managing Director, Order Routing Strategy, TD Ameritrade, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 17, 2009 ("TD Ameritrade Letter II") and December 1, 2009 ("TD Ameritrade Letter III") (available at *http://www.sec.gov/comments/sr-nysearca-2009-44/nysearca200944.shtml*).

[38] *See* Flash Order Proposal, *supra* note 19. A "flash order" generally is any order qualifying for the "immediate execution or withdrawal" exception from Rule 602. For more detail about the basic features that define flash orders, see the Flash Order Proposal. Flash orders allow options exchanges that charge no or low fees to execute customer orders to "step up" and match better displayed quotations on other exchanges.

[39] *See, e.g.,* letters from Christopher Nagy, Managing Director, Order Routing Strategy, TD Ameritrade, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated November 23, 2009 ("Ameritrade Flash Letter"); letter from John C. Nagel, Managing Director and Deputy General Counsel, Citadel, to Elizabeth M. Murphy, Secretary, Commission, dated November 20, 2009 ("Citadel Letter II"); Peter Bottini, EVP Trading and Customer Service, and Hillary Victor, Associate General Counsel, optionsXpress, to Elizabeth M. Murphy, Secretary, Commission, dated November 25, 2009 ("optionsXpress Flash Letter"); Thomas F. Price, Managing Director, Securities Industry Financial Association, to Elizabeth M. Murphy, Secretary, Commission, dated December 1, 2009 ("SIFMA Flash Letter") (available at *http://www.sec.gov/comments/s7-21-09/s72109.shtml*).

[40] *See* SIFMA Flash Letter, *supra* note 39, at 5. *See also* Citadel Letter II, *infra* note 39, at 1–2; Ameritrade Flash Letter, *supra* note 39, at 3; and optionsXpress Flash Letter, *supra* note 39, at 6.

[41] *See* NMS Adopting Release, *supra* note 4, at 37539. Currently, no national securities association quotes or trades listed options.

[42] *See id.*

[43] *See* Rule 600(b)(47), 17 CFR 242.610(b)(47) (defining NMS stock as any NMS security other than an option). *See also* Rule 600(b)(46), 17 CFR 242.610(b)(46) (defining NMS security as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options).

[44] *See* Rule 610(a), 17 CFR 242.610(a). *See also* NMS Adopting Release, *supra* note 4, at 37539.

premised on fair and efficient access of exchange or association members themselves to the quotations in NMS stocks.[45]

The Commission is proposing to amend Rule 610(a) to extend this prohibition to NMS securities,[46] which include listed options as well as NMS stocks. The proposal to extend the anti-discrimination standard in Rule 610(a) to the trading of listed options is designed to support indirect access by persons to quotations in listed options through members. Like current Rule 610(a), the proposed amendment is premised on the need for fair and efficient access of members themselves to the quotations of the exchange in listed options.

Market participants can either become members of an exchange to obtain direct access to its options quotations, or they can obtain indirect access by "piggybacking" on the direct access of members. Access to exchanges currently is addressed by several provisions of the Exchange Act.[47] In particular, Section 6(b)(5) of the Exchange Act requires in part that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[48] The proposed amendments to Rule 610(a) would build on this existing access structure, including the prohibition in Section 6(b)(5) against unfair discrimination, by specifically prohibiting unfair discrimination that prevents or inhibits non-members from "piggybacking" on the access of members. The ability to fairly and efficiently obtain indirect access through a member is necessary to assure that non-members can readily access quotations in options to meet the requirements of the Trade-Through Rules and to fulfill the non-members' duty of best execution.[49]

The Commission does not believe that, if it were to prohibit exchanges from imposing unfairly discriminatory terms on non-members who obtain indirect access to quotations in options through members, it would require exchanges to provide non-members with *free* access to such quotations. Members who provide piggyback access to non-members would be providing a useful service and presumably would charge a fee for such service. The fee would be subject to competitive forces and likely would reflect the costs of membership, plus some element of profit to the members. As a result, non-members that frequently make use of indirect access are likely to contribute indirectly to cover the costs of membership in the market. In addition, the unfair discrimination standard of Rule 610(a) as proposed to be amended would apply only to access to quotations in NMS securities, including options. All other services would be subject to the more general fair access provisions applicable to national securities exchanges, as well as the statutory provisions that govern their respective rules.[50]

On the other hand, any attempt by an options exchange to charge differential fees based solely on the non-member status of a person obtaining indirect access to its quotations would violate Rule 610(a) as proposed to be amended.[51] As noted above, fair and efficient access to quotations is essential to the functioning of the NMS.[52] For example, if an exchange charges discriminatory fees to non-members to access its quotations, this practice would interfere with the functioning of the private linkage approach and detract from its usefulness to exchanges in meeting their required responsibilities under the Trade-Through Rules. Fair and efficient access to the best quotations is also necessary for brokers to achieve best execution of orders.[53] Accordingly, the Commission is proposing to amend Rule 610(a) to establish baseline intermarket access rules for options markets to promote indirect access to such markets by a non-member through a member.

The prohibition on imposing unfairly discriminatory terms in Rule 610(a) currently applies to terms that prevent or inhibit efficient access to quotations. The term "quotation" is defined in Rule 600(a)(62) of Regulation NMS as a bid or offer, and "bid" or "offer" is defined in Rule 600(b)(8) of Regulation NMS as the bid price or the offer price communicated by a member of a national securities exchange or national securities association to any broker or dealer or to any customer.[54] Rule 610(a), therefore, applies to the entire depth of book of displayed orders in NMS stocks, including reserve size[55] and displayed size at each price.[56] The Commission's proposal to extend Rule 610(a) to all NMS securities so that listed options markets are covered by the Rule would apply in the same manner.[57] Thus, options markets would be prohibited from imposing unfairly discriminatory terms that prevent or inhibit efficient access to the entire depth of book of displayed orders.

III. Access Fees

A. Proposed Rule 610(c)(2)

Generally, the Commission believes that market forces and the dynamics of competition should determine the level of exchange fees whenever possible.[58] As discussed below, however, the Commission is concerned that because of the requirements for intermarket price protection, competitive forces, by themselves, are not, and will not be, enough to prevent fees from being charged that interfere with fair and

[45] *See* NMS Adopting Release, *supra* note 4, at 37502.

[46] *See supra* note 43 (defining NMS security).

[47] Section 6(b)(4) of the Exchange Act requires the rules of an exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities, while Section 6(b)(5) of the Exchange Act requires in part that its rules not be designed to permit unfair discrimination between customers, brokers, or dealers. Section 6(b)(5) also requires an exchange to have rules designed to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. In addition, Section 6(b)(1) of the Exchange Act requires that an exchange must have the capacity to be able to carry out the purposes of the Exchange Act. *See* 15 U.S.C. 78f(b)(4); 15 U.S.C. 78f(b)(5); 15 U.S.C. 78f(b)(1). Section 11A(a)(1)(C) of the Exchange Act provides that two of the objectives of a national market system are to assure the economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market. *See* 15 U.S.C. 78k–1(a)(1)(C).

[48] The requirements of Section 6(b)(5) of the Exchange Act apply to any rule of an exchange, and as such are not limited to access through members of an exchange to the quotations of that exchange.

[49] *See supra* notes 4–22 and accompanying text.

[50] *See* NMS Adopting Release, *supra* note 4, at 37540.

[51] *Id.* For example, the Commission preliminarily believes an exchange that charges a non-member broker-dealer that is registered as an options market maker on another exchange a higher fee than the fee charged to both member and non-member broker-dealers that also are not market makers on that exchange for obtaining access to its quotations would violate Rule 610(a), as proposed to be amended.

[52] *See supra* notes 4–7 and accompanying text.

[53] *See* NMS Adopting Release, *supra* note 4, at 37539. *See also supra* notes 20–22 and accompanying text.

[54] *See* 17 CFR 242.600(b)(62) and 17 CFR 242.600(b)(8).

[55] "Reserve size" generally means an undisplayed portion of an order. Once the displayed size of an order is executed against, the reserve size is used to refresh the market participant's displayed size. *See, e.g.,* NYSE Arca Rule 6.62(d)(3) and ISE Rule 2104(n).

[56] *See* NMS Adopting Release, *supra* note 4, at 37548.

[57] The Commission notes that, although fees are the most likely way in which an exchange could discriminate against non-members for access to its quote, the Commission's proposal would more broadly prohibit *any* unfairly discriminatory terms.

[58] *See* Securities Exchange Act Release Nos. 59039 (December 2, 2008), 73 FR 74770, 74781–82 (December 9, 2008) ("NYSE Arca Data Order") (stating in part that "[t]he Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.").

efficient access to an option exchange's displayed prices.[59] Accordingly, the Commission is proposing to impose a limit on the amount of fees that an exchange can impose (or permit to be imposed) for the execution of an order against the exchange's best bid and offer. This proposal also responds to market participants' concerns regarding access fees,[60] as discussed below.[61]

Each of the options exchanges currently charges market participants fees when incoming orders access their displayed quotations. Although these fees may have different names (*e.g.,* a "Take" fee versus a transaction fee), and may vary in amount based on the type of account from which the order is sent, these fees all have one thing in common—they are fees triggered by the execution of an incoming order against an order or quotation on that exchange.

In particular, on exchanges that use the "Broker Payment" fee model,[62] although orders executed on behalf of customer accounts may not be charged any transaction fees, orders executed on behalf of non-customer accounts are charged transaction fees.[63] In some cases, these fees may be substantial. For example, for options classes not included in the Minimum Quoting Increment Pilot Program, one exchange charges $0.50 per contract for electronically executed orders for the account of a broker dealer or firm,[64] while another exchange charges $0.45 per contract for electronically executed broker-dealer orders.[65]

In addition, on exchanges that use the "Make or Take" fee model,[66] an exchange charges "Take" fees to members that execute orders against that exchange's quotations. These exchanges then pass a substantial portion of that fee back as a rebate to the member that supplied the accessed liquidity (*i.e.,* market maker quotations or non-marketable limit orders). The "Take" fees charged by these exchanges also can be substantial. For example, for options classes in the Minimum Quoting Increment Pilot Program, one exchange charges $0.45 per contract when an order for the account of a non-customer (and $0.35 per contract when an order for the account of a customer) trades against liquidity on the exchange's book. The exchange then rebates $0.25 per contract to the member (or members) that represented the order (or orders) on its book that provided the liquidity to the incoming order.[67] Another exchange charges a $0.45 per-contract "Take" fee when an order in a Minimum Quoting Increment Pilot Program options class trades with liquidity on the exchange's book. This exchange then rebates $0.30 per contract to an exchange market maker that provided the liquidity to the incoming order and $0.25 per contract to the member that represented a broker-dealer or customer order that provided liquidity to the incoming order.[68]

The Commission believes that the benefits of intermarket price protection and more efficient linkages could be compromised if options exchanges charge substantial fees for accessing their best bids and offers. For this reason, the Commission preliminarily believes that a fee limitation is necessary to support the integrity of the price protection requirement under the Trade-Through Rules.[69] The Commission's views are informed by commenters that argue that a limit on fees for accessing quotations would support the integrity of the rules limiting trade-throughs because a fee limitation would prohibit individual exchanges from raising their fees substantially in an attempt to take improper advantage of protection against trade-throughs. In particular, commenters contend that, in the absence of a fee limit, some exchanges may take advantage of the requirement to protect displayed quotations by charging exorbitant fees to those required to access the exchange's quotations, which could compromise the fairness and efficiency of the NMS for trading standardized options.[70] Although the exchange charging the highest fees likely would be the last exchange to which orders would be routed, prices could not move to the next level until someone routed an order to take out the displayed price at such a high fee exchange. Thus, while exchanges would have significant incentives to compete to be near the top in order-routing priority, arguably there would be little incentive to avoid being the least-preferred exchange if fees were not limited.[71]

The proposed fee limitation is designed to preclude this business practice by limiting individual exchanges from having fee structures that take improper advantage of the required protection against trade-throughs and undermine the overall benefits of the new private routing regime. It also would preclude an options exchange from charging excessively high fees selectively to competitors.

[59] *See* NMS Adopting Release, *supra* note 4, at 37545 (concluding that imposing a fee limitation was necessary to support the integrity of the price protection requirement established to prevent trade-throughs: "[T]he adopted fee limitation is designed to preclude individual trading centers from raising their fees substantially in an attempt to take improper advantage of strengthened protection against trade-throughs and the adoption of a private linkage regime. In particular, the fee limitation is necessary to address "outlier" trading centers that otherwise might charge high fees to other market participants required to access their quotations by the Order Protection Rule.").

[60] These concerns, as noted above, have been raised by a petition for rulemaking to limit the "Take" fees that options exchanges may charge non-members to access quotations and comment letters in response to this petition and NYSE Arca's proposal to raise its "Take" fee. *See* Citadel Petition, *supra* note 34; *see also supra* note 37.

[61] *See infra* notes 70 and 79 and accompanying text.

[62] *See supra* notes 30–33 and accompanying text.

[63] A customer generally is understood to be a person that is not a broker-dealer. *See, e.g.,* ISE Rule 100(a)(38) (defining the term "public customer"). However, as noted above, some exchanges have begun to charge transaction fees to certain customers identified in exchange rules as "professionals." *See supra* note 30.

[64] *See* NYSE Arca Fee Schedule (available at *http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf*) (current as of January 8, 2010).

[65] *See* CBOE Fee Schedule (available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*) (current as of February 2, 2010).

[66] *See supra* note 27 and accompanying text.

[67] *See* Section 1 of Nasdaq Rule 7050 and The NASDAQ Options Market: Execution and Routing Fees (available at *http://www.nasdaqtrader.com/content/ProductsServices/PriceList/nasdaq_options_pricing.pdf*) (current as of January 4, 2010).

[68] *See* "Transaction Costs" Section of the NYSE Arca Fee Schedule (available at *http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf*) (current as of January 8, 2010). *See also supra* notes 35 and 36 and accompanying text.

[69] *See supra* notes 13 and 17–19 and accompanying text for a definition of "Trade-Through Rules."

[70] *See* Citadel Petition, *supra* note 34, at 4 (arguing that "Taker" fees are sustained by virtue of the regulatory obligations prohibiting trade-throughs, in that when an exchange is quoting alone at the NBBO, market participants cannot avoid the Taker fees imposed by such exchange, irrespective of how high such fees may be); Citadel Letter II, *supra* note 37, at 6 (arguing that if the Commission were to ban or limit the use of step-up mechanisms in the options markets, the need for an access fee cap would become essential); TD Ameritrade Letter, *supra* note 37, at 1 (arguing that Make or Take fees have the potential to create incentives for participants to post liquidity and lock markets to capture the rebate and that other options exchanges would have to increase their fees and rebates in order to defend their market share). *See also* Wolverine Letter, *supra* note 37, at 6 (asserting that, while a cap implemented as proposed by Citadel would reduce Take fees charged to *non-members* who may be forced to access "outlier" markets due to trade through obligations, *members* would still be forced to pay unrestricted fees); GETCO Letter, *supra* note 37, at 3 (stating that if the Commission does decide to place caps on access fees charged by exchanges that use the "Make or Take" fee model, it should also cap all-in access fees for traditional exchanges, *i.e.,* those that use the "Broker Payment" fee model, regardless of the type of market participant accessing the exchange's quotation).

[71] *See* NMS Adopting Release, *supra* note 4, at 37545.

The Commission notes that several exchanges have rules that allow—and encourage—their members to electronically "step up" and match a better-priced bid or offer available on another exchange—a "flash" functionality—rather than send orders to other exchanges for execution.[72] These exchanges stated that they implemented this "flash" functionality because of the high costs associated with routing an order to away exchanges to be executed, particularly one with a Make or Take fee model.[73]

The Commission separately has proposed changes to Rule 602 of Regulation NMS that may affect these electronic "step-up" mechanisms, if adopted.[74] There are structural differences between the listed options exchanges and the cash equity markets that commenters identified as making the use of "flash" orders on the options exchanges serve a different purpose. In particular, commenters stated that eliminating the ability of market participants on the options exchanges to "step up" to better prices on other exchanges through the use of "flash" orders could impose significant costs on retail options customers whose orders would be routed to other options exchanges because, in part, of the absence of any limits on the fees options exchanges may charge to access their quotations.[75]

The Commission also believes that for quotations to be fair and useful, there must be some limit on the extent to which the all-in price for those who access quotations can vary from the displayed price.[76] The wider the disparity in the level of fees among the different exchanges, the less useful and accurate are the displayed prices. For example, if two options exchanges displayed quotations to sell an option for $10.00 per contract, one exchange offer could be accessible for a total price of $10.00 per contract plus a $0.50 per contract access fee, while the second exchange might not charge any such access fee. What appeared in the consolidated data stream to be identical quotations in terms of all-in costs would in fact not be identical. Access fees tend to be highest when exchanges use them to fund substantial rebates to liquidity providers, rather than merely to compensate for agency services.[77] These concerns were also expressed by several commenters who argue that for quotations to be fair and useful, there must be some limit to the extent to which the displayed price can vary from the "all-in" price[78] of a quotation.[79] If exchanges were allowed to charge exorbitant fees and pass most of them through as rebates, the published quotations of such exchanges would not reliably indicate the all-in price actually available.

Section 11A(c)(1)(B) of the Exchange Act authorizes the Commission to adopt rules assuring the fairness and usefulness of quotation information. For quotations to be fair and useful, there must be some limit on the extent to which the all-in price for those who access quotations can vary from the displayed price. An access fee limit also creates more transparency in the cost of accessing quoted prices. Currently, there are so many different fees across options exchanges, across different categories of options participants, and across different product types, that it is not easy to estimate the total cost of executing against a quotation for a particular transaction. An access fee cap would provide clearer information on the maximum cost for accessing quoted prices. Consequently, the proposed fee limitation would further the statutory purposes of the Exchange Act by precluding the distortional effects of access fees.

The Commission preliminarily believes that to fully support the integrity of the price protection requirement in the Trade-Through Rules and to achieve the goals that an exchange's displayed quotations be fair and useful and reliably represent the all-in prices that are actually available to investors, the proposed fee limitation should apply to *any* fee, no matter what it is called,[80] charged to *any* person[81] for the execution of an incoming order against an options exchange's best bid and offer. As discussed above, the Commission believes that the benefits of intermarket price protection and more efficient linkages could be compromised if options exchanges charge substantial fees for accessing their best bids and offers. The proposed fee limitation is designed to preclude individual exchanges from having fee structures that take improper advantage of the required protection against trade-throughs and undermine the overall benefits of the new private routing regime. It also would preclude an options exchange from charging excessively high fees selectively to competitors. In this regard, the Commission preliminarily believes that limiting the proposed fee cap to apply to only one type of fee charged (for instance, only to "Take" fees), or limiting the proposed fee cap to fees charged only to certain persons (for example, only to non-members) by an options exchange for execution against

[72] *See, e.g.,* ISE Rule 803, Supplementary Material .02 and Securities Exchange Act Release Nos. 57551 (March 25, 2008), 73 FR 16917 (March 31, 2008) (SR–ISE–2008–28) and 58038 (June 26, 2008), 73 FR 38261 (July 3, 2008) (SR–ISE–2008–50). *See also* ISE Fee Schedule, *supra* note 32, at 3–4 (as an inducement to step-up and avoid routing to away markets, ISE waives the transaction fee for members when they execute against a public customer order that is exposed pursuant to ISE Rule 803, *i.e.,* ISE's step-up mechanism) (current as of January 8, 2010).

[73] *See, e.g.,* letters from William J. Brodsky, Chairman and Chief Executive Officer, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2009, at 2 (comment to Flash Order Proposal) ("CBOE Flash Letter"); Michael J. Simon, Secretary, ISE, to Elizabeth Murphy, Secretary, Commission, dated November 23, 2009 at 5 (comment to Flash Order Proposal) ("ISE Flash Letter"); Tony McCormick, CEO, BOX, to Elizabeth M. Murphy, Secretary, Commission, dated November 23, 2009, at 3 (comment to Flash Order Proposal). *See also* Securities Exchange Act Release Nos. 57551 (March 25, 2008), 73 FR at 16917 (March 31, 2008) (SR–ISE–2008–28) and 57937 (June 6, 2008), 73 FR 33865 (June 13, 2008) (SR–CBOE–2008–58) (relating to electronic exposure on HAL).

[74] *See* Flash Order Proposal, *supra* note 19.

[75] *See* SIFMA Flash Letter, *supra* note 39, at 5; Ameritrade Flash Letter, *supra* note 39, at 3; optionsXpress Flash Letter, *supra* note 39, at 6; and Citadel Letter II, *supra* note 39, at 6 (arguing that if the Commission were to ban or limit the use of step-up mechanisms in the options markets, the need for an access fee cap would become essential).

[76] *See* NMS Adopting Release, *supra* note 4, at 37545.

[77] *Id.* at 37544.

[78] The term "all-in" price is intended to capture the total costs for executing a trade. *See infra* note 90 and accompanying text.

[79] *See* BOX Letter, *supra* note 37, at 5–6 (stating its agreement with Citadel and the Commission that "[f]or quotations to be fair and useful, there must be some limit on the extent to which the true prices for those who access quotations can vary from the displayed price"); Citadel Petition, *supra* note 34, at 3–5 (arguing that markets employing a Make or Take fee model are charging excessive fees to obtain access to their quotations and, as a result, are causing distortions in such quotations, which should otherwise reliably represent the true prices actually available to investors.); NYSE Euronext Letter, *supra* note 37, at 3 (stating generally that they are in favor of rules that ensure the reasonableness of fees, similar to rate caps that were enacted in the equities markets in Regulation NMS); TD Ameritrade Letter, *supra* note 37, at 1–2; and Wolverine Letter, *supra* note 37, at 6 (asserting that unrestricted fees that members would have to pay would result in executions at prices materially different from the displayed quotations and, as a consequence, run contrary to the purposes behind the trade-through rules and the principles of best execution).

[80] *See* NYSE Euronext Letter, *supra* note 37, at 3 (stating that access fees should be addressed not as one model versus the other, but as a fee to access the market independent of the market structure that marketplace employs).

[81] *See* Wolverine Letter, *supra* note 37, at 6 (asserting that, while a proposed fee cap would reduce Take fees charged to non-members forced to access "outlier" markets at the NBBO due to trade-through obligations, members would still be forced to pay unrestricted fees) and GETCO Letter, *supra* note 37, at 3 (stating that if the Commission does decide to place caps on access fees charged by exchanges using the "Make or Take" fee model, it should also cap all-in access fees for traditional exchanges, regardless of the type of market participant accessing the exchange's quotation).

the exchange's best bid and offer would not fully achieve these objectives because it would not cover all fees that could be charged for access to the exchange's best quotation.

The Commission has received comments that the Make or Take fee structure exerts competitive pressure on the "traditional" fee structure where market makers pay brokers for order flow, and that imposing a cap on Take fees would limit the ability of exchanges that employ a Make or Take model to compete effectively with other exchanges that employ a Broker Payment model, to the detriment of investors.[82] The Commission supports the development of competing market models, as long as they are consistent with the requirements of the Exchange Act. An exchange could not, however, engage in conduct that is otherwise inconsistent with the requirements of the Exchange Act,[83] even if doing so would help that exchange to compete. As discussed above, the Commission preliminarily believes that the benefits of intermarket price protection and more efficient linkages could be compromised if options exchanges charge substantial fees for accessing their best bids and offers, and that a fee limitation is necessary to support the integrity of the price protection requirement under the Trade-Through Rules, but it requests comment on this issue.[84] The Commission also believes that for quotations to be fair and useful, there must be some limit on the extent to which the all-in price for those who access quotations can vary from the displayed price.[85] The Commission preliminarily believes that adopting an access fee limit of $0.30 per contract for option exchanges, regardless of their particular market structure, would not compromise the competitive viability of exchanges employing a Make or Take fee structure because it preliminarily believes that the proposed level of fee cap would provide those exchanges with sufficient flexibility to structure their fees and rebates to support their market model.[86] Although the Commission preliminarily believes that the proposed fee limit would continue to allow for competition among the options exchanges, it requests comment on this issue and comment on other ways to achieve the Commission's objectives.[87]

The Commission preliminarily believes that a limitation on access fees of $0.30 per contract (equal to $0.003 per share) would be a fair and appropriate solution. In the Commission's preliminary view, limiting access fees to $0.30 per contract would promote intermarket access, standardization of quotations, and the Commission's goals for an effective and efficient linkage between and among the options exchanges. The proposed fee limitation would place all options exchanges on a level playing field in terms of the fees they can charge for the execution of incoming options orders against their best bid and offer. Some exchanges might choose to charge lower fees, thereby increasing their ranking in the preferences of order routers; others might charge the full $0.30 per-contract fee and rebate a substantial portion to liquidity providers. The Commission preliminarily believes that competition would ultimately determine which strategy is most successful.

The Commission recognizes, however, that even though it is not proposing to prohibit an exchange from employing any particular market model, the proposed fee limitation may impact different market models in different ways. An exchange with a Make or Take fee model that currently charges a Take fee in excess of the proposed fee cap would take in less revenue per contract from a reduced Take fee, while an exchange with a Broker Payment fee model that charges a transaction fee in excess of the proposed fee cap would take in less revenue per contract from a reduced transaction fee. These reduced fees for accessing an exchange's best bid or offer, standing alone, might have an impact on the manner in which broker-dealers and other market participants, including the exchanges, route order flow. The exchange with the Make or Take fee model, however, might choose to recoup some of that revenue by reducing its Make rebate, which may have an impact on the quoting behavior of market participants that provide liquidity on that exchange. An exchange with a Broker Payment model might choose to recoup some of the revenue by amending other fees charged to its members, which might impact the order routing or other behavior of those members (and the members' customers), depending upon the type of fee change. Accordingly, although the Commission preliminarily believes that the proposed fee limit would allow for vigorous competition among the options exchanges, it requests comment on the impact of the proposed fee limit on the different exchanges' and market participants' behavior.[88]

The Commission is proposing to set a flat fee cap of $0.30 per contract (the equivalent of $0.003 per share). The Commission is not proposing to establish a cap for low-priced options based on a percentage of the options' price, similar to the existing fee cap of 0.3 percent of the quotation price per share for NMS stocks. The Commission's proposal is based on its preliminary view that the $0.30 per-contract level is consistent with the maximum fee limit for NMS stocks under Rule 610(c). The experience of the markets trading NMS stocks in recent years suggests that a fee cap of $0.30 per 100 shares did not prevent markets using a Make or Take fee model from competing effectively in a market where some participants engage in payment for order flow.[89] In addition, this access fee cap level would help ensure that the "all-in" fee[90] would be below the $1 minimum quoting increment[91] so that the quotations displayed in the NBBO indicate the best prices. For example, having a $0.30 cap[92] would help ensure that an offer of $2 is not inferior to an offer of $2.01 once access and other per-contract fees were added to the price. Stated another way, the Commission preliminarily believes that setting the proposed fee cap at $0.30 per contract would allow options exchanges flexibility to generate revenues from access fees while still providing the exchange the ability to continue to charge other fees, such as "licensing" fees charged by exchanges for executions in certain index

[82] *See* BOX Letter, *supra* note 37, at 2–3; IB Letter, *supra* note 37, at 2–3; and GETCO Letter, *supra* note 37, at 3.

[83] *See* 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[84] *See supra* note 69 and accompanying text.

[85] *See supra* note 76 and accompanying text. *See also* NMS Adopting Release, *supra* note 4, at 37545.

[86] *See infra* Section VIII.A.2 (discussing the impacts of the proposed amendments to Rules 610(a) and (c) on competition). *See also infra* notes 89 and 172 and accompanying text (noting that the experience of the markets trading NMS stocks in recent years suggests that a fee cap of $0.30 per 100 shares did not prevent markets using a Make or Take fee model from competing effectively in a market where some participants engage in payment for order flow).

[87] *See infra* Sections V (Request for Comment) and VIII.A.2 (discussing the impacts of the proposed amendments to Rules 610(a) and (c) on competition).

[88] *See infra* Sections V (Request for Comment) and VIII.A.2 (discussing the impacts of the proposed amendments to Rules 610(a) and (c) on competition).

[89] *See infra* note 172 and accompanying text.

[90] The "all in" fee for transactions in options contracts may include multiple charges such as "Take" fees or transaction fees, routing fees, and licensing fees. *See supra* note 78.

[91] Since every options quotation represents a cost equal to 100 times its price, a penny increment—the smallest possible increment for certain options—equals $1.00 in option cost.

[92] A $0.30 per-contract access fee is equal to a fee of $0.003 per underlying share.

options[93] or routing fees,[94] without exceeding the $1 minimum increment.

The Commission preliminarily believes that a flat $0.30 per-contract fee cap for all options would strike the appropriate balance between imposing a cap to carry out the objectives discussed above and providing options exchanges flexibility to compete with one another.[95] The Commission preliminarily does not believe that a cap for low-priced options should be based on a percentage of the quotation price as it is for low-priced NMS stocks. The Commission preliminarily believes that differences in the markets for NMS stocks and listed options merit this distinction. First, if an NMS stock is trading at a very low price, the access fee can become significant as a percentage of the total economic exposure. This result is less likely for listed options, given the leverage implicit in an option contract. For example, if an NMS stock is trading for $0.01 per share, so that an order for 100 shares represents $1 worth of stock, an access fee of $0.30 for 100 shares would represent thirty percent of the total economic position. On the other hand, an NMS stock priced at $10 per share could have a short-term out-of-the-money option priced at $0.01. If the Delta[96] of this option is 0.05, then one option contract would cost $1 but would give the investor exposure equivalent to an investment of $50 of the stock. An access fee of $0.30 per contract for the option would represent only six-tenths of one percent of the economic position.[97]

Second, the restriction on subpenny quoting in NMS stocks does not apply to stocks priced below $1.[98] Thus, for certain low-priced NMS stocks, an access fee of $0.003 per share could be larger than the minimum quoting increment, making it possible for an order to be routed to an exchange quoting a better price but ending up with an inferior all-in price after the access fee. For NMS stocks, the percentage fee cap for stocks priced below $1 helps to mitigate this concern. Because listed options are not currently quoted in subpenny increments, these concerns are not present, and, therefore, the Commission preliminarily believes it is unnecessary to establish a cap based on a percentage of the options' price for low-priced options. Further, if the Commission were to propose a percent-based fee cap for low-priced options, the access fee cap would be, in some cases, less than the amount of the "licensing" fees charged by exchanges for executions in certain index options.

Finally, a significant percentage of options contract trading volume is in lower priced options.[99] Thus, the Commission estimates that imposing a flat $0.30 per-contract cap, and not including a percentage fee cap for low-priced options similar to the existing fee cap of 0.3 percent of the quotation price per share for NMS stocks, would result in less potential revenue loss for options exchanges from the impact of the proposed fee cap and, therefore, possibly reduce the need for the options exchange to impose other fees on market participants.[100]

B. Terms of Proposed Rule 610(c)(2)

Under proposed Rule 610(c)(2), a national securities exchange would be prohibited from imposing, or permitting to be imposed, any fee or fees that exceeds or accumulates to more than $0.30 per contract for the execution of an order against any quotation in an option series that is the best bid or best offer of such national securities exchange. Thus, when triggered, the proposed fee limitation would apply to any order execution at the displayed price of the best bid or offer and would therefore encompass executions of orders against both the displayed size and any reserve size at the price of those quotations. Further, proposed Rule 610(c)(2) would apply to any fee based on the execution of an incoming order against an exchange's best bid or offer, such as a "Take" fee or other "transaction" fee charged by the exchange when an incoming order executes against the best bid or offer of the exchange. The Commission preliminarily believes that the proposed fee limitation would apply to other types of fees charged by an exchange to a member who represents an incoming order that trades against the exchange's best bid or offer.

For example, the proposed fee limitation would apply to fees charged by various exchanges for the execution of orders in certain options on indexes (called "licensing" or "index surcharge" or "royalty" fees) when the fee is charged for the execution of an incoming order against the exchange's best bid or offer. The proposed fee limitation also would apply to options regulatory fees ("ORF"), such as those that have been adopted by several exchanges.[101] For those exchanges that have adopted an ORF, the fee is charged on a per-contract basis and is assessed on each member for all options transactions executed or cleared by the member in a customer account. Because an ORF would constitute a fee for accessing the best bid or offer of an options exchange when such fee is assessed on a customer order that trades with the exchange's best bid or offer, the ORF would be covered by the proposed amendments to Rule 610(c)(2). So long as the fees are based on the execution of orders against the best bid or offer of the exchange, the proposed restriction in Rule 610(c)(2) would apply. Conversely, fees not triggered by the execution of orders against such quotations (*e.g.,* certain periodic fees

[93] These "licensing" fees generally do not exceed $0.22 per contract. *See, e.g.,* CBOE Fee Schedule (available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*) (current as of February 2, 2010); and NYSE Arca Fee Schedule (available at *http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf*) (current as of January 8, 2010).

[94] Fees charged by options exchanges for routing orders to execute on other exchanges range from $0.00 to $0.95 per contract. *See* NYSE Arca Fee Schedule (available at *http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf*) (current as of January 8, 2010); and CBOE Fee Schedule (available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*) (current as of March 16, 2010) (CBOE charges a $0.50 per contract fee for routing non-customer orders in addition to the customary CBOE execution charge, which for electronic orders for broker-dealers is $0.45 per contract).

[95] *See infra* Section VII.B.2 (discussing generally the costs and benefits of the proposal) and notes 179–183 and accompanying text (discussing the costs with respect to options exchanges that would need to amend their rules to comply with the access fee limitation as a result of proposed Rule 610(c)(2)).

[96] Delta is measured as the change in the option price divided by the change in the underlying asset price. *See* Guy Cohen, *Options Made Easy* (2d ed., Upper Saddle River: FT Prentice Hall 2005).

[97] A $0.30 per-contract access fee would be a more significant percentage of the option price as the option price decreases. For example, for an option priced at $0.01, a $0.30 per-contract access fee would be 30% of the total option price ($0.01 × 100 = $1 per contract, and $0.30 is 30% of $1). The Commission preliminarily believes, however, that a flat cap of $0.30, rather than a cap based on a percentage of the option price for low-priced options, strikes the appropriate balance, for the reasons discussed in this section. The Commission, however, requests comment on the issue. *See infra* Section V (Request for Comment).

[98] *See* Rule 612 of Regulation NMS, 17 CFR 242.612.

[99] Approximately 76% of the contract volume is in options priced at $3 or below, and approximately 48% of the contract volume is in options priced at $1 or below (these estimates are based on December 2009 volume data from OptionsMetrics).

[100] *See infra* notes 179–187 and accompanying text for a discussion of the estimated costs of the proposed fee cap on options exchanges.

[101] *See* Securities Exchange Act Release Nos. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (SR–CBOE–2008–105); 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR–Phlx–2009–100); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR–ISE–2009–105); and 61388 (January 20, 2010), 75 FR 4431 (January 27, 2010) (SR–BX–2010–001).

such as monthly or annual fees) would not be included.

The proposed fee limitation in Rule 610(c)(2) would apply to any fee charged directly by an options exchange. It would also limit any fee charged by a market participant, such as a market maker, that displays a quotation through the exchange's facilities. The Commission, however, understands that market participants in the options markets currently do not charge access fees. Nothing in proposed Rule 610(c)(2) would preclude an options exchange from taking action to limit fees beyond what would be required under the proposed rule, and such exchange would have flexibility in establishing its respective fee schedule to comply with proposed Rule 610(c)(2).

The proposed access fee limitation in Rule 610(c)(2) would apply only to quotations that market participants are required to access to comply with the Trade-Through Rules; it would not apply to depth of book quotations. By proposing to apply the fee cap only to the best bid or offer of an options exchange, the limitation is designed to have minimal impact on competition and individual business models while furthering the objectives of the Exchange Act by preserving the fairness and usefulness of quotations, and by providing support for the proper functioning of the Trade-Through Rules, as discussed above.[102]

Further, as the Commission noted in adopting current Rule 610(c), a market participant could intend to interact only with a quotation subject to the access fee cap in Rule 610(c) but in fact execute against a quotation not subject to the cap. For example, at the time a market participant routes an order to an exchange, it could be attempting to execute only against that exchange's best bid or offer, which would be subject to the proposed fee cap. By the time the order arrives at the exchange, the incoming order may, if a better priced bid or offer has been displayed at the exchange for a size smaller than the size of the incoming order, execute partially against the new best bid or offer and partially against the quotation that was previously the exchange's best bid or offer. If the exchange were to charge a fee higher than the access fee cap to the market participant accessing the previous best bid or offer, the Commission believes that such charge could undermine the purpose of the proposed access fee cap as discussed above. Therefore, the Commission believes that to meet the requirements of proposed Rule 610(c)(2), an exchange would have to ensure that it never charges a fee in excess of the cap when a market participant tries to access only the exchange's best bid or offer.[103]

The operation of this limitation would be based on quotations as they are displayed in the consolidated quotation stream. Thus, the exchange would be responsible for ensuring that any time lag between prices in its internal systems and its quotations in the consolidated quotation system do not cause fees to be charged that would violate the limitation of proposed Rule 610(c)(2). Compliance with this requirement obviously would not be a problem for exchanges that do not charge any fees in excess of the proposed cap. If an exchange were to choose to charge higher fees for access to its depth of book quotations,[104] the Commission does not believe the exchange could comply with the proposed Rule 610(c)(2) unless it provided a functionality that enables market participants to assure that they will never inadvertently be charged a fee in excess of the cap. For example, such an exchange could provide a "top-of-book only" or "limited-fee only" order functionality. By using this functionality, market participants themselves could assure that they were never required to pay a fee in excess of the levels proposed in Rule 610(c)(2).[105] Further, for similar reasons, the proposed access fee limitation in Rule 610(c)(2) would apply to an exchange's non-displayed quotations in listed options that are priced better than the exchange's displayed best bid or offer. Specifically, if an exchange had an order type that allowed an order to be entered at a price that is not displayed but is available for execution, the proposed fee limitation would apply to an execution against that non-displayed price.[106]

C. Payment for Order Flow

In a traditional payment for order flow arrangement in the options market, a specialist or market maker offers cash and non-cash inducements to brokers that direct orders to the specialist or market maker. The specialist or market maker is willing to pay firms for this order flow because it knows that it will be able to trade with a portion of such orders due to specialist and market maker guarantees provided by the exchanges.[107] In addition, some exchanges have adopted fees on market makers to facilitate their members' payment for order flow.[108] Typically, the exchange charges each market maker a fee for trading with customer orders on the exchange. The exchange then pools the proceeds from such fees and allows specialists and/or market makers to use such funds to pay for order flow.[109]

Several commenters argue that, if the Commission were to limit "Take" fees, it also should limit fees associated with payment for order flow arrangements.[110]

[102] *See* NMS Adopting Release, *supra* note 4, at 37546.

[103] This is consistent with the approach in Regulation NMS. *Id.*

[104] The Commission is not aware of any options exchange that charges differential fees for accessing depth-of-book quotations, but requests comment on the issue.

[105] The existing access fee cap for NMS stocks operates in this same manner. *See id.*

[106] *See, e.g.,* Chapter VI, Sections 6 and 7 of the NOM Rules governing NOM's price improving order type. "Price Improving Orders" are defined under the NOM Rules as orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent, and those Price Improving Orders that are available for display must be displayed at the minimum price variation in that security and rounded up for sell orders and rounded down for buy orders. *See* Chapter VI, Section 1(e)(6) of the NOM Rules (defining Price Improving Orders).

[107] *See, e.g.,* CBOE Rule 8.13 and ISE Rule 713.

[108] *See, e.g.,* Securities Exchange Release Nos. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex–2003–50) (immediately effective proposed rule change to reinstate marketing fee to raise revenue for Amex specialists to compete for order flow); 47948 (May 30, 2003), 68 FR 33749 (June 5, 2003) (SR–CBOE–2003–19) (immediately effective proposed rule change to reinstate marketing fee to compete for order flow); 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR–Phlx–2002–75) (immediately effective proposed rule change to reinstate marketing fee to compete for order flow); 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR–ISE–00–10) (order approving ISE's payment for order flow program); 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000) (SR–PCX–00–30) (immediately effective proposed rule change to adopt a payment for order flow fee); 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000) (SR–Amex–00–38) (immediately effective proposed rule change to establish new marketing fee to raise revenue for Amex specialists to compete for order flow); 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77) (immediately effective proposed rule change to adopt a payment for order flow fee); and 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000) (SR–CBOE–00–28) (immediately effective proposed rule change to establish new CBOE marketing fee to raise revenue that could be used by CBOE market makers to pay for order flow).

[109] For example, NYSE Amex LLC ("NYSE Amex") imposes a $0.65 per-contract marketing fee for non-Minimum Quoting Increment Pilot Program classes and a $0.25 per-contract marketing fee for Minimum Quoting Increment Pilot Program classes where a market maker trades against an incoming electronic customer order. *See* NYSE Amex Options Fee Schedule (available at *http://www.nyse.com/pdfs/NYSE_Amex_Options_Fee_Schedule01.04.10.pdf*) (current as of January 4, 2010).

[110] *See* BOX Letter, *supra* note 37, at 2 (stating its belief that, if the Commission does decide to enact fee caps, a cap on Take fees is acceptable only to the extent that other options exchanges are willing to accept a comparable limit on payments and fees

Continued

This view is premised on the notion set forth by several commenters that payment for order flow fees affect quoted prices, and thus executions received by investors, because market makers that have to pay for order flow will reflect that cost in their quoted prices.[111] In this regard, one commenter petitioned the Commission to impose a cap at the same level on private payment for order flow arrangements between market makers and agency brokerage firms as any cap it imposes on "Take" fees.[112] Another commenter argues that fees relating to "accessing" quotations can be characterized broadly to include exchange fees used to fund members' payment for order flow.[113]

The Commission agrees with commenters that payment for order flow fees, among other costs, affect quoted prices. However, the Commission is not proposing to specifically limit payment for order flow, nor the exchange fees imposed on market makers to fund members' payment for order flow. Instead, the Commission is proposing to limit the amount of fees that an exchange can impose, or permit to be imposed, for access to the best bid and offer of the exchange. The Commission preliminarily does not believe that an exchange payment for order flow fee on members is an access fee, *i.e.,* it is not a fee imposed for executing against an exchange's quotation. The basis for the proposal, as discussed at length above,[114] is to (1) provide for fair and efficient access to displayed quotations to support the integrity of the price protection requirement contained in the Trade-Through Rules, and (2) further the objective that quotations be fair and useful by limiting the extent to which the all-in price can vary from the displayed price.

The Commission preliminarily believes these objectives can be achieved without limiting payment for order flow fees. Payment for order flow is when a market maker offers cash and non-cash inducements to brokers that direct orders to the market maker. In addition, some exchanges impose a fee on market makers to facilitate their members' payment for order flow.[115] Payment for order flow fees are not fees imposed by an exchange on incoming orders for executing against an exchange's quotations. Therefore, the Commission preliminarily does not believe that payment for order flow fees directly impact the ability of a market participant to access an exchange's best priced displayed quotations, and therefore does not believe that limiting payment for order flow fees is necessary to achieve the objectives of the proposed fee cap—to provide for fair and efficient access to displayed quotations and that displayed quotations be fair and useful.

However, if a market maker is charged a payment for order flow fee by an exchange when the market maker is accessing the best bid or offer of the exchange, then the proposed fee limitation would apply to that fee because it would be a fee for the execution of an order against the best bid or offer of the exchange. A payment for order flow fee would be a fee for accessing an exchange's best bid or offer if, for example, a market maker's quote traded against a resting customer limit order that is the best bid or offer of the exchange. Similarly, a payment for order flow fee would be a fee for accessing an exchange's best bid or offer if a market maker sent an order in a class to which it is not appointed as a market maker, and that order trades against a customer order resting on the exchange's limit order book that is the best bid or offer of the exchange. In sum, if the rules of the exchange provide that the market maker would pay a payment for order flow fee for executing against the resting customer order that is the best bid or best offer of the exchange, that fee would be covered by proposed Rule 610(c)(2).

On several occasions, the Commission has recognized that the anticipation of payment for order flow raises a potential conflict of interest for brokers handling customer orders, and that reliance by market centers on the strategy of simply paying money to attract orders may present a threat to aggressive quotation competition.[116] At the same time, the Commission has stated that payment for order flow is not necessarily inconsistent with a broker's duty of best execution, so long as appropriate measures are taken to ensure that that duty is, in fact, met.[117] The Commission further acknowledges the broader concern that payment for order flow may result in less aggressive competition for order flow on the basis of price,[118] such as through displaying aggressively-priced quotations or offering opportunities for price improvement. However, the Commission has stated that singling out and banning only one particular form of such payment—for example, payment made possible by an exchange through the collection of fees from its market makers—would scarcely address the issue on the larger scale.[119]

Further, as noted above, the Commission believes that market forces and the dynamics of competition should determine exchange fees, to the extent practicable.[120] Payment for order flow fees generally are charged by exchanges to market makers when they execute against a customer order. If a market maker does not want to pay this fee, the market maker is free to give up its appointment as a market maker on that exchange and become a liquidity provider on another exchange with a more attractive fee structure. For instance, an exchange may set a fee to collect funds for members' payment for order flow at such a level that a market maker may determine it can no longer effectively compete for order flow based on its quotations, which must incorporate the costs of all fees.[121] The market maker may then make the determination to become a liquidity provider on another exchange where it is able to compete more effectively based on the price of its quotations. Similarly, an exchange may determine to charge any market participant a fee for providing liquidity on its exchange.[122] If a market participant did not want to pay this fee, it could choose to send its non-marketable limit order to another options exchange with a more

associated with exchange payment for order flow) and Wolverine Letter, *supra* note 37, at 7 (stating that any cap on make-take fees should be made in conjunction with a commensurate cap on payment for order flow fees).

[111] *See* BOX Letter, *supra* note 37, at 4; GETCO Letter, *supra* note 37, at 3–6; IB Letter, *supra* note 37, at 2–3 and 6–7; and Wolverine Letter, *supra* note 37, at 4.

[112] *See* IB Letter, *supra* note 37, at 1 and 6.

[113] *See* Wolverine Letter, *supra* note 37, at 3.

[114] *See supra* notes 58–100 and accompanying text.

[115] *See supra* notes 107–109 and accompanying text.

[116] *See, e.g.,* Options Concept Release, *supra* note 21, at 6128–6130.

[117] *See* Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR–ISE–00–10) (citing to Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000)); *see also* Options Concept Release, *supra* note 21, at 6128–6129.

[118] *See* Securities Exchange Act Release No. 43833, *supra* note 117, at 7825.

[119] *Id.*

[120] *See supra* note 58.

[121] This would assume that the amount of the payment for order flow fee impacts the price at which the market maker is willing to quote.

[122] *See, e.g.,* BOX Fee Schedule, Section 7 (available at *http://www.bostonoptions.com/pdf/BOX_Fee_Schedule.pdf*) (current as of January 2010) (imposing a $0.55 fee for adding liquidity in Non-Penny Classes, a $0.15 fee for adding liquidity in Penny Pilot Classes except SPY, QQQQ, and IWM, and a $0.05 fee for adding liquidity in SPY, QQQQ, and IWM). In its filing imposing this fee, BOX stated that the changes proposed are in response to various "Payment for Order Flow" programs currently in operation on other options exchanges. *See* Securities Exchange Act Release No. 60934 (November 4, 2009), 74 FR 58358 (November 12, 2009).

attractive fee structure. The Commission therefore preliminarily believes that competition among the various options exchanges, and the different market models, will act to restrict payment for order flow and other fees for providing liquidity.[123]

IV. Technical Amendments to Rule 610

The Commission is proposing to amend Rule 610(c) to reflect that Nasdaq is now registered as a national securities exchange under Section 6(a) of the Exchange Act.[124] The current rule's prohibition on a trading center imposing, or permitting to be imposed, fees in excess of the stated limits applies to the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is "the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. in an NMS stock." Given Nasdaq's current status as a registered national securities exchange, there no longer is a need to separately reference Nasdaq's best bid or best offer. Therefore, the Commission is proposing to amend Rule 610(c)(1) to simplify the relevant language to refer only to any other quotation of the trading center that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association in an NMS stock.[125]

The Commission also is proposing to make technical changes to Rule 610(c) to reflect the addition of proposed Rule 610(c)(2) that would apply to listed options.

[123] The Commission also notes that the exchanges generally lowered the level of payment for order flow fees charged to their market makers in classes included in the Minimum Quoting Increment Pilot Program. *See* Securities Exchange Act Release Nos. Securities Exchange Act Release Nos. 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR–Amex–2007–16); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); 55223 (February 1, 2007) 72 FR 6306 (February 9, 2007) (SR-NYSEArca–2007–07); and 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05). As noted above, currently approximately 69.5 percent of trading volume is in classes included in the Minimum Quoting Increment Pilot Program where trading interest can be represented in the quote in one-cent increments, and by August 2, 2010, 363 classes will be included in the Minimum Quoting Increment Pilot Program, representing approximately 88.1 percent of trading volume during February 2010. *See supra* note 29 and accompanying text.

[124] *See* 15 U.S.C. 78f(a); *see also* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[125] *See* proposed Rule 610(c)(1).

V. Request for Comments

The Commission requests the views of commenters on all aspects of this proposal, including whether the proposal is consistent with the provisions of the Exchange Act. In particular, the Commission requests comment on the following:

1. Rule 610(a) currently prohibits the imposition of unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the exchange to quotations in NMS stocks. The Commission requests comment on its proposal to extend this prohibition to include access to quotations of listed options. The Commission further requests comment on whether the Commission's rules also should prohibit unfairly discriminatory terms for other services offered by exchanges. For example, should the Commission rule be expanded to cover exchange transaction fees generally, even those transaction fees that are not based on accessing the exchange's quotations?

2. Rule 610(a) as proposed to be amended would prohibit an exchange from charging higher "Take" fees in certain options classes to non-directed customers than to directed customers. Do commenters agree that such a fee differential should be prohibited by the proposed amendments to Rule 610(a)?

3. As discussed above, the Commission is proposing to limit fees charged for accessing the best bid and offer in a listed option, as proposed in Rule 610(c)(2), to support fair and efficient access to an exchange's quotations, and to provide greater transparency in the quoted price. To what extent is this action necessary to achieve these objectives? To what extent do competitive forces in the options markets currently act, or will continue to act, to keep fees such as access fees at a level that does not impede fair and efficient access to an exchange's quotations, or impede the transparency of the quoted price? Does the existence of flash functionality at some of the exchanges that trade listed options have an impact on the level at which options exchanges set access fees?[126]

4. The markets for trading NMS stocks are similar in certain ways to the markets for trading listed options, and in other ways are different. The Commission requests comment on whether, and how, those similarities and differences should impact a decision to apply an access fee cap, as proposed, in the options markets. For example, both NMS stocks and listed options can be traded on multiple markets, and broker-dealers that trade NMS stock and listed options have a duty of best execution with respect to each. Likewise, both markets have prohibitions on trading-through. How, if at all, do these similarities support, or not, the proposed fee cap for accessing an options exchange's best bid and offer?

Unlike NMS stocks, listed options are only traded on exchanges, and not in the over-the-counter ("OTC") market. It can be argued that one result of the lack of OTC trading in listed options is that more "good" order flow (that is, order flow relatively uninformed about future prices) reaches the options exchanges than the exchanges that trade NMS stocks.[127] It can be further argued that because quotations must be available for execution to all incoming order flow—both informed and uninformed—the quotations must be wider than the prices that could be offered exclusively to uninformed order flow.[128] In addition, it is argued that investors in listed options depend upon the liquidity supplied by professional liquidity providers to a greater extent than in the market for NMS stocks.[129] Further, some market participants state that liquidity providers price options differently than liquidity providers price NMS stocks, pursuant to pricing models or algorithms rather than based on the inherent value of the issuer.[130] Do commenters agree with these statements? How, if at all, do these differences mitigate for or against applying the proposed fee cap for accessing an options exchange's best bid and offer? Do these differences impact the incentives for liquidity providers to quote aggressively, or the competitiveness of an options exchange's fees, differently than a

[126] The Commission separately has proposed changes to Rule 602 of Regulation NMS that, if adopted, would affect flash functionality in the listed options markets, raising concerns about access to order information and incentives for market participants to display their trading interest publicly. *See* Flash Order Proposal, *supra* note 19, and *supra* notes 72–75 and accompanying text.

[127] *See* ISE Flash Letter, *supra* note 73, Appendix B at 2.

[128] *See* Letter from Larry Harris, Professor of Finance and Business Economics, USC Marshall School of Business, dated December 4, 2009 ("Harris Letter") at 4. Prices that could be offered exclusively to uninformed order flow could incorporate tighter spreads because the market maker does not need to protect itself from adverse selection by informed traders by building in a wider spread.

[129] *See* CBOE Flash Letter, *supra* note 73, at 1 and 10; ISE Flash Letter, *supra* note 73, at 9. *See also* Letter from Peter Bottini, EVP Trading and Customer Service, and Hillary Victor, Associate General Counsel, optionsXpress, Inc. ("optionsXpress") dated November 25, 2009 ("optionsXpress Letter") at 3.

[130] *See* ISE Flash Letter, *supra* note 73, at 7–8.

market participant or market trading NMS stocks?

5. The Commission requests comment on the different sources of revenue available to options exchanges, and any differences between those sources available to options exchanges and exchanges that trade NMS stocks. For example, exchanges that have in place rules for listing NMS stocks have the ability to charge listing fees to issuers for listing on their market. Does the amount of revenue received from market data differ significantly for options exchanges versus exchanges that trade NMS stocks? How, if at all, should any differences in sources of revenue for options exchanges versus exchanges that trade NMS stocks mitigate for or against applying the proposed fee cap for accessing an options exchange's best bid and offer? How, if at all, should any differences in sources of revenue for options exchanges versus exchanges that trade NMS stocks impact a determination as to the level of an access fee cap to be imposed?

6. If commenters do not believe that the Commission should limit fees charged for accessing the best bid and offer in a listed option, as proposed in Rule 610(c)(2), do commenters believe that the Commission should take any action with respect to fees charged, or permitted to be charged, by an options exchange for executing against the exchange's best bid or offer in a listed option? If not, please explain why not. If so, please explain why, and what alternative action the Commission should take. For example, would commenters support action by the Commission to cap all fees for executing an options order, including access fees, routing fees, and any other per contract fee, at the minimum pricing variation for the option? Would this alternative achieve the objectives of the proposed fee cap, as discussed above in Section III? Would this alternative approach provide more or less flexibility to exchanges than an access fee cap as proposed in Rule 610(c)(2)?

7. The Commission is proposing a flat fee cap of $0.30 per contract. As discussed above, the Commission's proposal is based on several factors. First, the $0.30 per-contract level is consistent with the maximum fee limit for NMS stocks under Rule 610(c). Experience of the markets trading NMS stocks in recent years suggests that a fee cap of $0.30 per 100 shares did not prevent markets using a Make or Take fee model from competing effectively in a market where some participants engage in payment for order flow.[131] In addition, this access fee cap level would help ensure that the "all-in" fee would be below the $1 minimum quoting increment. Further, the Commission preliminarily believes that setting the proposed fee cap at $0.30 per contract would allow options exchanges flexibility to generate revenues from access fees while still providing the exchange the ability to continue to charge other fees, such as "licensing" fees charged by exchanges for executions in certain index options or routing fees, without exceeding the $1 minimum increment. The Commission requests comment on this analysis. If commenters agree with this approach and threshold, please explain why; if commenters do not agree, please explain why not.

8. If a commenter believes that a fee cap for accessing the best priced quotation in listed options is necessary and appropriate, the Commission requests comment as to what level such a cap should be set, and what considerations should be part of any analysis as to the level of a fee cap. One commenter states that while 30% of the minimum quoting increment is a reasonable access fee cap for the equity markets, which allow internalization as a defense to excessive access fees, a lower cap is needed in the options markets because internalization is not permitted, and suggests a cap of $0.20 per contract.[132] Other commenters argue that any fee cap should not be lower than $0.99 per contract (for options quoted in one-cent increments) because a customer is still better off paying a $0.99 per contract fee to execute against a price that is better by $1.00 per contract.[133] The Commission requests commenters' views on each of these alternative levels, and the reasoning supporting them.

9. One of the bases for the proposed access fee cap is to support the requirements of the Trade-Through Rules and the duty of best execution. It could be argued that because investors will not be worse off accessing a price that is better by $1 per contract as long as the fee to access that quotation is not more than $0.99 per contract,[134] any fee cap should not be lower than $0.99 per contract to support the operation of the Trade-Through Rules. Do commenters agree with this view? Should the fact that there is no guarantee that an order sent to another exchange to access a better displayed price will actually obtain an execution on the away exchange impact the level at which an access fee is capped? Should there be the possibility for more than a one-cent per contract advantage (which is what would result with an access fee of $0.99 per contract) to require market participants to attempt to access quotations in listed options on other exchanges that are better priced by $1 per contract? What percent of the time do orders sent to another exchange to access a better displayed price actually obtain an execution on the away exchange? What other considerations, if any, should the Commission take into account when determining the level of any fee cap imposed for access to an exchange's best bid or offer in a listed option?

10. As discussed above in Question 4, the markets for trading NMS stocks are similar in certain ways to the markets for trading listed options, and in other ways are different. The Commission requests comment on whether, and how, those similarities and differences should impact the *level* at which an access fee cap should be set for access to an options exchange's best bid and offer. Should any limit on access fees that can be imposed by the options exchanges be different than or the same as the existing limit on access fees in the market for NMS stocks? If different, please explain whether an access fee limit in the options exchanges should be higher or lower than the limit for NMS stocks, and the basis for the difference. If the same, please explain why, with specificity.

11. As discussed above, the Commission has proposed a flat access fee cap of $0.30 per contract, and not proposed a percentage fee limit for low-priced options, similar to the 0.3 percent of the price per share limit for NMS stocks priced under $1.[135] The Commission preliminarily believes that differences in the markets for NMS stocks and listed options merit this distinction. Specifically, when an NMS stock is trading at a very low price, the access fee can become significant as a percentage of the total economic exposure. This result is less likely for listed options, given the leverage implicit in an option contract.[136] In

[131] *See infra* note 172 and accompanying text.

[132] *See* Citadel Petition, *supra* note 34, at 10.

[133] *See* BOX Letter, *supra* note 37, at 5 (stating in part that if the Commission were to impose a fee limit that it should be $0.01 per contract less than the standard trading increment of the class); and IB Letter, *supra* note 37, at 4–5 (opposing any fee cap less than $0.99 per contract for a contract quoted in pennies).

[134] *Id.*

[135] *See supra* notes 96–100 and accompanying text.

[136] For example, if an NMS stock is trading for $0.01 per share, so that an order for 100 shares represents $1 worth of stock, an access fee of $0.30 for 100 shares would represent thirty percent of the total economic position. On the other hand, an NMS stock priced at $10 per share could have a

addition, the restriction on subpenny quoting in NMS stocks does not apply to stocks priced below $1. Thus, for certain low-priced NMS stocks, an access fee of $0.003 per share could be larger than the minimum quoting increment, making it possible for an order to be routed to an exchange quoting a better price but ending up with an inferior all-in price after the access fee. For NMS stocks, the percentage fee cap for stocks priced below $1 helps to mitigate this concern. Because listed options are not currently quoted in subpenny increments, these concerns are not present, and, therefore, the Commission preliminarily believes it is unnecessary to establish a cap based on a percentage of the options' price for low-priced options.[137]

The Commission requests comment on its analysis, and whether the proposed access fee limit should have a percentage fee limit for low-priced options, similar to the 0.3 percent of the price per share for NMS stocks priced under $1, and on its reasoning for not proposing such a percent-based limit for low-priced options. If commenters believe that the proposed access fee cap should be different for low-priced options, please explain with specificity why, and what the breakpoint should be, and why.

12. As discussed above, one of the bases for the proposed fee cap is to ensure the fairness and usefulness of displayed quotations, and to enhance transparency of displayed quotations. The Commission requests comment as to whether there is a need to promote transparency of the displayed quotations in listed options beyond the status quo.

13. If commenters believe that, to support the transparency of displayed quotations, there should be a limit as to how far away from the quoted price the amount that the investor would pay (for a buy) or receive (for a sell) inclusive of access fees should be, what factors should go into determining the allowable deviation? For example, should access fees be limited to one increment less than the minimum quoting increment (for example, $0.99 per contract in an option that has a one-cent minimum increment), such that the investor would always get a better execution price net of access fees when the quoted price is better by one minimum quoting increment? Should the access fees be limited to less than half of the minimum quoting increment (for example, $0.50 per contract in an option that has a one-cent minimum increment), so that the net price to investors inclusive of access fees is closer to the displayed price than the next worse price? Should the allowable access fees be some other amount?

14. The Commission requests comment on whether there are alternative methods other than the proposed access fee cap to achieve the objective of greater transparency in displayed quotations of listed options.

15. The Commission requests comment on the types of fees that should be covered by an access fee limitation. For example, the Commission believes that proposed Rule 610(c)(2) would apply to fees charged for the execution of options on certain indexes (so-called "licensing fees," "royalty fees," or "index surcharge fees"). Please state why it would be appropriate or not appropriate to apply the proposed fee limitation to licensing fees. What would be the impact on these fees if the proposed fee limitation did apply? What would be the impact on market quality if the proposed fee limitation applied to licensing fees?

16. The Commission requests comment on its preliminary view of the applicability of the proposal to an ORF.[138] The Commission also requests comment on any potential impact of the proposal on an ORF.

17. As proposed, the fee limitation in Rule 610(c)(2) would apply to fees charged for executions of orders in all listed options, including those that are listed and traded only on one options exchange ("non-multiply listed options"). Do commenters agree that Rule 610(c)(2) should apply to trades in such options? Or should any fee cap apply only to multiply listed options? Or should the proposed fee limitation in Rule 610(c)(2) be set at a different level for non-multiply listed options? If commenters believe the proposed fee limitation in Rule 610(c)(2) should not apply to fees charged for executions of orders in non-multiply listed options, please explain why and how "non-multiply listed options" should be defined.

18. As proposed, the fee limitation in Rule 610(c)(2) would apply to fees charged for the execution of orders in FLEX options and to the execution of complex orders.[139] Do commenters agree that Rule 610(c)(2) should apply to such transactions? If so, should the proposed fee limitation in Rule 610(c)(2) be set at a different level for orders in FLEX options or complex orders? If commenters believe the proposed fee limitation in Rule 610(c)(2) should not apply to fees charged for the execution of orders in FLEX options or to the execution of complex orders, please explain why.

19. What would be the impact of the proposed access fee cap in Rule 610(c) on market quality? In particular, the Commission encourages submission of any data that quantifies potential benefits or harm.

20. Do commenters believe that limiting access fees as proposed in Rule 610(c) would have a disparate effect on one type of market model over another? If not, why not? If so, how? And if so, how would the disparate effect impact the ability of exchanges with different market models to compete with each other? The Commission further requests comment as to whether, and if so how, the quoting, order routing or other behavior of market participants would change if the proposed fee cap were in place.

For example, as discussed above, several commenters express concern with limiting Take fees without also limiting payment for order flow fees.[140] They argue that market participants on Make or Take exchange quote more aggressively because of the Make rebates paid for providing liquidity that are funded by the Take fees charged to liquidity takers.[141] Exchanges with Make or Take fee models thus provide direct competition based on aggressive quoting to exchanges with payment for

short-term out-of-the-money option priced at $0.01. If the Delta of this option is 0.05, then one option contract would cost $1 but would give the investor exposure equivalent to an investment of $50 of the stock. An access fee of $0.30 per contract for the option would only represent six-tenths of one percent of the economic position.

[137] Commission staff also estimates that imposing a flat $0.30 per-contract cap, and not including a percentage fee cap for low-priced options similar to the existing fee cap of 0.3 percent of the quotation price per share for NMS stocks, would result in less potential revenue loss for options exchanges from the impact of the proposed fee cap. *See supra* notes 99–100 and accompanying text.

[138] *See supra* note 101 and accompanying text.

[139] A complex order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. *See, e.g.,* ISE Rule 722. *See also, e.g.,* CBOE Rule 6.53C (describing a complex order generally as any of the following orders for the same account, including Spread Orders, Straddle Orders, Strangle Orders, Combination Orders, Ratio Orders, Butterfly Spread Orders, Box/Roll Spread Orders, Collar Orders and Risk Reversals, Conversions and Reversals, and Stock-Option Orders). A flex option is a customized option contract that provides the ability to customize key contract terms, like exercise price, exercise styles and expiration dates. *See, e.g., http://www.cboe.com/Institutional/FLEX.aspx;* CBOE Rule 24A.4.

[140] *See supra* note 82 and accompanying text.

[141] *See* BOX Letter, *supra* note 37, at 3; IB Letter, *supra* note 37, at 2–3. *See also* ISE Flash Letter, *supra* note 73, at 8; and Harris Letter, *supra* note 128, at 2.

order flow models because a market maker on a payment for order flow exchange must match the better prices on the Make or Take exchange, or route to the Make or Take exchange and pay the Take fee.[142] Limiting the amount of a Take fee a Make or Take exchange can charge will directly impact the amount of a Make rebate the exchange can pay to liquidity providers, which in turn will impact a liquidity provider's incentive to quote aggressively, thus limiting the Make or Take exchange's ability to compete with an exchange with a payment for order flow fee model through aggressive quoting.[143]

The Commission requests comment on whether commenters agree with this view. Do commenters agree that liquidity providers on Make or Take exchanges quote more aggressively than liquidity providers on other exchanges once their displayed quotations are adjusted to account for the effect of access fees on the "all in" cost to the investor? If so, are liquidity rebates the only reason that liquidity providers on Make or Take exchanges are willing to quote aggressively? For example, does the absence of order flow captured by payments to routing brokers or the absence of guaranteed allocations for liquidity providers also contribute significantly to aggressive quoting by liquidity providers on Make or Take exchanges?

Do commenters believe that limiting Take fees, which are a type of access fee, would result in reduced Make rebates paid for supplying liquidity? If so, what are commenters views as to how much Make rebates would be reduced in reaction to reduced Take fees? What would be the impact, if any, of reduced Make rebates on market participant incentives to aggressively quote on exchanges employing a Make or Take fee model? To the extent that commenters believe that limiting Take fees would result in reduced Make rebates paid for supplying liquidity, and that reduced Make rebates would adversely impact market participant incentives to aggressively quote on exchanges employing a Make or Take fee model, what impact would this have on those market participants supplying liquidity? Or on investors taking liquidity?

The Commission requests comment as to the impact of the proposed fee cap on the ability of an exchange with a Make or Take fee model to compete with exchanges with a payment for order flow model. For example, to the extent that commenters believe that limiting Take fees would result in reduced Make rebates paid for supplying liquidity, and that reduced Make rebates would adversely impact market participant incentives to aggressively quote on exchanges employing a Make or Take fee model, do commenters believe that a $0.30 per contract access fee cap, as proposed, would allow Make or Take exchanges to pay a large enough rebate to continue to incent market participants to quote aggressively, and thus compete more aggressively on price with payment for order flow exchanges?

21. The Commission notes the distinction between "aggressive" quotations and "matching" quotations. Aggressive quotations are price leaders and help narrow the NBBO spread (by either improving the NBBO or remaining alone at the NBBO). Matching quotations follow prices set elsewhere and add size to the NBBO, but do not narrow the spread. To what extent do liquidity providers on payment for order flow options exchanges quote aggressively rather than merely matching the NBBO set elsewhere? Would applying an access fee cap, as proposed, lead market participants on one or both types of options exchange to quote more aggressively and thereby narrow NBBO spreads for listed options? Or would applying an access fee cap lead market participants on one or both types of options exchanges to quote less aggressively? Does your answer change depending on whether the Commission adopts a ban on flash functionality in the options markets?[144]

22. As noted above, the Commission recognizes that even though it is not proposing to prohibit an exchange from employing any particular market model, the proposed fee limitation may impact different market models in different ways. An exchange with either a Make or Take fee model that charges a Take fee in excess of the proposed fee cap, or an exchange with a Broker Payment fee model that charges a transaction fee in excess of the proposed fee cap, would take in less revenue per contract from a reduced Take or transaction fee, as applicable. These reduced fees for accessing an exchange's best bid or offer, standing alone, might have an impact on the manner in which broker-dealers and other market participants, including the exchanges, route order flow. The exchange with the Make or Take fee model, however, might choose to recoup some of that revenue by reducing its Make rebate, which may have an impact on the quoting behavior of market participants that provide liquidity on that exchange. An exchange with a Broker Payment model might choose to recoup some of the revenue by amending other fees charged to its members, which might impact the order routing or other behavior of those members (and the members' customers), depending upon the type of fee change.

The Commission requests comment on how the exchanges might reallocate their sources of revenue, if at all, in response to the access fee limit in proposed Rule 610(c)(2). What changes, if any, to fees other than access fees imposed by, or rebates paid by, exchanges would the options exchanges make in response to being required to limit access fees as proposed? Would any potential disparate impact from these fees changes across exchange fee models lead to harm to investors? If so, please explain. How, if at all, would potential changes to fees other than access fees imposed on members by exchanges impact the behavior of particular categories of market participants, such as retail investors, market makers, and broker-dealers?

23. As noted above in Question 20, several commenters express concern with limiting Take fees without also limiting payment for order flow fees. They argue that limiting the amount of a Take fee a Make or Take exchange can charge will directly impact the amount of a Make rebate the exchange can pay to liquidity providers, which in turn will impact a liquidity provider's incentive to quote aggressively, thus limiting the Make or Take exchange's ability to compete with an exchange with a payment for order flow fee model through aggressive quoting.[145] The Commission notes that the percent of overall contract volume for trading in equity options for the month of February 2010 for each exchange that primarily employs a Make or Take fee model ranges from 2.83 percent to 15.36 percent, and that the aggregate market share of these exchanges was 18.19 percent.[146] Exchanges that primarily employ a Broker Payment Model had an aggregate market share of overall contract volume for trading in equity options for the month of February 2010 of 81.81 percent.[147] The Commission requests comment as to the reasons why

[142] *See* IB Letter, *supra* note 37, at 3; GETCO Letter, *supra* note 37, at 6–7.

[143] *See id.*

[144] *See supra* notes 19 and 72–75.

[145] *See supra* notes 140–143 and accompanying text.

[146] *See http://www.theocc.com/webapps/exchange-volume.* The data is for the month of February 2010 and includes market share for NOM and NYSE Arca, but does not include BATS, which began trading options on February 26, 2010.

[147] This data also is from OCC's public website and is for the month of February 2010. *See http://www.theocc.com/webapps/exchange-volume.* This data covers percent volume for BOX, CBOE, ISE, NYSE Amex, and Nasdaq OMX Phlx.

commenters believe that the Make or Take fee model has not resulted in greater market share to date, given the arguments that the payment of a Make rebate acts as a direct incentive to quote more aggressively. For instance, how does the existence of flash functionality on other exchanges impact the ability of Make or Take exchanges to compete on quoted price?

24. The proposed fee limitation in Rule 610(c)(2) would prohibit an exchange from imposing, or permitting to be imposed by market participants, any fee or fees that exceed or accumulate to more than the proposed limit. The Commission requests comment on whether it is necessary in the listed options exchanges to include a prohibition, as proposed, on an exchange permitting other market participants to impose fees that exceed the limit. The Commission does not believe that market makers in listed options currently impose fees for the execution of orders against their quotes on an exchange, but requests comment on whether they do. Do commenters think it likely that market makers would in the future impose such fees?

25. In this proposal, the Commission has not proposed to limit payment for order flow fees. As stated above, an exchange payment for order flow fee on members is not an access fee, *i.e.,* it is not a fee imposed for executing against an exchange's quotation.[148] The Commission therefore preliminarily does not believe that it is necessary or appropriate to prohibit payment for order flow fees to achieve its stated objectives in proposing to cap access fees—to ensure fair and efficient access to displayed quotation and to enhance transparency of quoted prices. Several commenters, however, argue that payment for order flow fees also impact the displayed (quoted) prices, and thus the prices received by investors when their orders are executed, because market makers that are charged the payment for order flow fees adjust the price at which they are willing to quote to take into account the amount of the payment for order flow fee. In this regard, one commenter petitioned the Commission to impose a cap at the same level on private payment for order flow arrangements between market makers and agency brokerage firms as any cap it imposes on "Take" fees.[149] Another commenter argues that fees relating to "accessing" quotations can be characterized broadly to include exchange fees used to fund members' payment for order flow.[150] Do commenters agree with these statements? If so, do commenters believe that the Commission should limit payment for order flow fees as an "access fee"? The Commission further requests comment on its preliminary determination not to limit payment for order flow fees, and the basis for that determination.

26. As noted above, the Commission has previously acknowledged a concern that payment for order flow may result in less aggressive competition for order flow on the basis of price.[151] To what extent, if any, does payment for order flow in the options markets affect a specialist's or market maker's incentive to quote aggressively? To what extent does payment for order flow in the options markets affect the opportunities for non-professional customers to receive better prices than displayed quotations in price improvement mechanisms? If commenters believe that payment for order flow diminishes a specialist's or market maker's incentives to quote aggressively, what impact, if any, do commenters believe that diminished incentive has on the quality of displayed quotations? How, if at all, would limiting or prohibiting payment for order flow fees impact broker-dealer's ability to obtain best execution of their customer's orders?

27. On several occasions, the Commission has recognized that the anticipation of payment for order flow raises a potential conflict of interest for brokers handling customer orders, and that reliance by market centers on the strategy of simply paying money to attract orders may present a threat to aggressive quotation competition. At the same time, the Commission has stated that payment for order flow is not necessarily inconsistent with a broker's duty of best execution, so long as appropriate measures are taken to ensure that that duty is, in fact, met.[152] Do customer orders that are routed pursuant to payment for order flow arrangements receive less favorable executions than orders not subject to such arrangements?

28. Some may argue that specialists and market makers in the options markets establish the prices and sizes of their quotations based in part on the assumption that their counterparties will be other professional traders, which involves more risk than trading with uninformed non-professional traders.[153] The desirability of trading with uninformed order flow due to the lower risks of trading with non-professionals should translate into those orders, on average, receiving better prices than the specialist's or market maker's quotation.[154] Under this argument, specialists and market makers may use payment for order flow as an indirect way to provide a better execution to uninformed or non-professional orders. Do commenters agree with these statements?

29. The Commission requests comment on what, if any, impact the proposed limitation on access fees may have on payment for order flow fees.

30. The Commission requests comment on whether the proposed access fee limitation should apply only to the best bid and offer of each exchange, or whether the limitation also should apply to "depth of book" quotations.

31. Some commenters stated that Make or Take pricing leads to more locked and crossed markets,[155] while others dispute that.[156] The Commission requests commenters' views on this issue. Please provide data that support your view. Could any increase in the incidence of locked and crossed markets be caused or influenced by other factors, such as more efficient and faster quotation updating and trading, or the expansion of the Minimum Quoting Increment Pilot Program? How, if at all, does the recently implemented Plan [157] help alleviate the frequency of locked and crossed markets? How, if at all, would the proposed limitation on access fees affect the frequency of locked/crossed markets?

32. The Commission requests comment on what the impact of imposing a limit on access fees, if any, would be if the Commission were to ban flash orders on the options exchanges.[158]

33. The Commission requests comment on whether there are alternative methods other than the

[148] As noted above, if a market maker is charged a payment for order flow fee by an exchange when the market maker is accessing the best bid or offer of the exchange, then the proposed fee limitation would apply to that fee because it would be a fee for the execution of an order against the best bid or offer of the exchange. *See supra* Section III.C (discussing payment for order flow fees).

[149] *See* IB Letter, *supra* note 37, at 1 and 6–7.

[150] *See* Wolverine Letter, *supra* note 37, at 3.

[151] *See supra* note 116 and accompanying text.

[152] *See supra* notes 117–118 and accompanying text.

[153] *See* Options Concept Release, *supra* note 21, at 6131. *See also supra* note 128.

[154] *See* Options Concept Release, *supra* note 21, at 6131.

[155] *See* Citadel Petition, *supra* note 34, at 5, and Ameritrade Letter, *supra* note 37, at 11.

[156] *See* BOX Letter, *supra* note 37, at 3; IB Letter, *supra* note 37, at 6; NYSE Euronext Letter, *supra* note 37, at 3–4; and GETCO Letter, *supra* note 37, at 7.

[157] *See supra* note 13.

[158] *See* Flash Order Proposal, *supra* note 19.

proposed access fee cap to achieve the objectives of the proposal—to provide for fair and efficient access to displayed quotations and that displayed quotations be fair and useful. For example, could additional disclosure of fees charged by exchanges for executions against their quotations in listed options achieve the same objectives by fostering further competition based on transparent pricing? Why or why not? Please address current disclosure by options exchanges of their fees, and why that disclosure is or is not sufficient.

34. The Commission requests comment on whether, if it were to adopt the proposed access provisions, a phase-in period would be necessary to allow exchanges and market participants to adapt. If so, what aspect or aspects of the proposal should be phased in, and what would be the appropriate phase-in period?

The Commission recognizes that intermarket access presents a number of complex problems to which there may be many possible solutions. Interested persons may wish to propose and discuss specific, alternative approaches to intermarket access that the Commission should consider for future rulemaking as it seeks to accomplish its goal of strengthening the NMS. Commenters may also wish to discuss whether there are any reasons why the Commission should consider an alternative approach.

VI. Paperwork Reduction Act

The Commission preliminarily does not believe that the proposed amendments to Rule 610(a) pertaining to quotations in a listed option and the proposed access fee limitation in Rule 610(c)(2) contain any "collection of information" requirements as defined by the Paperwork Reduction Act of 1995, as amended ("PRA").[159] The proposed amendment to Rule 610(a) would expand the rule to apply to listed options, in addition to NMS stocks, and would prohibit each national securities exchange or national securities association from imposing unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of such exchange or association to any quotation in an NMS security. The Commission preliminarily does not believe that the prohibition in Rule 610(a), as proposed to be amended to apply to listed options, would require any new or additional collection of information, as such term is defined in the PRA, but the Commission encourages comments on this point.[160]

In addition, proposed Rule 610(c)(2) would prohibit a national securities exchange from imposing, or permitting to be imposed, any fee or fees for the execution of an order against a quotation that is the best bid or best offer of such exchange in a listed option that exceeds or accumulates to more than $0.30 per contract. The Commission preliminarily does not believe that the access fee limitation in proposed Rule 610(c)(2) would require any new or additional collection of information, as such term is defined in the PRA, but the Commission encourages comments on this determination.[161]

With respect to a proposed rule change that an options exchange may be required to file pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder to bring its rules into compliance with the proposed amendment to Rule 610(a) and proposed Rule 610(c)(2),[162] the burden of filing such proposed rule change would already be included under the collection of information requirements contained in Rule 19b–4 under the Exchange Act.[163]

VII. Consideration of Costs and Benefits

The proposed amendments to Rule 610 of Regulation NMS would set forth new standards governing means of access to quotations in listed options. The proposal would prohibit an exchange or association from imposing unfairly discriminatory terms that would prevent or inhibit the efficient access of any person through members of such exchange or association to any quotations in an NMS security, including in a listed option, displayed through its SRO trading facility. In addition, to ensure the fairness and accuracy of displayed quotations in listed options, proposed Rule 610(c)(2) would establish an outer limit on the cost of accessing the best bid and best offer on each exchange in a listed option of no more than $ 0.30 per contract.

A. Benefits

The Commission preliminarily believes that the proposed amendments to Rule 610 of Regulation NMS would help achieve the statutory objectives for the NMS by promoting fair and efficient access to each individual options exchange.

1. *Proposed Amendment to Rule 610(a)*

The access provision of Rule 610(a), as proposed to be amended, is designed to strengthen the ability of all market participants that are not members of an options exchange to fairly and efficiently route orders to execute against quotations in a listed option, wherever such quotations are displayed in the NMS, by prohibiting an exchange from unfairly discriminating against any person trying to obtain access through a member to that exchange's quotations. The Commission believes that fair and efficient access to the best displayed quotations of all options exchanges is critical to achieving best execution of those orders.[164] The Commission further believes that such fair and efficient

[159] 44 U.S.C. 3501, *et seq.*

[160] *See* 44 U.S.C. 3502(3) (defining the term "collection of information" to include, generally, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either: (i) Answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes).

The Commission notes that the requirement under the proposed amendment to Rule 610(a) is substantially similar to current Rule 610(a) of Regulation NMS. *See* 17 CFR 242.610(a). The Commission requested comment on its preliminary view that Rule 610 of Regulation NMS pertaining to access to quotations in an NMS stock did not contain a collection of information requirement as defined by the PRA. *See* Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126, 11160–61 (March 9, 2004) (File No. S7–10–04) ("Regulation NMS Proposing Release"). The Commission notes that no comments were received that addressed whether Rule 610(a) contained a collection of information requirement. *See* Securities Exchange Act Release No. 50870 (December 16, 2004), 69 FR 77424, 77476 (December 27, 2004) ("Regulation NMS Reproposing Release").

[161] The Commission notes that proposed Rule 610(c)(2) is substantially similar to current Rule 610(c) of Regulation NMS. *See* 17 CFR 242.610(c). The Commission requested comment on its preliminary view that Rule 610 of Regulation NMS pertaining to a limit on access fees did not contain a collection of information requirement as defined by the PRA. *See* Regulation NMS Proposing Release, *supra,* note 160, at 11160–61. The Commission notes that no comments were received that addressed whether the proposed access fee cap under Rule 610 contained a collection of information requirement. *See* Regulation NMS Reproposing Release, *supra* note 160, at 37577 n.746.

[162] *See infra* Section VII.B.

[163] *See* Securities Exchange Act Release No. 50486 (October 5, 2004), 69 FR 60287, 60293 (October 8, 2004) (File No. S7–18–04) (describing the collection of information requirements contained in Rule 19b–4 under the Exchange Act). The Commission has submitted revisions to the current collection of information titled "Rule 19b–4 Filings with Respect to Proposed Rule Changes by Self-Regulatory Organizations" (OMB Control No. 3235–0045). According to the last submitted revision concluded as of August 5, 2008, the current collection of information estimates 1279 total annual Rule 19b–4 filings with respect to proposed rule changes by self-regulatory organizations.

[164] *See* NMS Adopting Release, *supra* note 4, at 37539.

access to the best displayed quotations of options exchanges is critical for compliance with the requirements of the Trade-Through Rules. Specifically, options exchanges themselves must have the ability to route orders for execution against the displayed quotations of other exchanges. Indeed, the concept of intermarket protection against trade-throughs is premised on the ability of options exchanges to route orders to execute against, rather than trade through, the quotations displayed by other options exchanges.[165]

Thus, the Commission preliminarily believes that the proposed amendment to Rule 610(a) would benefit investors by furthering the ability of brokers on behalf of their customers, and of investors themselves, to achieve best execution of their orders in listed options. The Commission also preliminarily believes that the proposed amendment to Rule 610(a) would contribute to the smooth functioning of intermarket trading by furthering the ability of options exchanges and market participants, including investors, to fairly and efficiently access the quotations of each options exchange.[166]

The proposed amendment to Rule 610(a) also would help to clarify when certain terms set by exchanges would be unfairly discriminatory, including terms in current exchange rules. For example, an exchange could not charge a higher per-contract access fee to a non-member broker-dealer that is a registered options market maker on another exchange ("non-member market maker") acting for its own account than to a member or non-member broker-dealer acting for its own account that is not registered as a market maker on another exchange. In this example, neither broker-dealer is registered as, nor is acting in the capacity of, a market maker on that exchange.[167] The Commission preliminarily believes that this type of distinction could unfairly discriminate against non-member market makers and prevent or inhibit such non-member market makers from obtaining efficient access through a member to that exchange's quotations. Similarly, an exchange could not charge differing fees for accessing liquidity depending on whether the order is for the account of a "directed" customer. The Commission preliminarily believes that such a distinction could unfairly discriminate against non-directed customer orders and prevent or inhibit such non-directed customers from obtaining efficient access through a member to that exchange's quotations in certain listed options.

2. *Proposed Rule 610(c)(2)*

The access fee limitation of proposed Rule 610(c)(2) would address the potential distortions caused by substantial, disparate fees. When a displayed quotation does not include the amount of any fee or fees charged by an exchange for executing against that quotation, persons attempting to execute, or evaluating whether they want to execute, against that quotation cannot readily ascertain the all-in price for the trade. The larger the non-displayed fee(s), the less accurate would be the displayed price in comparison to the all-in price for the trade. This concern is compounded when competing exchanges charge differing fees, as the same displayed price on two or more options exchanges may reflect different all-in prices for executing against the same-priced quotations. Thus, the wider the disparity in the level of access fees among different options exchanges, the less useful and accurate may be the quoted prices at reflecting the full cost of a trade. As a result of the proposed fee limitation, quoted prices should in many cases more closely reflect the total cost of a trade because the highest potential access fee that could be charged by any exchange would be $0.30 per contract. This limitation, in turn, should enhance the usefulness of quotation information.

An access fee limit also makes the cost of accessing quoted prices more transparent. Currently, the eight options exchanges charge so many different fees to different categories of options participants and for different products that it is not easy to estimate that total cost of a particular transaction. An access fee cap would limit the scope of differences and therefore would result in quoted prices providing clearer information on the total cost for executing against quoted prices. Consequently, the proposed fee limitation would further the statutory purposes of the Exchange Act by reducing the tendency of access fees to distort quoted prices. In addition, by applying equally to all types of options exchanges, the proposed fee limitation would promote NMS objectives and further the goals of Section 11A of the Exchange Act relating to equal regulation of markets and broker-dealers.[168]

The proposed fee limitation also would benefit the markets and market participants by addressing options exchanges that otherwise might charge high fees to market participants required to access their quotations under the Trade-Through Rules. The requirements under the Trade-Through Rules and the use of private linkages could provide an exchange the opportunity to take advantage of intermarket price protection by acting essentially as a toll booth between price levels. Even though the exchange charging the highest fees likely would be the last exchange to which orders would be routed, orders could not be executed against the next-best price level until someone routed an order to take out the displayed price at such high fee exchange. While exchanges would have significant incentives to compete to be near the top in order-routing priority, arguably there would be little incentive to avoid being the least-preferred exchange if fees were not limited. Such a business model could detract from the usefulness of quotation information and impede market efficiency and competition.[169]

The Commission preliminarily believes that the proposed access fee cap would limit the viability of this business model. Consequently, another benefit of the proposal would be to place all options exchanges on a level playing field with respect to the maximum amount of access fees they can charge, and, ultimately, the rebates they can pay to liquidity providers, by establishing a clear limit on the fees they can charge. Some options exchanges might choose to charge lower fees, thereby increasing their ranking in the preferences of order routers. Others might charge $0.30 per contract and rebate a substantial proportion to liquidity providers.[170] The Commission preliminarily believes that competition will determine which strategy is most successful. Proposed Rule 610(c)(2) also would preclude an options exchange from charging high fees selectively to competitors.

The Commission also preliminarily believes that the proposed access fee

[165] *Id.*

[166] *Id.*

[167] *See supra* note 51 and accompanying text.

[168] *See* Section 11A(c)(1)(F) of the Exchange Act, 15 U.S.C. 78k–1(c)(1)(F) (providing objective to assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities).

[169] *See* NMS Adopting Release, *supra* note 4, at 37584 (concluding that, with respect to NMS stocks, an outlier business model would detract from the usefulness of quotation information and impede market efficiency and competition and that a fee cap would limit such a business model). *See also supra* notes 69–71 and accompanying text.

[170] The Commission notes that nothing in proposed Rule 610(c)(2) would preclude an options exchange from taking action to limit fees beyond what is required by the proposed Rule, and such options exchanges would have flexibility in establishing their fee schedules to comply with proposed Rule 610(c)(2), consistent with existing requirements of the Exchange Act and the rules and regulations thereunder.

limitation would further the purposes of Section 11A(c)(1)(B) of the Exchange Act, which authorizes the Commission to adopt rules assuring the fairness and usefulness of quotation information. As discussed above, if options exchanges are allowed to charge high fees and pass most of them through as rebates, the published quotations of such exchanges may not reliably indicate the all-in price that is actually available to investors. For quotations to be fair and useful, there must be some limit on the extent to which the all-in price for those who access quotations can vary from the displayed price. Consequently, the Commission preliminarily believes that the proposed access fee limitation would further the statutory purposes of the NMS by limiting the distortive effects of high fees. Moreover, the Commission preliminarily believes that the proposed fee limitation would further the statutory purpose of enabling broker-dealers to route orders in a manner consistent with the operation of the NMS.[171] Under the Trade-Through Rules, one exchange cannot trade through another exchange displaying the best-priced quotations. The purposes of the Trade-Through Rules would be thwarted if market participants were allowed to charge high fees that distort quoted prices in a listed option.

In proposing amendments to Rule 610, the Commission seeks to help ensure that transactions in listed options can be executed efficiently at any market center for reasonable execution fees. By enabling fair access and transparent pricing among the different market places within a unified national market, the Commission preliminarily believes that the proposal would foster efficiency, enhance competition, and contribute to the best execution of orders in listed options.

Finally, the Commission notes that the current access fee limitation in Rule 610(c) has applied to the trading of NMS stocks for several years and believes that such limitation has not caused any apparent harm to competition among markets or market participants trading NMS stocks. For example, when recently requesting comment on various aspects of equity market structure, the Commission noted how trading volume for NMS stocks is spread out among the registered exchanges, ECNs, dark pools, and broker-dealers that execute trades internally.[172] The Commission notes that, currently, the options exchanges are competitive.[173] As such, the Commission preliminarily believes that an access fee limitation applied to the trading of listed options would not harm competition among exchanges or market participants trading listed options.

The Commission also preliminarily believes that the proposed access provisions would help to assure investors that their orders are executed at the best prices and are not subject to large, non-transparent fees by limiting the difference between the all-in price of an investor executing its order and the displayed quotation, regardless of the exchange on which the execution takes place.

B. Costs

1. *Proposed Amendment to Rule 610(a)*

If the proposed amendment to Rule 610(a) were adopted, it could impose costs associated with modifications to an options exchange's rules to comply with such proposed Rule's specific anti-discriminatory standard for access to an exchange's quotations through a member. The Commission notes, however, that each exchange registered as a national securities exchange is currently subject to similar restrictions in Section 6 of the Exchange Act, including the requirements in Section 6(b)(5) that the rules of a national securities exchanges be designed, among other things, not to permit unfair discrimination between customers, issuers, brokers, or dealers.[174] Accordingly, the Commission preliminarily believes that it would be unlikely for the options exchanges to need to amend their rules to comply with Rule 610(a), as proposed to be amended. To the extent that any amendments are necessary, the Commission preliminarily expects such amendments would be minimal. The Commission, therefore, preliminarily believes that any costs incurred as a result of the requirement under the proposed amendment to Rule 610(a) by an options exchange would not be significant.

More specifically, an options exchange that would need to amend its rules to comply with the proposed amendment to Rule 610(a) so as not to unfairly discriminate would be required to file a proposed rule change on Form 19b–4 with the Commission.[175] The Commission further notes that the proposed rule change filing format is not new to the options exchanges, as multiple filings are made annually by such exchanges.[176] The Commission estimates that an average rule change requires approximately 34 hours for an exchange to complete at an average hourly cost of $305.[177] The Commission estimates that the aggregate cost of one proposed rule change for each options exchange, which assumes that every options exchange would have to amend its rules to eliminate any unfairly discriminatory terms not consistent with the proposed amendments to Rule 610(a), would total approximately $82,960 ($305 times 34 times 8). Therefore, the Commission preliminarily believes that the costs incurred by an options exchange to make such a filing as a result of the proposed amendment to Rule 610(a) would not be substantial.[178]

2. *Proposed Rule 610(c)(2)*

The Commission preliminarily does not believe that the fee limitation of

[171] Section 11A(c)(1)(E) of the Exchange Act, 15 U.S.C. 78k–1(c)(1)(E), authorizes the Commission to adopt rules assuring that broker-dealers transmit orders for securities in a manner consistent with the establishment and operation of a national market system.

[172] *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3598 (January 21, 2010) (S7–02–10).

[173] *See infra* Section VIII.A.1 (discussing market share data for January 2010 among the eight options exchanges).

[174] Section 6(b)(5) of the Exchange Act also requires in part that the rules of a national securities exchanges be designed to: (1) Promote just and equitable principles of trade; (2) remove impediments to and perfect the mechanism of a free and open market and a national market system; and (3) protect investors and the public interest. *See* 15 U.S.C. 78f(b)(5). *See also supra* note 47 and accompanying text. No national securities association currently trades listed options.

[175] *See* 15 U.S.C. 78s(b) (requiring each SRO to file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO, accompanied by a concise general statement of the basis and purpose of such proposed rule change). *See also* 17 CFR 240.19b–4(a) (generally requiring that filings with respect to proposed rule changes by an SRO be made on Form 19b–4, 17 CFR 249.819).

[176] The Commission notes that, for its 2009 fiscal year (October 1, 2008 to September 30, 2009), the seven options exchanges (NYSE Amex, BOX, CBOE, ISE, NOM, NYSE Arca, and Nasdaq OMX Phlx) filed approximately 444 proposed rule changes in the aggregate pursuant to Section 19(b) and Rule 19b–4 thereunder.

[177] The $305 per-hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Exchange Act Release No. 59748 (April 10, 2009), 74 FR 18042, 18093 (April 20, 2009) (S7–08–09) (noting the Commission's modification to the $305 per hour figure for an attorney).

[178] The Commission also notes that each options exchange should already have in place policies and procedures to ensure that terms of access to its market are consistent with the federal securities laws and the rules thereunder. *See supra* note 174 and accompanying text. The Commission preliminarily believes that such options exchange's existing policies and procedures should not change as a result of the proposed amendments to Rule 610, and, therefore, should not incur any new costs, including administrative costs, in this regard.

proposed Rule 610(c)(2) would impose significant new costs on the options exchanges or market participants. The Commission preliminarily believes that the proposed fee limitation would be relatively easy to administer given that it would impose a single accumulated access fee limitation for all options. For options exchanges that currently charge and collect fees and that would continue to do so, the costs of imposing and collecting fees are already incurred. The fee limitation would not require an options exchange that does not currently charge fees to begin charging fees. Thus, the Commission preliminarily believes that the proposed fee limitation should not impose significant new administrative costs.

The Commission recognizes that the fee limitations of proposed Rule 610(c)(2) would affect options exchanges that currently impose access fees in excess of the proposed limits. As a result of the access fee limitations of proposed Rule 610(c)(2), such options exchanges would be required to modify their respective rules to ensure compliance with the proposed Rule's fee cap. The Commission preliminarily believes, however, that the potential administrative costs associated with any necessary changes to the rules of an options exchange that may be needed to account for the proposed access fee limitation would not be substantial. The Commission notes that an options exchange that would need to amend its rules and fee schedule to comply with the access fee limitation as a result of proposed Rule 610(c)(2) would be required to file a proposed rule change on Form 19b–4 with the Commission.[179] The Commission further notes that the proposed rule change filing format and the process to change a due, fee, or other charge applicable only to members is not new to the options exchanges, as multiple fee filings are made annually by such exchanges.[180] As stated above, the Commission estimates that an average rule change requires approximately 34 hours for an exchange to complete at an average hourly cost of $305.[181] The Commission estimates that the aggregate cost for all options exchanges of one proposed rule change for each exchange would total approximately $82,960.[182] Therefore, the Commission preliminarily believes that the costs incurred by an options exchange to make such a filing as a result of proposed Rule 610(c)(2) would not be substantial.[183]

The Commission also recognizes that, as a result of the proposed access fee limitation, certain options exchanges that currently charge access fees that exceed, or accumulate to more than, $0.30 per contract would be required to reduce their access fees, and that this action could result in a reduction in revenue from transaction fees for those exchanges.

The Commission preliminarily estimates that the imposition of an access fee cap, as proposed, could reduce option exchanges' annual transaction fee revenues by about $74 million under a flat $0.30 access fee cap.[184] The estimated revenue losses per exchange are set forth in Table 3 of the Appendix. Commission staff estimates the proportion of fee losses to total fees for December 2009 and applies that proportion to the annual transaction fee revenue for each exchange. The Commission staff utilized OCC data that contains aggregate two-sided volume data by account type (customer, firm or market maker). In order to estimate the impact on each option exchange's revenues,[185] Commission staff makes a number of assumptions:

- Commission staff assumes that the options exchanges that impose fees in excess of the proposed access fee cap would not adjust their rebates or other fees to offset any shortfalls on revenues imposed by the access fee cap.
- Commission staff looked at a range of fees that each options exchange charges for accessing the best bid or offer in listed options on the exchange, based on its published fee schedule.[186] The fee ranges include any fee that is charged for execution of an order against an exchange's best bid or offer. Thus, they include "Take" fees, transaction fees, index "licensing" fees, certain payment for order flow fees, and ORF. The fee ranges exclude fees charged for transactions in FLEX options, credit default options, and the fee that ISE charges for transactions by broker-dealers registered as market makers on other exchanges. Commission staff has excluded these specific transaction fees from these calculations because it preliminarily believes that the volume of transactions and the corresponding assessed transaction fees are not significant, but requests comment on whether such fees should be included in the cost impact calculation. Any available volume discounts also are not taken into account because such discounts are variable and if applied would reduce the cost estimates. Tables 1 and 2 of the Appendix show the fee ranges used in estimating the revenue impact.
- To estimate the impact on each option exchange's revenues, the Commission staff generally assumes the maximum possible fee for electronically transmitted orders grouped by account type, whether or not the class is included in the Minimum Quoting Increment Pilot Program, and option type. This assumption would lead, conservatively, to higher estimates of

[179] *See supra* note 175.

[180] An exchange generally would be able to amend its fees imposed on its members by filing a proposed rule change pursuant to Section 19(b)(3)(A) of the Exchange Act of Rule 19b–4(f)(2) thereunder. *See* 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(2) (permitting proposed rule changes that establish or change a due, fee, or other charge applicable only to members to take effect upon filing with the Commission). The Commission notes that, for its 2009 fiscal year, the seven options exchanges filed approximately 120 proposed rule changes in the aggregate pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(f)(2) thereunder. *See supra* note 176 (noting the approximate total of all proposed rule changes filed by the options exchanges pursuant to Section 19(b) and Rule 19b–4 thereunder during the same time period).

[181] *See supra* note 177.

[182] The Commission notes that if an exchange were required to submit a proposed rule change to address a rule or fee that was not consistent with the anti-discriminatory standard proposed in Rule 610(a), as well as a fee that exceeds the proposed fee cap, the exchange could choose to submit one rule filing that would make changes necessary to comply with proposed Rules 610(a) and 610(c)(2) to reduce costs.

[183] The Commission also notes that each options exchange should already have in place policies and procedures to ensure that all of the fees it charges, including access fees, are consistent with the federal securities laws and the rules thereunder. The Commission preliminarily believes that, while an options exchange may be required to amend its fee schedule to account for the proposed access fee limitation, such options exchange's existing policies and procedures should not change as a result of the proposed amendments to Rule 610, and therefore, should not incur any new costs, including administrative costs, in this regard.

[184] For this estimate, Commission staff used December 2009 option trading data from OCC and OptionMetrics. The Commission staff estimates that if the Commission were to impose a fee cap of 0.3 percent of the price of the option for options priced below $1—similar to the existing cap for NMS stocks—the potential reduction in revenue for the options exchanges would be $177 million.

The Commission has not included BATS in these revenue impact calculations. As noted below, BATS recently started trading options on February 26, 2010. *See infra* note 197. Further, BATS' only transaction fee for listed options is $0.30 per contract for removing liquidity (and a $0.20 per-contract rebate for providing liquidity). *See* BATS Fee Schedule (available at *http://batstrading.com/resources/regulation/rule_book/BATS_Ex_Fee_Schedule.pdf*) (current as of February 26, 2010).

[185] *See infra* note 187 and accompanying text for an estimate of the impact of the proposed access fee cap on transaction fee revenues using an assumption that the options exchanges that have a Make or Take fee model reduce their "Make" fees to compensate for a reduction in "Take" fees.

[186] The fees used are as of January 2010, except that they do not include fees or credits imposed by Nasdaq OMX Phlx in SR–Phlx–2009–116, SR–Phlx–2010–14, and SR–Phlx–2009–104, which filings were abrogated by the Commission on February 19, 2010. *See* Securities Exchange Act Release No. 61547 (February 19, 2010), 75 FR 8762 (February 25, 2010).

revenue losses. Further, because fee levels for equity options tend to be different than fee levels for index options, and because the fee levels for classes included in the Minimum Quoting Increment Pilot Program sometimes are different than the fee levels for classes not included in that Pilot Program, Commission staff estimates fees separately for each.

- Commission staff assumes that access fees only apply to "Takers" of liquidity at a particular exchange. Staff further assumes that customers always "take" liquidity, market makers always "make" liquidity, and firms make up the difference. Based on December 2009 data, Commission staff estimates that average firm volume by option class is about 52% on the "take" side and 48% on the "make" side.
- The OCC classifies cleared trades based on OCC membership rather than exchange membership. Therefore, Commission staff assumes that the OCC "firm" classification applies to both member and non-member firms at a particular exchange. If a particular exchange charges different levels of fees for member and non-member firms, Commission staff conservatively assumes the maximum fee applies to all trades classified as "firm" accounts.

As noted above, this cost estimate assumes that the exchanges do not make any changes to their other fees in response to the proposed access fee cap. Options exchanges may, however, respond to access fee limits by restructuring their fee schedules to mitigate the effect of the proposed fee cap. For example, the impact of imposing a fee limitation in a Make or Take fee model may be mitigated if exchanges using such fee model reduce the rebates to reflect the reduced "Take" fees. In such a case, the net impact on exchange revenue would be less than the amount by which an exchange is required to reduce its "Take" fee because the exchange would pay a smaller rebate to members providing liquidity. In addition, certain options exchanges may simply be able to re-calibrate existing fee structures to offset potential revenue losses, while other exchanges may decide to charge additional fees to make up for potential revenue losses.

Options exchanges have the ability, consistent with the requirements of the Exchange Act, to levy fees on their members. Currently, exchanges charge their members various types of fees for membership, transacting on the exchange, and for other services provided by the exchange, including connectivity fees, regulatory fees, and other fees. The Commission preliminarily believes that exchanges are likely to amend their fees that would not be impacted by the access fee limitation to make up for the reduction in access fee revenue, thus keeping the overall level of fees paid by members, and the amount of revenue received by the exchange, relatively constant. Further, the Commission preliminarily believes that exchanges that provide rebates to liquidity providers based on the amount of fees the exchanges charge for accessing liquidity may reduce such rebates commensurate with any reduction in the fees charged for accessing liquidity. In this event, the amount of revenue received by the exchange—the difference between the "Take" fee and the "Make" rebate—would remain constant. If exchanges with "Make or Take" models reduce their "Make" fees to compensate for a reduction in "Take" fees due to the proposed access fee cap, the Commission estimates that the imposition of an access fee cap as proposed could reduce option exchanges' transaction fee revenues by about $55 million under a flat $0.30 access fee cap.[187]

The Commission also preliminarily believes that the overall cost to members of exchanges from the proposal to limit access fees would be minimal. As noted above, exchange members pay various types of fees to their exchanges, including transaction fees, regulatory fees, and other fees. Some of these fees are charged for activity by the members' customers or other non-member market participants that comes through members. Exchange members today can choose to pass through these fees to their customers, or not, subject to competition among members for this order flow. As outlined above, the Commission preliminarily believes that the overall revenue to the exchanges—and thus the overall fees charged by exchanges to members—would remain constant, although the levels of fees within individual fee categories may change. Thus, the impact of fee changes on individual members and market participants may vary, depending upon each participant's business structure and trading strategies, and depending upon what portion of the fees each member chooses to "pass through" to its customers.

C. Request for Comment

The Commission requests general comment on the costs and benefits of the proposed amendments to Rules 610(a) and (c) of Regulation NMS discussed above, as well as any costs and benefits not already described which could result from them. The Commission also requests data to quantify any potential costs or benefits.

The Commission specifically requests comment on the cost estimates made, and the assumptions underlying those cost estimates as outlined, in Section VII.B.2. For example, do commenters believe that options exchanges that currently impose fees in excess of the fee cap proposed in Rule 610(c)(2) would or would not adjust their rebates or other fees to offset the impact of a fee cap? If commenters believe that options exchanges would adjust their rebates or other fees to offset the impact of a fee cap, what specific types of changes would exchanges make? Further, depending upon the specific change to rebates or fees that commenters believe exchanges would make in response to the proposed fee cap, how do commenters believe that such change(s) would impact the quoting, order routing, or other behavior of particular categories of market participants, such as retail investors, market makers, and broker-dealers?

Do commenters believe that it is appropriate generally to consider the maximum fee charged for electronically transmitted orders in calculating the impact on an options exchange's revenue of the proposed access fee cap? If so, please explain why. If not, please provide detail as to what assumptions should underlie such a calculation. Further, do commenters agree that it is reasonable to exclude specific fees charged for the execution of orders in FLEX options or credit default options, and the fee that ISE charges for transactions by broker-dealers registered as market makers on other exchange, as well as volume discounts, when determining the maximum fee charged by options exchanges? Do commenters agree with the assumption that customers always "take" liquidity, market makers always "make" liquidity, and firms make up the difference? If not, please provide detail as to what assumptions should be made and any supporting information, or describe another approach for estimating the costs of this proposal.

VIII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the

[187] For this estimate, Commission staff used December 2009 option trading data from OCC and OptionMetrics. *See infra* Table 3 in the Appendix.

protection of investors, whether the action would promote efficiency, competition, and capital formation.[188] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact such rules would have on competition.[189] Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[190]

A. Competition

The Commission begins its consideration of potential competitive impacts with observations of the current structure of the option markets and broker-dealers, mindful of the statutory requirements regarding competition. Based on the Commission's experience in regulating the options markets and broker-dealers, including reviewing information provided by them in their registrations and filings with the Commission and approving such registration applications, the Commission discusses below the basic framework of the markets they comprise.

1. Market Structure for Options Markets

In order to consider whether the proposed rules promote competition, staff of the Commission's Division of Risk, Strategy, and Financial Innovation evaluated the competitive structure of the exchange-listed options trading industry in the United States. In particular, Commission staff considered the nature of competition between liquidity providers within exchanges and competition between exchanges to attract order flow. Within the options exchanges, multiple market makers, proprietary trading firms, and customers submitting limit orders compete to provide liquidity to incoming market or marketable limit orders. Options exchanges compete for order flow through their quotations and, in some cases, through exchange-sponsored payment for order flow.

In the late 1990s, the Commission took actions in response to concerns that the options industry was not fully competitive. Competition in the listed options market is significantly more rigorous today that it has been in the past, as a result of several developments since 1999. These include the move to multiple listing,[191] the advent of electronic exchanges,[192] the extension of the Commission's Quote Rule to options,[193] the injunction against trading outside of the national best bid and offer,[194] the adoption of market structures on the floor-based exchanges that permit individual market maker quotations to be reflected in the exchange's quotation,[195] and the Minimum Quoting Increment Pilot Program,[196] among other developments.

Among the relevant considerations in assessing the degree of competition in an industry are the number of competitors and concentration of market share. Listed options in the United States are currently traded on eight national securities exchanges, owned by six entities. These eight exchanges are CBOE, ISE, NYSE Arca, NYSE Amex, Nasdaq OMX Phlx, NOM, BOX, and BATS. Based on market share data for January 2010 obtained from the OCC,[197] the exchange with the highest market share of option volume was CBOE, with 29.58%, followed by ISE at 22.86%. The two exchanges owned by NYSE Euronext together had a market share of 25.82% (NYSE Arca had 13.94% and NYSE Amex had 11.88%). The two exchanges owned by The NASDAQ OMX Group, Inc. together had a market share of 19.76% (Nasdaq OMX Phlx had 17.17% and NOM had 2.59%). The BOX had a market share of 1.98%.

Another key factor determining the competitiveness of an industry is the extent to which there are significant barriers to entry. In the Commission's assessment, barriers to entry in providing trading platforms in the options market are higher than they are in the equities market because equities may be traded off exchange while options may not. Thus, new entrants in the options market face the regulatory costs associated with establishing a national securities exchange. These costs are not large enough to prevent entry, as evidenced by the fact that four new option exchanges have entered the industry since 2000,[198] and another is anticipated to begin operations soon.[199] However, it is possible that the economic barriers to entry to the options trading industry may be more significant for participants who do not already have the infrastructure required to operate registered exchanges. With the sole exception of the ISE, every new entrant in the options market since 1973 has been created by participants who were already operating securities exchanges.

Broker-dealers are required to register with the Commission and be a member of at least one SRO. The broker-dealer industry, including market makers, is a competitive industry, with most trading activity concentrated among several dozen larger participants and with thousands of smaller participants competing for niche or regional segments of the market.

There are approximately 5,178 registered broker-dealers, of which approximately 890 are small broker-dealers.[200] Larger broker-dealers often enjoy economies of scale over smaller broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and customers. The reasonably low barriers to entry for broker-dealers are evidenced, for example, by the fact that the average number of new broker-dealers entering the market each year between 2001 and 2008 was 389.[201]

[188] 15 U.S.C. 78c(f).

[189] 15 U.S.C. 78w(a)(2).

[190] *Id.*

[191] *See* Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (June 5, 1989) (S7–25–87).

[192] *See* ISE Exchange Approval, *supra* note 30, 65 FR at 11395; Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving options trading rules for BOX) ("BOX Approval Order"); 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (approving NYSE Arca's OX, a fully automated trading system for standardized equity options intended to replace NYSE Arca's options trading platform, PCX Plus); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (approving options trading rules for NOM) ("NOM Approval Order"); and 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (approving BATS Exchange proposal to operate as an options exchange) ("BATS Approval Order").

[193] *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

[194] *See supra* notes 8–16 and accompanying text.

[195] *See, e.g.,* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441, 34442 (June 9, 2003) (SR–CBOE–2002–05) (adopting, among other things, amendments to incorporate firm quote requirements in CBOE's rules).

[196] *See supra* notes 28–29 and accompanying text.

[197] Although the Commission approved BATS Exchange's proposal to operate as an options exchange in January 2010 (*see* BATS Approval Order, *supra* note 192), BATS Exchange did not commence options trading operations until February 26, 2010. As a result, there is no market share data for BATS for purposes of this discussion.

[198] *See* ISE Exchange Approval, *supra* note 30; BOX Approval Order, *supra* note 192; NOM Approval Order, *supra* note 192; and BATS Approval Order, *supra* note 192.

[199] *See supra* note 8 (referring to the order approving C2 Options Exchange's application for registration as a national securities exchange).

[200] These numbers are based on a review of 2007 and 2008 FOCUS Report filings reflecting registered broker-dealers, and discussions with SRO staff. The number does not include broker-dealers that are delinquent on FOCUS Report filings.

[201] This number is based on a review of FOCUS Report filings reflecting registered broker-dealers from 2001 through 2008. The number does not include broker-dealers that are delinquent on FOCUS Report filings. New registered broker-dealers for each year during the period from 2001 through 2008 were identified by comparing the unique registration number of each broker-dealer

Continued

2. Discussion of Impacts of Proposed Amendments to Rules 610(a) and 610(c) on Competition

The Commission believes that the estimated costs associated with implementing and complying with the proposed amendments to Rules 610(a) and 610(c) are not so large as to raise significant barriers to entry, or otherwise significantly alter the competitive landscape of the listed options market. Given the reasonably high level of competition for order flow in option markets and among broker-dealers, the Commission believes that this industry would remain competitive, despite the potential costs associated with implementing and complying with the proposed amendments to Rules 610(a) and 610(c), even if those costs influence to some degree the profitability of individual option markets or entry and exit of broker-dealers at the margin.

Trading fees typically constitute the largest component of revenues for option exchanges. For example, transaction fees accounted for approximately 80.8% of total revenues for the CBOE in 2008. Thus, a change in the fee structure that significantly reduces total fees could potentially have an important impact on industry profits and thus on the ability of smaller exchanges, including potential new entrants, to meet their fixed costs. However, the Commission believes that the proposed access fee limitations would have a limited, if any, negative impact on the profitability of individual option markets because option markets would be able to adjust their fee structures to accommodate the access fee cap. Therefore, the Commission preliminarily believes that limiting access fees to $0.30 per contract would not lead to a large reduction in total revenues, and would not put an undue burden on smaller exchanges or new entrants that would result in a decrease in competition in the industry.

The Commission recognizes that a limit on access fees that applies to exchanges utilizing a "Make or Take" market model effectively limits the size of the liquidity rebate that such exchanges can offer, inasmuch as the economic viability of the "Make or Take" model generally requires that the rebate be smaller than the access fee. The Commission also recognizes that effectively limiting the size of the liquidity rebate in this way may limit the ability of exchanges utilizing the "Make or Take" model to attract liquidity. However, the Commission preliminarily believes that the proposal would not unduly burden "Make or Take" fee models. In the "Make or Take" fee model, the market earns the differential between the "make" credit and the "take" fee. The proposal allows for access fees of up to $0.30 per contract and thus can accommodate a $0.30 per-contract differential in "make" credits and "take" fees. The largest differential charged by "Make or Take" model option markets currently is $0.20 per contract, sufficiently within the $0.30 per-contract access fee limit of the proposal. In addition, the Commission observes that the "Make or Take" market model has become the dominant structure in the equity market despite the cap of $0.003 per share, suggesting that a similar cap in the option market would not prevent the "Make or Take" model from succeeding in the option market. The Commission requests comment on this preliminary view.[202]

Further, the proposed rules apply uniformly to exchanges with different markets and fee structures, thereby facilitating the ability of option markets to compete in a level regulatory environment. A fee limitation is necessary to preclude individual markets from having fee structures that take improper advantage of the protection against trade-throughs in the Trade-Through Rules. Precluding option markets from taking improper advantage of trade-through protection and making sure that all option markets compete under the same regulatory landscape should strengthen the ability of option markets to compete fairly for business.

The Commission believes that the proposed access fee limitations may have benefits that enhance quote competition among markets. The proposed access fee provisions are intended to bolster transparency in the options markets by improving the integrity of the quotations and preventing large, non-transparent fees from being charged on orders that are being sent to a particular market in order to comply with the trade through provisions of the Trade-Through Rules. Since quotation information would be more informative under the proposed access fee limitations, the Commission expects that the proposed amendments would likely encourage quote competition. Moreover, the Commission preliminarily believes that, by prohibiting a national securities exchange or national securities association from imposing unfairly discriminatory terms that would prevent or inhibit the efficient access of any person through members or non-member subscribers, the proposed rule would promote competition to offer the best displayed quotation among exchanges that trade listed options.

The Commission also believes that the proposal would have a minimal effect on the competitiveness of the broker-dealer industry. Since the proposal seeks to limit access fees, the proposal may result in a reduction in fees paid by broker-dealers to options exchanges. On the other hand, it is possible that options exchanges could increase broker-dealer fees, including market maker fees, to offset any revenue losses from an access fee limit. However, since transaction fee costs are typically a small part of the total expenses for a broker-dealer, the Commission preliminarily believes that any increase in transaction fee costs for broker-dealers would have a minimal, if any, effect on the competitiveness of the broker-dealer industry. The Commission seeks comment, however, on the level of options exchange-levied fees on broker-dealers and whether an increase in these fees would inhibit the competitiveness of the broker-dealer industry.

In summary, the Commission preliminarily believes that the proposal would not result in an undue burden on the competitiveness of any option markets and, as a result, would not result in any decrease in competition among option markets. Moreover, the Commission preliminarily believes that the proposal would promote quote competition in options. The Commission also preliminarily believes that the proposal would not result in an undue burden on the competitiveness of the broker dealer industry.

B. Capital Formation

A purpose of the proposed amendments to Rules 610(a) and 610(c) is to strengthen transparency and quote competition in the option markets regulated by the Commission which should help make investors more willing to invest, resulting in the promotion of capital formation. Long holdings of equity are integral to capital formation. Fair and robust option markets, in which long holders can hedge risk through the option markets, support the public offerings of the underlying equities by which issuers raise capital and, as a result, investors who provided private capital realize profits and manage risk. Therefore, the Commission preliminarily believes that the proposed amendments to Rules 610(a) and 610(c) would increase transparency and quote competition, thereby enhancing investment, and thus capital formation.

filed for the relevant year to the registration numbers filed for each year between 1995 and the relevant year.

[202] *See also* Section V (Request for Comment).

C. Efficiency

The access provision of Rule 610(a), as proposed to be amended, is designed to strengthen the ability of all market participants that are not members of an options exchange to fairly and efficiently route orders to execute against quotations in a listed option, wherever such quotations are displayed in the NMS, by prohibiting an exchange from unfairly discriminating against any person trying to obtain access through a member to that exchange's quotations. Fair and efficient access to the best displayed quotations of all options exchanges is necessary to achieving best execution of those orders.[203] Further, fair and efficient access to the best displayed quotations of options exchanges is necessary for compliance with the requirements of the Trade-Through Rules. Specifically, options exchanges themselves must have the ability to route orders for execution against the displayed quotations of other exchanges. Indeed, the concept of intermarket protection against trade-throughs is premised on the ability of options exchanges to route orders to execute against, rather than trade through, the quotations displayed by other options exchanges.[204] In this way, fair and efficient indirect access would, through the enhancement of the ability to achieve best execution and the support of compliance with the Trade-Through Rules, increase the efficiency of executions across option markets.

The proposed access fee limit would apply equally to all national securities exchanges, thereby promoting the NMS objective of equal regulation of markets. A fee limitation is necessary to preclude individual markets from having fee structures that take improper advantage of the protection against trade-throughs in the Trade-Through Rules. Precluding option markets from taking improper advantage of trade-through protection and making sure that all option markets compete under the same regulatory landscape should strengthen the ability of option markets to compete on a more level playing field, thereby promoting efficiency of execution across option markets by reducing costs.

The Commission solicits comments on these matters with respect to the proposed amendments to Rules 610(a) and (c). Would the proposed amendments have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? Would the proposed amendments, if adopted, promote efficiency, competition, and capital formation? Commenters are requested to provide empirical data and other factual support for their views if possible.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[205] the Commission must advise the Office of Management and Budget as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed amendments to Rule 610 on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

X. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA")[206] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[207] of the Administrative Procedure Act,[208] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities."[209] Section 605(b) of the RFA specifically states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not "have a significant economic impact on a substantial number of small entities."[210]

The proposed amendment to Rule 610(a) of Regulation NMS would prohibit a national securities exchange or national securities association from imposing unfairly discriminatory terms that would prevent or inhibit any person from obtaining efficient access through a member of such exchange or association to the quotations in a listed option. In addition, proposed Rule 610(c)(2) would prohibit a national securities exchange from imposing, or permitting to be imposed, any fee or fees for the execution of an order against any quotation that is the best bid or best offer of such exchange in a listed option that exceeds or accumulates to more than $0.30 per contract. As such, only national securities exchanges registered with the Commission under Section 6 of the Exchange Act and national securities associations registered with the Commission under Section 15A of the Exchange Act would be subject to the proposed amendments to Rules 610(a) and (c). None of the national securities exchanges registered under Section 6 of the Exchange Act or national securities associations registered with the Commission under Section 15A of the Exchange Act that would be subject to the proposed amendments are "small entities" for purposes of the RFA.[211] Accordingly, the Commission preliminarily does not believe that the proposed amendments to Rule 610 would have a significant economic impact on a substantial number of small entities.

The Commission invites commenters to address whether the proposed rules would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The Commission requests that commenters provide empirical data to support the extent of such impact.

[203] *See* NMS Adopting Release, *supra* note 4, at 37539.

[204] *Id.*

[205] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[206] 5 U.S.C. 601 *et seq.*

[207] 5 U.S.C. 603(a).

[208] 5 U.S.C. 551 *et seq.*

[209] Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. S7–879).

[210] *See* 5 U.S.C. 605(b).

[211] *See* 17 CFR 240.0–10(e). Paragraph (e) of Rule 0–10 states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 601 of Regulation NMS, 17 CFR 242.601, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. Under this standard, none of the exchanges subject to the proposed amendments to Rule 610 is a "small entity" for the purposes of the RFA. The Financial Industry Regulatory Authority or "FINRA" (f/k/a the National Association of Securities Dealers or "NASD") is not a small entity as defined by 13 CFR 121.201.

XI. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 5, 6, 11A, 15, 15A, 17(a) and (b), 19, and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k–1, 78o, 78o–3, 78q(a) and (b), 78s, and 78w(a), the Commission proposes to amend Rule 610 of Regulation NMS, as set forth below.

Text of Proposed Rule

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

PART 242—REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

2. Amend § 242.610 by revising paragraphs (a) and (c) to read as follows:

§ 242.610 Access to quotations.

(a) *Quotations of an SRO trading facility.* A national securities exchange or national securities association shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the national securities exchange or national securities association to the quotations in an NMS security displayed through its SRO trading facility.

* * * * *

(c) *Fees for access to quotations.* (1) A trading center shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association in an NMS stock that exceed or accumulate to more than the following limits:

(i) If the price of a protected quotation or other quotation is $1.00 or more, the fee or fees cannot exceed or accumulate to more than $0.003 per share; or

(ii) If the price of a protected quotation or other quotation is less than $1.00, the fee or fees cannot exceed or accumulate to more than 0.3% of the quotation price per share.

(2) A national securities exchange shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a quotation that is the best bid or best offer of such exchange in a listed option that exceed or accumulate to more than $0.30 per contract.

* * * * *

By the Commission.

Dated: April 14, 2010.

Elizabeth M. Murphy,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

TABLE 1—RANGE OF CHARGES FOR ACCESSING QUOTATIONS*

Exchange	Equity options		Index options	
	Classes included in minimum quoting increment pilot	Classes not included in minimum quoting increment pilot	Classes included in minimum quoting increment pilot	Classes not included in minimum quoting increment pilot
NYSE Amex	$0.00 to $0.42	$0.00 to $0.82	$0.00 to $0.64	$0.00 to $1.04.
NYSE Arca	$0.45	$0.00 to $0.81	$0.45 to $0.67	$0.00 to $1.03.
BOX	−$0.147 to $0.10	−$0.547 to −$0.30	−$0.147 to $0.32	−$0.547 to −$0.08.
CBOE	$0.004 to $0.45	$0.004 to $0.85	$0.004 to $0.60	$0.004 to $1.00.
ISE	$0.0035 to $0.43	$0.0035 to $0.83	$0.0035 to $0.65	$0.0035 to $1.05.
NOM	$0.35 to $0.45	−$0.20 to $0.45	$0.35 to $0.45	−$0.20 to $0.45.
Nasdaq OMX Phlx	$0.0035 to $0.56	$0.0035 to $1.01	$0.30 to $0.45	$0.30 to $0.45.

* As noted above, the Commission has not included BATS in its revenue impact calculations. *See supra* note 184.

TABLE 2—RANGE OF CHARGES FOR PROVIDING SIDE

Exchange	Equity options		Index options	
	Classes included in minimum quoting increment pilot	Classes not included in minimum quoting increment pilot	Classes included in minimum quoting increment pilot	Classes not included in minimum quoting increment pilot
NYSE Amex	$0.00 to $0.42	$0.00 to $0.82	$0.00 to $0.64	$0.00 to $1.04.
NYSE Arca	−$0.30 to −$0.25	$0.00 to $0.81	−$0.25 to $−0.08	$0.00 to $1.03.
BOX	$0.053 to $0.40	$0.553 to $0.80	$0.053 to $0.62	$0.553 to $1.02.
CBOE	$0.004 to $0.45	$0.004 to $0.85	$0.004 to $0.60	$0.004 to $1.00.
ISE	$0.0035 to $0.43	$0.0035 to $0.83	$0.0035 to $0.65	$0.0035 to $1.05.
NOM	−$0.25	$0.00 to $0.30	−$0.25	$0.00 to $0.30.
Nasdaq OMX Phlx	$0.0035 to $0.56	$0.0035 to $1.01	$0.30 to $0.45	$0.30 to $0.45.

TABLE 3—ESTIMATES OF POTENTIAL REVENUE IMPACT ON OPTIONS EXCHANGES

Exchange	Annual transaction fee revenues [1] ($Millions)	$0.30 cap estimated % of revenues impacted	$0.30 cap estimated revenue loss ($Millions)	$0.30 Cap estimated % of revenues impacted assuming make rebate reductions	$0.30 Cap estimated revenue loss ($Millions) assuming make rebate reductions
NYSE Amex	66.5	0.2	0.1	0.2	0.1
NYSE Arca	114.8	26.0	29.8	12.5	14.4
BOX [2]	4.0	0.0	0	0.0	0.0
CBOE	314.5	7.6	23.9	7.6	23.9
ISE	264.9	0.1	0.3	0.1	0.3
NOM	38.3	11.0	4.2	0.0	0.0
Nasdaq OMX Phlx	180.4	8.9	16.1	8.9	16.1
Total	983.4	7.6	74.4	5.6	54.7

[1] The transaction fee revenue amounts are based on either an exchange's 2008 Annual Report, an exchange's 2009 unaudited financial results from information circulars, or annualized from the exchange's latest 2009 10–Q.

[2] Financial data on annual transaction fees are not available for BOX. Therefore, Commission staff annualized its December 2009 fee revenue estimate.

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Federal Register

Tuesday,
April 20, 2010

Part V

The President

Memorandum of April 16, 2010—A 21st Century Strategy for America's Great Outdoors

Federal Register
Vol. 75, No. 75
Tuesday, April 20, 2010

Presidential Documents

Title 3—

The President

Memorandum of April 16, 2010

A 21st Century Strategy for America's Great Outdoors

Memorandum for the Secretary of the Interior[,] the Secretary of Agriculture[,] the Administrator of the Environmental Protection Agency[, and] the Chair of the Council on Environmental Quality

Americans are blessed with a vast and varied natural heritage. From mountains to deserts and from sea to shining sea, America's great outdoors have shaped the rugged independence and sense of community that define the American spirit. Our working landscapes, cultural sites, parks, coasts, wild lands, rivers, and streams are gifts that we have inherited from previous generations. They are the places that offer us refuge from daily demands, renew our spirits, and enhance our fondest memories, whether they are fishing with a grandchild in a favorite spot, hiking a trail with a friend, or enjoying a family picnic in a neighborhood park. They also are our farms, ranches, and forests—the working lands that have fed and sustained us for generations. Americans take pride in these places, and share a responsibility to preserve them for our children and grandchildren.

Today, however, we are losing touch with too many of the places and proud traditions that have helped to make America special. Farms, ranches, forests, and other valuable natural resources are disappearing at an alarming rate. Families are spending less time together enjoying their natural surroundings. Despite our conservation efforts, too many of our fields are becoming fragmented, too many of our rivers and streams are becoming polluted, and we are losing our connection to the parks, wild places, and open spaces we grew up with and cherish. Children, especially, are spending less time outside running and playing, fishing and hunting, and connecting to the outdoors just down the street or outside of town.

Across America, communities are uniting to protect the places they love, and developing new approaches to saving and enjoying the outdoors. They are bringing together farmers and ranchers, land trusts, recreation and conservation groups, sportsmen, community park groups, governments and industry, and people from all over the country to develop new partnerships and innovative programs to protect and restore our outdoors legacy. However, these efforts are often scattered and sometimes insufficient. The Federal Government, the Nation's largest land manager, has a responsibility to engage with these partners to help develop a conservation agenda worthy of the 21st Century. We must look to the private sector and nonprofit organizations, as well as towns, cities, and States, and the people who live and work in them, to identify the places that mean the most to Americans, and leverage the support of the Federal Government to help these community-driven efforts to succeed. Through these partnerships, we will work to connect these outdoor spaces to each other, and to reconnect Americans to them.

For these reasons, it is hereby ordered as follows:

Section 1. *Establishment.*

(a) There is established the America's Great Outdoors Initiative (Initiative), to be led by the Secretaries of the Interior and Agriculture, the Administrator of the Environmental Protection Agency, and the Chair of the Council on Environmental Quality (CEQ) and implemented in coordination with the agencies listed in section 2(b) of this memorandum. The Initiative may

include the heads of other executive branch departments, agencies, and offices (agencies) as the President may, from time to time, designate.

(b) The goals of the Initiative shall be to:

(i) Reconnect Americans, especially children, to America's rivers and waterways, landscapes of national significance, ranches, farms and forests, great parks, and coasts and beaches by exploring a variety of efforts, including:

(A) promoting community-based recreation and conservation, including local parks, greenways, beaches, and waterways;

(B) advancing job and volunteer opportunities related to conservation and outdoor recreation; and

(C) supporting existing programs and projects that educate and engage Americans in our history, culture, and natural bounty.

(ii) Build upon State, local, private, and tribal priorities for the conservation of land, water, wildlife, historic, and cultural resources, creating corridors and connectivity across these outdoor spaces, and for enhancing neighborhood parks; and determine how the Federal Government can best advance those priorities through public private partnerships and locally supported conservation strategies.

(iii) Use science-based management practices to restore and protect our lands and waters for future generations.

Sec. 2. *Functions.* The functions of the Initiative shall include:

(a) *Outreach.* The Initiative shall conduct listening and learning sessions around the country where land and waters are being conserved and community parks are being established in innovative ways. These sessions should engage the full range of interested groups, including tribal leaders, farmers and ranchers, sportsmen, community park groups, foresters, youth groups, businesspeople, educators, State and local governments, and recreation and conservation groups. Special attention should be given to bringing young Americans into the conversation. These listening sessions will inform the reports required in subsection (c) of this section.

(b) *Interagency Coordination.* The following agencies shall work with the Initiative to identify existing resources and align policies and programs to achieve its goals:

(i) the Department of Defense;

(ii) the Department of Commerce;

(iii) the Department of Housing and Urban Development;

(iv) the Department of Health and Human Services;

(v) the Department of Labor;

(vi) the Department of Transportation;

(vii) the Department of Education; and

(viii) the Office of Management and Budget (OMB).

(c) *Reports.* The Initiative shall submit, through the Chair of the CEQ, the following reports to the President:

(i) Report on America's Great Outdoors. By November 15, 2010, the Initiative shall submit a report that includes the following:

(A) a review of successful and promising nonfederal conservation approaches;

(B) an analysis of existing Federal resources and programs that could be used to complement those approaches;

(C) proposed strategies and activities to achieve the goals of the Initiative; and

(D) an action plan to meet the goals of the Initiative.

The report should reflect the constraints in resources available in, and be consistent with, the Federal budget. It should recommend efficient

and effective use of existing resources, as well as opportunities to leverage nonfederal public and private resources and nontraditional conservation programs.

(ii) Annual reports. By September 30, 2011, and September 30, 2012, the Initiative shall submit reports on its progress in implementing the action plan developed pursuant to subsection (c)(i)(D) of this section.

Sec. 3. *General Provisions.*

(a) This memorandum shall be implemented consistent with applicable law and subject to the availability of any necessary appropriations.

(b) This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(c) The heads of executive departments and agencies shall assist and provide information to the Initiative, consistent with applicable law, as may be necessary to carry out the functions of the Initiative. Each executive department and agency shall bear its own expenses of participating in the Initiative.

(d) Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(e) The Chair of the CEQ is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, April 16, 2010

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