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WHEN: Tuesday, October 5, 2010 [CANCELLED]
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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RESERVATIONS: (202) 741–6008

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 531

**RIN 3206–AM25**

## General Schedule Locality Pay Areas

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** On behalf of the President's Pay Agent, the U.S. Office of Personnel Management is issuing interim regulations on the locality pay program for General Schedule employees. The interim regulations establish separate locality pay areas for the States of Alaska and Hawaii and extend coverage of the Rest of U.S. locality pay area to include American Samoa, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territory of Guam, the U.S. Virgin Islands, and all other U.S. possessions listed in 5 CFR 591.205, applicable on the first day of the first pay period beginning on or after January 1, 2011.

**DATES:** *Effective Date:* The regulations are effective November 1, 2010.

*Applicability Date:* The regulations apply on the first day of the first pay period beginning on or after January 1, 2011.

*Comment Date:* We must receive comments on or before November 29, 2010.

**ADDRESSES:** Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; FAX: (202) 606–4264; or e-mail: *pay-performance-policy@opm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; e-mail: *pay-performance-policy@opm.gov.*

**SUPPLEMENTARY INFORMATION:** Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. The Non-Foreign Area Retirement Equity Assurance Act of 2009 (NAREA), Public Law 111–84, title XIX, subtitle B (October 28, 2009), extended locality pay to the States of Alaska and Hawaii and the U.S. territories and possessions effective in January 2010. While the statute included a sense of Congress that one locality pay area cover the entire State of Alaska and one cover the entire State of Hawaii, it did not actually establish any new locality pay areas.

Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council (Council), a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Council, which submits annual recommendations to the Pay Agent about the locality pay program.

The Federal Salary Council has been unable to meet to consider what locality pay areas should be established for the States of Alaska and Hawaii and the U.S. territories and possessions. Since establishing locality pay areas by regulation takes a substantial amount of time, we are publishing this interim rule now, even though the Council has not yet met, to insure these new locality pay areas are established in time for the January 2011 pay adjustments. We are hopeful the Council will be able to meet during the comment period for these regulations to formulate and submit recommendations.

In the absence of Council recommendations, the Pay Agent has concluded that separate locality pay areas should be established for the States of Alaska and Hawaii. We have non-Federal salary survey data collected under the National Compensation Survey (NCS) that can be used to set and adjust locality pay rates for these locations. This is the same survey source currently used in the other locality pay areas. In fact, the Council's recommendation letter of November 4, 2009, included a pay disparity for Alaska (based on a survey of Anchorage) of 54.98 percent and a pay disparity for Hawaii (based on a survey of Honolulu) of 38.41 percent. These measures were generated using the methodology adopted by the Council and the Pay Agent and salary surveys conducted by the Bureau of Labor Statistics (BLS) and both are well above the Rest of U.S. locality pay area pay disparity of 27.81 percent included in our 2009 annual report to the President. Establishing single pay areas for all of Alaska and all of Hawaii also coincides with a sense of Congress provision that these locations each be covered by a single separate locality pay area. Since it is not feasible for BLS to conduct salary surveys using the current survey methods at current budget levels in additional locations in Alaska, Hawaii, or the U.S. territories and possessions, the Pay Agent concludes Alaska and Hawaii should become whole-State locality pay areas and the other locations should be part of the Rest of U.S. (RUS) locality pay area. This decision may be revisited if the Federal Salary Council makes a different recommendation when it next convenes.

### Impact and Implementation

This rule will affect rates of pay for about 44,100 civilian white-collar employees in the States of Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and other U.S. possessions. Under the rule, approved locality pay rates would likely be higher than in the RUS locality pay area for employees in Alaska and Hawaii. Federal civilian white-collar employees in the U.S. territories and possessions will be covered by the RUS locality pay rate.

### Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving

the general notice of proposed rulemaking. Notice is being waived to comply with the intent of Congress that employees affected by the NAREA in Alaska and Hawaii have separate locality pay areas established for January 2011 pay adjustments. In addition, notice is being waived to ensure that employees in the U.S. territories and possessions who are affected by the NAREA are included in the RUS locality pay area in time for the January 2011 pay adjustments. I find that provision of the general notice of proposed regulations is both impracticable and unnecessary in this instance because Congress has indicated its intent that these changes be effected in time for the January 2011 pay adjustments, and because the process of promulgating proposed and final rules to establish these changes would introduce unnecessary delay resulting in effecting these changes beyond the date on which the January 2011 pay adjustments take effect. In addition, since the latest available data indicates that, for Alaska and Hawaii, the locality pay rates will be higher than that for the RUS locality pay area, the process of promulgating proposed and final rules would be contrary to the public interest in that it would cause unnecessary delay in applying the higher locality pay rates in these areas in time for the January 2011 pay adjustments.

**E.O. 12866, Regulatory Review**

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

**Paperwork Reduction Act**

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

**List of Subjects in 5 CFR Part 531**

Government employees, Law enforcement officers, Wages.

**John Berry,**

*Director, U.S. Office of Personnel Management.*

■ Accordingly, OPM amends 5 CFR part 531 as follows:

## PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304 and 5305; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

### Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.603, paragraph (b) is revised to read as follows:

**§ 531.603 Locality pay areas.**

* * * * *

(b) The following are locality pay areas for the purposes of this subpart:

(1) Alaska—consisting of the State of Alaska;

(2) Atlanta-Sandy Springs-Gainesville, GA–AL—consisting of the Atlanta-Sandy Springs-Gainesville, GA–AL CSA;

(3) Boston-Worcester-Manchester, MA–NH–RI–ME—consisting of the Boston-Worcester-Manchester, MA–RI–NH CSA, plus Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME;

(4) Buffalo-Niagara-Cattaraugus, NY—consisting of the Buffalo-Niagara-Cattaraugus, NY CSA;

(5) Chicago-Naperville-Michigan City, IL–IN–WI—consisting of the Chicago-Naperville-Michigan City, IL–IN–WI CSA;

(6) Cincinnati-Middletown-Wilmington, OH–KY–IN—consisting of the Cincinnati-Middletown-Wilmington, OH–KY–IN CSA;

(7) Cleveland-Akron-Elyria, OH—consisting of the Cleveland-Akron-Elyria, OH CSA;

(8) Columbus-Marion-Chillicothe, OH—consisting of the Columbus-Marion-Chillicothe, OH CSA;

(9) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CSA;

(10) Dayton-Springfield-Greenville, OH—consisting of the Dayton-Springfield-Greenville, OH CSA;

(11) Denver-Aurora-Boulder, CO—consisting of the Denver-Aurora-Boulder, CO CSA, plus the Ft. Collins-Loveland, CO MSA;

(12) Detroit-Warren-Flint, MI—consisting of the Detroit-Warren-Flint, MI CSA, plus Lenawee County, MI;

(13) Hartford-West Hartford-Willimantic, CT–MA—consisting of the Hartford-West Hartford-Willimantic, CT CSA, plus the Springfield, MA MSA and New London County, CT;

(14) Hawaii—consisting of the State of Hawaii;

(15) Houston-Baytown-Huntsville, TX—consisting of the Houston-Baytown-Huntsville, TX CSA;

(16) Huntsville-Decatur, AL—consisting of the Huntsville-Decatur, AL CSA;

(17) Indianapolis-Anderson-Columbus, IN—consisting of the Indianapolis-Anderson-Columbus, IN CSA, plus Grant County, IN;

(18) Los Angeles-Long Beach-Riverside, CA—consisting of the Los Angeles-Long Beach-Riverside, CA CSA, plus the Santa Barbara-Santa Maria-Goleta, CA MSA and all of Edwards Air Force Base, CA;

(19) Miami-Fort Lauderdale-Pompano Beach, FL—consisting of the Miami-Fort Lauderdale-Pompano Beach, FL MSA, plus Monroe County, FL;

(20) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(21) Minneapolis-St. Paul-St. Cloud, MN–WI—consisting of the Minneapolis-St. Paul-St. Cloud, MN–WI CSA;

(22) New York-Newark-Bridgeport, NY–NJ–CT–PA—consisting of the New York-Newark-Bridgeport, NY–NJ–CT–PA CSA, plus Monroe County, PA, Warren County, NJ, and all of Joint Base McGuire-Dix-Lakehurst;

(23) Philadelphia-Camden-Vineland, PA–NJ–DE–MD—consisting of the Philadelphia-Camden-Vineland, PA–NJ–DE–MD CSA excluding Joint Base McGuire-Dix-Lakehurst, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ;

(24) Phoenix-Mesa-Scottsdale, AZ—consisting of the Phoenix-Mesa-Scottsdale, AZ MSA;

(25) Pittsburgh-New Castle, PA—consisting of the Pittsburgh-New Castle, PA CSA;

(26) Portland-Vancouver-Hillsboro, OR–WA—consisting of the Portland-Vancouver-Hillsboro, OR–WA MSA, plus Marion County, OR, and Polk County, OR;

(27) Raleigh-Durham-Cary, NC—consisting of the Raleigh-Durham-Cary, NC CSA, plus the Fayetteville, NC MSA, the Goldsboro, NC MSA, and the Federal Correctional Complex Butner, NC;

(28) Richmond, VA—consisting of the Richmond, VA MSA;

(29) Sacramento—Arden-Arcade—Yuba City, CA–NV—consisting of the Sacramento—Arden-Arcade—Yuba City, CA–NV CSA, plus Carson City, NV;

(30) San Diego-Carlsbad-San Marcos, CA—consisting of the San Diego-Carlsbad-San Marcos, CA MSA;

(31) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA, plus the Salinas, CA MSA and San Joaquin County, CA;

(32) Seattle-Tacoma-Olympia, WA—consisting of the Seattle-Tacoma-Olympia, WA CSA, plus Whatcom County, WA;

(33) Washington-Baltimore-Northern Virginia, DC–MD–VA–WV–PA—consisting of the Washington-Baltimore-Northern Virginia, DC–MD–VA–WV CSA, plus the Hagerstown-Martinsburg, MD–WV MSA, the York-Hanover-Gettysburg, PA CSA, and King George County, VA; and

(34) Rest of U.S.—consisting of those portions of the United States and its territories and possessions as listed in 5 CFR 591.205 not located within another locality pay area.

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 360

**RIN 3064–AD55**

### Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation ("FDIC") has adopted an amended regulation regarding the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization or a participation (the "Rule"). The Rule continues the safe harbor for financial assets transferred in connection with securitizations and participations in which the financial assets were transferred in compliance with the existing regulation. The Rule also imposes further conditions for a safe harbor for securitizations or participations issued after a transition period. On March 11, 2010, the FDIC established a transition period through September 30, 2010. In order to provide for a transition to the new conditions for the safe harbor, the Rule provides for an extended transition period through December 31, 2010 for securitizations and participations. The Rule defines the conditions for safe harbor protection for securitizations and participations for which transfers of financial assets are made after the transition period; and clarifies the application of the safe harbor to transactions that comply with the new accounting standards for off balance sheet treatment as well as those that do not comply with those accounting standards. The conditions contained in the Rule will serve to protect the Deposit Insurance Fund ("DIF") and the FDIC's interests as deposit insurer and receiver by aligning the conditions for the safe harbor with better and more sustainable securitization practices by insured depository institutions ("IDIs").

**DATES:** Effective September 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Michael Krimminger, Office of the Chairman, 202–898–8950; George Alexander, Division of Resolutions and Receiverships, (202) 898–3718; Robert Storch, Division of Supervision and Consumer Protection, (202) 898–8906; or R. Penfield Starke, Legal Division, (703) 562–2422, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In 2000, the FDIC clarified the scope of its statutory authority as conservator or receiver to disaffirm or repudiate contracts of an insured depository institution with respect to transfers of financial assets by an IDI in connection with a securitization or participation when it adopted a regulation codified at 12 CFR 360.6 (the "Securitization Rule"). This rule provided that the FDIC as conservator or receiver would not use its statutory authority to disaffirm or repudiate contracts to reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an IDI in connection with a securitization or in the form of a participation, provided that such transfer met all conditions for sale accounting treatment under generally accepted accounting principles ("GAAP"). The rule was a clarification, rather than a limitation, of the repudiation power. Such power authorizes the conservator or receiver to breach a contract or lease entered into by an IDI and be legally excused from further performance, but it is not an avoiding power enabling the conservator or receiver to recover assets that were previously sold and no longer reflected on the books and records on an IDI.

The Securitization Rule provided a "safe harbor" by confirming "legal isolation" if all other standards for off balance sheet accounting treatment, along with some additional conditions focusing on the enforceability of the transaction, were met by the transfer in connection with a securitization or a participation. Satisfaction of "legal isolation" was vital to securitization transactions because of the risk that the pool of financial assets transferred into the securitization trust could be recovered in bankruptcy or in a bank receivership. If the transfer satisfied this condition, the Securitization Rule confirmed that the transferred assets were "legally isolated" from the IDI in an FDIC conservatorship or receivership. The Securitization Rule, thus, addressed only purported sales which met the conditions for off balance sheet accounting treatment under GAAP.

Since its adoption, the Securitization Rule has been relied on by securitization participants as assurance that investors could look to securitized financial assets for payment without concern that the financial assets would be interfered with by the FDIC as conservator or receiver. However, the implementation of new accounting rules has created uncertainty for securitization participants.

*Modifications to GAAP Accounting Standards*

On June 12, 2009, the Financial Accounting Standards Board ("FASB") finalized modifications to GAAP through Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140* ("FAS 166") and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* ("FAS 167") (the "2009 GAAP Modifications"). The 2009 GAAP Modifications are effective for annual financial statement reporting periods that begin after November 15, 2009. The 2009 GAAP Modifications made changes that affect whether a special purpose entity ("SPE") must be consolidated for financial reporting purposes, thereby subjecting many SPEs to GAAP consolidation requirements. These accounting changes may require some IDIs to consolidate an issuing entity to which financial assets have been transferred for securitization onto their balance sheets for financial reporting purposes primarily because an affiliate of the IDI retains control over

the financial assets.[1] Given the 2009 GAAP Modifications, legal and accounting treatment of a transaction may no longer be aligned. As a result, the safe harbor provision of the Securitization Rule may not apply to a transfer in connection with a securitization that does not qualify for off balance sheet treatment.

FAS 166 also affects the treatment of participations issued by an IDI, in that it defines participating interests as pari-passu pro-rata interests in financial assets, and subjects the sale of a participation interest to the same conditions as the sale of financial assets. Statement FAS 166 provides that transfers of participation interests that do not qualify for sale treatment will be viewed as secured borrowings. While the GAAP modifications have some effect on participations, most participations are likely to continue to meet the conditions for sale accounting treatment under GAAP.

*FDI Act Changes*

In 2005 Congress enacted Section 11(e)(13)(C)[2] of the Federal Deposit Insurance Act (the "FDI Act").[3] In relevant part, this paragraph provides that generally no person may exercise any right or power to terminate, accelerate, or declare a default under a contract to which the IDI is a party, or obtain possession of or exercise control over any property of the IDI, or affect any contractual rights of the IDI, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator or the 90-day period beginning on the date of the appointment of the receiver. If a securitization is treated as a secured borrowing, Section 11(e)(13)(C) could prevent the investors from recovering monies due to them for up to 90 days. Consequently, securitized assets that remain property of the IDI (but subject to a security interest) would be subject to the stay, raising concerns that any attempt by securitization noteholders to exercise remedies with respect to the IDI's assets would be delayed. During the stay, interest and principal on the securitized debt could remain unpaid. The FDIC has been advised that this 90-day delay would cause substantial downgrades in the ratings provided on existing securitizations and could prevent planned securitizations for multiple asset classes, such as credit cards, automobile loans, and other credits, from being brought to market.

*Analysis*

The FDIC believes that several of the issues of concern for securitization participants regarding the impact of the 2009 GAAP Modifications on the eligibility of transfers of financial assets for safe harbor protection can be addressed by clarifying the position of the conservator or receiver under established law. Under Section 11(e)(12) of the FDI Act,[4] the conservator or receiver cannot use its statutory power to repudiate or disaffirm contracts to avoid a legally enforceable and perfected security interest in transferred financial assets. This provision applies whether or not the securitization meets the conditions for sale accounting. The Rule clarifies that prior to repudiation or, in the case of a monetary default, prior to the date on which the FDIC's consent to the exercise of remedies becomes effective, required payments of principal and interest and other amounts due on the securitized obligations will continue to be made. In addition, if the FDIC decides to repudiate the securitization transaction, the FDIC will pay damages equal to the par value of the outstanding obligations, less prior payments of principal received, plus unpaid, accrued interest through the date of repudiation. The payment of such damages will discharge the lien on the securitization assets. This clarification in paragraphs (d)(4) and (e) of the Rule addresses certain questions that were raised about the scope of the stay codified in Section 11(e)(13)(C).

An FDIC receiver generally makes a determination of what constitutes property of an IDI based on the books and records of the failed IDI. Given the 2009 GAAP Modifications, there may be circumstances in which a sale transaction will continue to be reflected on the books and records of the IDI because the IDI or one of its affiliates continues to exercise control over the assets either directly or indirectly. The Rule provides comfort that conforming securitizations which do not qualify for off balance sheet treatment will have access to the assets in a timely manner irrespective of whether a transaction is viewed as a legal sale.

If a transfer of financial assets by an IDI to an issuing entity in connection with a securitization is not characterized as a sale and is properly perfected, the securitized assets will be viewed as subject to a perfected security interest. This is significant because the FDIC as conservator or receiver is prohibited by statute from avoiding a legally enforceable and perfected security interest, except where such an interest is taken in contemplation of insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.[5] Consequently, the ability of the FDIC as conservator or receiver to reach financial assets transferred by an IDI to an issuing entity in connection with a securitization, if such transfer is characterized as a transfer for security, is limited by the combination of the status of the entity as a secured party with a perfected security interest in the transferred assets and the statutory provision that prohibits the conservator or receiver from avoiding a legally enforceable and perfected security interest.

Thus, for securitizations that are consolidated on the books of an IDI, the Rule provides a safe harbor in a conservatorship or receivership. There are two situations in which consent to expedited access to transferred assets will be given—(i) monetary default under a securitization by the FDIC as conservator or receiver or (ii) repudiation by the FDIC of the securitization agreements pursuant to which the financial assets were transferred. The Rule provides that in the event the FDIC is in monetary default under the securitization documents due to its failure to pay or apply collections from the financial assets received by it in accordance with the securitization documents and the default continues for a period of ten (10) business days after written notice to the FDIC, the FDIC will be deemed to consent pursuant to Sections 12 U.S.C. 1821(e)(13)(C) and 12 U.S.C. 1825(b)(2) to the exercise of contractual rights under the documents on account of such monetary default, and such consent shall constitute satisfaction in full of obligations of the IDI and the FDIC as conservator or receiver to the holders of the securitization obligations.

The Rule also provides that in the event the FDIC repudiates the securitization asset transfer agreement, the FDIC shall have the right to discharge the lien on the financial assets included in the securitization by paying damages in an amount equal to the par value of the obligations in the securitization on the date of the

[1] Of particular note, Paragraph 26A of FAS 166 introduces a new concept that was not in FAS 140, as follows: "* * * the transferor must first consider whether the transferee would be consolidated by the transferor. Therefore, if all other provisions of this Statement are met with respect to a particular transfer, and the transferee would be consolidated by the transferor, then the transferred financial assets would not be treated as having been sold in the financial statements being presented."

[2] 12 U.S.C. 1821(e)(13)(C).

[3] 12 U.S.C. 1811 *et seq.*

[4] 12 U.S.C. 1821(e)(12).

[5] 12 U.S.C. 1821(e)(12).

appointment of the FDIC as conservator or receiver, less any principal payments received by the investors through the date of repudiation, plus unpaid, accrued interest through the date of repudiation. The payment of accrued interest is dependent on whether the FDIC has received those funds through payments on the financial assets. If such damages are not paid within ten (10) business days of repudiation, the FDIC will be deemed to consent pursuant to Sections 12 U.S.C. 1821(e)(13)(C) and 12 U.S.C. 1825(b)(2) to the exercise of contractual rights under the securitization agreements.

The Rule also confirms that, if the transfer of the assets in a securitization is viewed as a sale for accounting purposes (and thus the assets are not reflected on the books of an IDI), the FDIC as receiver will not, in the exercise of its authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership the transferred assets. However, this safe harbor only applies if the transactions comply with the requirements set forth in paragraphs (b) and (c) of the Rule.

Pursuant to 12 U.S.C. 1821(e)(13)(C), no person may exercise any right or power to terminate, accelerate, or declare a default under a contract to which the IDI is a party, or to obtain possession of or exercise control over any property of the IDI, or affect any contractual rights of the IDI, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator or the 90-day period beginning on the date of the appointment of the receiver. In order to address concerns that the statutory stay could delay repayment of investors in a securitization or delay a secured party from exercising its rights with respect to securitized financial assets, the Rule provides for consent by the conservator or receiver or, if the FDIC is acting as servicer, for the agreement of the FDIC in that capacity, to continue making required payments under the securitization documents and continued servicing of the assets. In addition, the Rule allows for the exercise of self-help remedies during the stay period of 12 U.S.C. 1821(e)(13)(C) ten (10) business days after notice is given following a monetary default by the FDIC or, in the event that the FDIC does not timely pay repudiation damages.

The FDIC recognizes that, as a practical matter, the scope of the comfort that is provided by the Rule is more limited than that provided in the Securitization Rule. However, the FDIC believes that the requirements are necessary to support sustainable securitizations. The safe harbor is not exclusive, and it does not address any transactions that fall outside the scope of the safe harbor or that fail to comply with one or more safe harbor conditions. The FDIC believes that its safe harbor should promote responsible financial asset underwriting and increase transparency in the market.

*Previous Rulemakings*

On November 12, 2009, the FDIC issued an Interim Final Rule amending 12 CFR 360.6, Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation, to provide for safe harbor treatment for participations and securitizations until March 31, 2010, which was further amended, on March 11, 2010, by a Final Rule extending the safe harbor until September 30, 2010 (as so amended, the "Transition Rule"). Under the Transition Rule, all existing securitizations as well as those for which transfers were made or, for revolving trusts, for which beneficial interests were issued, on or prior to September 30, 2010, were permanently "grandfathered" so long as they complied with the pre-existing Section 360.6.

At its December 15, 2009 meeting, the Board adopted an Advance Notice of Proposed Rulemaking ("ANPR") and, at its May 11, 2010 meeting, the Board adopted a Notice of Proposed Rulemaking ("NPR"), each of which sought public comment on the scope of amendments to Section 360.6 as well as on the requirements for the application of the safe harbor. The FDIC considered all of the comments received in response to the ANPR in formulating the NPR. The NPR and the public comments received are discussed below in Sections III and IV.

*Purpose of the Rule*

The FDIC, as deposit insurer and receiver for failed IDIs, has a unique responsibility and interest in ensuring that residential mortgage loans and other financial assets originated by IDIs are originated for long-term sustainability. The supervisory interest in origination of quality loans and other financial assets is shared with other bank and thrift supervisors. Nevertheless, the FDIC's responsibilities to protect insured depositors and resolve failed insured banks and thrifts and its responsibility to the DIF require that when the FDIC provides a safe harbor consenting to special relief from the application of its receivership powers, it must do so in a manner that fulfills these responsibilities.

The evident defects in many subprime and other mortgages originated and sold into securitizations requires attention by the FDIC to fulfill its responsibilities as deposit insurer and receiver in addition to its role as a supervisor. The defects and misalignment of incentives in the securitization process for residential mortgages were a significant contributor to the erosion of underwriting standards throughout the mortgage finance system. While many of the troubled mortgages were originated by non-bank lenders, insured banks and thrifts also made many troubled loans as underwriting standards declined under the competitive pressures created by the returns achieved by lenders and service providers through the "originate to distribute" model.

Defects in the incentives provided by securitization through immediate gains on sale for transfers into securitization vehicles and fee income directly led to material adverse consequences for insured banks and thrifts. Among these consequences were increased repurchase demands under representations and warranties contained in securitization agreements, losses on purchased mortgage and asset-backed securities, severe declines in financial asset values and in mortgage- and asset-backed security values due to spreading market uncertainty about the value of structured finance investments, and impairments in overall financial prospects due to the accelerated decline in housing values and overall economic activity. These consequences, and the overall economic conditions, directly led to the failures of many IDIs and to significant losses to the DIF. In this context, it would be imprudent for the FDIC to provide consent or other clarification of its application of its receivership powers without imposing requirements designed to realign the incentives in the securitization process to avoid these devastating effects.

The FDIC's adoption of 12 CFR 360.6 in 2000 facilitated legal and accounting analyses that supported securitization. In view of the accounting changes and the effects they have upon the application of the Securitization Rule, it is crucial that the FDIC provide clarification of the application of its receivership powers in a way that reduces the risks to the DIF by better aligning the incentives in securitization to support sustainable lending and structured finance transactions.

The Rule is fully consistent with the position of the FDIC in the Final Covered Bond Policy Statement of July 15, 2008. In that Policy Statement, the

FDIC Board of Directors acted to clarify how the FDIC would treat covered bonds in the case of a conservatorship or receivership with the express goal of thereby facilitating the development of the U.S. covered bond market. As noted in that Policy Statement, it served to "define the circumstances and the specific covered bond transactions for which the FDIC will grant consent to expedited access to pledged covered bond collateral." The Policy Statement further specifically referenced the FDIC's goal of promoting development of the covered bond market, while protecting the DIF and prudently applying its powers as conservator or receiver.[6]

The Rule is also consistent with the amendments to Regulation AB proposed by the Securities and Exchange Commission ("SEC") on April 7, 2010 (as so proposed to be amended, "New Regulation AB"). The proposed amendments represent a significant overhaul of Regulation AB and related rules governing the offering process, disclosure requirements and ongoing reporting requirements for securitizations. New Regulation AB would establish extensive new requirements for both SEC registered publicly offered securitization and many private placements, including disclosure of standardized financial asset level information, enhanced investor cash flow modeling tools and on-going information reporting requirements. In addition New Regulation AB requires certain certifications to the quality of the financial asset pool, retention by the sponsor or an affiliate of a portion of the securitization securities and third party reports on compliance with the sponsor's obligation to repurchase assets for breach of representations and warranties as a precondition to an issuer's ability to use a shelf registration. The disclosure and retention requirements of New Regulation AB are consistent with and support the approach of the Rule.

To ensure that IDIs are sponsoring securitizations in a responsible and sustainable manner, the Rule imposes certain conditions on securitizations that are not grandfathered by the Rule's transition provision and additional conditions on non-grandfathered securitizations that include residential mortgages ("RMBS"), including those that qualify as true sales, as a prerequisite for the FDIC to grant consent to the exercise of the rights and powers listed in 12 U.S.C. 1821(e)(13)(C) with respect to such financial assets. To qualify for the safe harbor provision of the Rule, the conditions must be satisfied for any securitization (i) for which transfers of financial assets were made on or after December 31, 2010 or (ii) from a master trust or revolving trust established after adoption of the Rule, or from an open commitment not in effect on the date of adoption of the Rule or which otherwise does not qualify to be grandfathered under the transition provisions.

## II. The NPR

On January 7, 2010, the FDIC published its Advance Notice of Proposed Rulemaking Regarding Treatment by the FDIC as Conservator or Receiver of Financial Assets Transferred by an IDI in Connection with a Securitization or Participation After March 31, 2010 in the **Federal Register** (75 FR 935 (Jan. 7, 2010)) soliciting public comment to proposed amendments to the Securitization Rule. On May 17, 2010, the FDIC published its Notice of Proposed Rulemaking Regarding Treatment by the FDIC as Conservator or Receiver of Financial Assets Transferred by an IDI in Connection with a Securitization or Participation After September 30, 2010 (75 FR 27471 (May 17, 2010)). The NPR solicited public comment on the Proposed Rule for 45 days.

## III. Summary of Comments on the NPR

The FDIC received 22 comment letters on the Proposed Rule and held one teleconference at which details of the NPR were discussed. The letters included comments from trade associations, banks and rating agencies, among others.

Several entities commented specifically on the need for greater disclosure, and the comments included support for the requirement of loan level data for residential mortgage loans. In addition, support was expressed for risk retention; however, there were differing views as to the level of required risk retention.

A number of commenters had objections to the Proposed Rule. Objections fell mainly into the following categories: (1) With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the FDIC should only adopt conditions jointly with the other federal regulators; (2) certain criteria were deemed to be too qualitative in nature; (3) certain conditions were viewed as potentially increasing costs to IDIs; and (4) the remedies available under the safe harbor and legal isolation were perceived as lacking clarity.

*Joint action by the agencies.* The FDIC undertook to revise its safe harbor in light of accounting changes that came into effect for reporting periods after November 15, 2009. At that point in time, the outcome of financial regulatory reform proposals was unclear. The FDIC did not delay its efforts because the accounting and legal bases for the pre-existing safe harbor did not apply after November 2009. Given the changed facts, industry urged the FDIC to evaluate the safe harbor and provide guidance in light of the 2009 GAAP Modifications.

Beginning in the fall of 2009, FDIC staff discussed differing approaches to the safe harbor regulation with the staff of all relevant federal financial regulators and the Department of Treasury. Accordingly, earlier this year the Securities and Exchange Commission proposed New Regulation AB to govern required disclosures for shelf registrations and private placements that were fully consistent with the additional transparency requirements contained in the Proposed Rule. As a result, the Rule and the SEC's proposed regulations are fully consistent.

Nothing in the Rule is inconsistent with the Dodd-Frank legislation. The provisions of the Dodd-Frank legislation substantively address only the risk retention requirements and, pending further regulatory action, require five percent risk retention. This is fully consistent with the Rule as well.

Section 941 of Dodd-Frank requires the federal banking agencies, including the FDIC, and the SEC to jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any assets involved in a securitization. Dodd-Frank also requires regulations addressing retention of credit risk for residential mortgages, and requires the agencies to define "qualified residential mortgages" which are exempt from risk retention. Section 941 authorizes the rulemaking agencies to consider whether additional exemptions, exceptions, or adjustments are appropriate. The regulations covering securitizations involving residential mortgages must be jointly issued by the foregoing agencies along with the Secretary of the Department of Housing and Urban Development and the Federal Housing Finance Agency. These regulations must be adopted within 270 days of enactment of the Dodd-Frank legislation. In order to assure consistency between the Rule and these required interagency regulations, the Rule provides that upon the effective date of final regulations required by

[6] FDIC Covered Bond Policy Statement, 73 FR 43754 *et seq.* (July 28, 2008).

Section 941(b), such final regulations shall exclusively govern the requirement to retain an economic interest in a portion of the credit risk of the financial assets under the Rule.

An important consideration is that different regulatory agencies have different regulatory jurisdiction. The FDIC has regulatory jurisdiction over the rules applied in the resolution of failed IDIs, as the SEC has jurisdiction over disclosure requirements under the securities laws. In exercising their different responsibilities, the agencies may have to adopt rules addressing the same issues within their regulatory mandate. In those cases, those rules should be harmonized except where differences are appropriate to accomplish their different regulatory missions. For the FDIC's safe harbor rule, the FDIC is setting the conditions that define how it will apply its receivership powers and, thereby, what types of transactions will be entitled to the safe harbor protecting them from application of certain of those powers. This was precisely what the FDIC did in 2000 when it adopted the original version of Section 360.6. The interagency risk retention rule required by the Dodd-Frank legislation will not address all of the issues relevant to the application of those receivership rules or to the availability of the safe harbor. In exercising the FDIC's regulatory jurisdiction, the Rule addresses risk retention as well as the other components of the safe harbor whereas the interagency rule will solely address risk retention.

*Certain criteria were too qualitative in nature.* A number of commenters noted that reliance on qualitative criteria or requirements for continuing actions, such as ongoing disclosures, would make it more difficult to de-link the rating of a securitization from that of the sponsor. It is a debatable proposition that rating agencies cannot evaluate qualitative information when they must rely on changing, qualitative information in any ongoing surveillance of a rating. Nonetheless, the Rule reflects revisions from the text of the Proposed Rule and ties disclosures and many other requirements solely to the contractual terms of the securitization documents. This will permit a clearer assessment of whether a transaction meets the conditions in the Rule. Certain other conditions included in the Proposed Rule that were asserted to be vague were also modified to clarify terminology and respond to the concerns expressed in comments.

*Conditions potentially increase costs for IDIs.* Comments received in opposition to the conditions included disagreement that such requirements would serve to promote more long-term sustainability for loans and other financial assets originated by IDIs and assertions that the conditions would impose additional costs on IDIs and competitively disadvantage IDIs in relation to non-regulated securitization sponsors.

These comments reflect a misunderstanding of the purpose of the conditions. The conditions are designed to provide greater clarity and transparency to allow a better ongoing evaluation of the quality of lending by banks and reduce the risks to the DIF from opaque securitization structures and the poorly underwritten loans that led to the onset of the financial crisis. In addition, these comments fail to recognize that securitization as a viable liquidity tool in mortgage finance will not return without greater transparency and clarity because investors have experienced the difficulties provided by the existing model of securitization. However, greater transparency is not solely for investors, but will serve to more closely tie the origination of loans to their long-term performance by requiring disclosures of that performance. These conditions are supported by New Regulation AB.

*Remedies available under the safe harbor and legal isolation.* A number of commenters were concerned that damages payable for repudiation of securitization transfer agreements would not include payment of interest to the date of repudiation. The Rule has been revised to specifically include in the calculation of repudiation damages accrued interest through the date of repudiation, to the extent received through payments on financial assets through the date of repudiation.

Credit rating agencies expressed concern that in the absence of clarification by the FDIC regarding the continuation of payments after an IDI's failure and the payment of damages in the event of repudiation, an IDI securitization might need to be linked to the IDI's credit rating. The Rule addresses these issues in its provisions consenting to payments being made prior to repudiation and in its provisions relating to the amount of damages payable in the event of repudiation by a conservator or receiver.

Some commenters also objected to the safe harbor's reliance on the accounting treatment of the transfers of financial assets being securitized and were critical of the Rule's treatment of financial assets that did not obtain off balance sheet accounting treatment as property of an insolvent IDI. Commenters suggested that the FDIC focus instead on a legal sale analysis in determining whether a transfer of assets was eligible for the safe harbor.

The FDIC has rejected this position because the Securitization Rule as adopted in 2000, as well as the FDIC's longstanding evaluation of the assets potentially subject to receivership powers, has been based on the treatment of those assets as on or off balance sheet. This was explicitly stated in the Securitization Rule. Moreover, it is appropriate for the FDIC to rely on the books and records of a failed IDI in administering a conservatorship or receivership and consider how to apply a safe harbor for assets that are deemed part of the IDI's balance sheet under GAAP.

Objections to the treatment of securitization transfers that do not meet the requirements for off balance sheet treatment under the new accounting rules are misplaced. Prior to the Securitization Rule, securitization transactions were typically treated as secured transactions or sales. As a result, under the Rule, if the transfer does not meet the standards for off balance sheet treatment, the FDIC will consider the transaction as a secured transaction if it meets the requirements imposed on such transactions under the Rule and state law. In this way, investors in securitization transactions that do not qualify for off balance sheet treatment may still receive benefits of expedited access to the securitized financial assets if they meet the conditions specified in the Rule.

Comments relating to specific provisions of the NPR are discussed below in the description of the Rule.

## IV. The Rule

The Rule replaces the Securitization Rule as amended by the Transition Rule. Paragraph (a) of the Rule sets forth definitions of terms used in the Rule. It retains many of the definitions previously used in the Securitization Rule but modifies or adds definitions to the extent necessary to accurately reflect current industry practice in securitizations. Pursuant to these definitions, the safe harbor does not apply to certain government sponsored enterprises ("Specified GSEs"), affiliates of certain such enterprises, or any entity established or guaranteed by those GSEs. In addition, the Rule is not intended to apply to the Government National Mortgage Association ("Ginnie Mae") or Ginnie Mae-guaranteed securitizations. When Ginnie Mae guarantees a security, the mortgages backing the security are assigned to Ginnie Mae, an entity owned entirely by the United States government. Ginnie

Mae's statute contains broad authority to enforce its contract with the lender/issuer and its ownership rights in the mortgages backing Ginnie Mae-guaranteed securities. In the event that an entity otherwise subject to the Rule issues both guaranteed and non-guaranteed securitizations, the securitizations guaranteed by a Specified GSE are not subject to the Rule.

Paragraph (b) of the Rule imposes conditions to the availability of the safe harbor for transfers of financial assets to an issuing entity in connection with a securitization. These conditions make a clear distinction between the conditions imposed on RMBS from those imposed on securitizations for other asset classes. In the context of a conservatorship or receivership, the conditions applicable to all securitizations will improve overall transparency and clarity through disclosure and documentation requirements along with ensuring effective incentives for prudent lending by requiring that the payment of principal and interest be based primarily on the performance of the financial assets and by requiring retention of a share of the credit risk in the securitized loans.

The conditions applicable to RMBS are more detailed and include additional capital structure, disclosure, documentation and compensation requirements as well as a requirement for the establishment of a reserve fund. These requirements are intended to address the factors that caused significant losses in current RMBS securitization structures as demonstrated in the recent crisis. Confidence can be restored in RMBS markets only through greater transparency and other structures that support sustainable mortgage origination practices and require increased disclosures. These standards respond to investor demands for greater transparency and alignment of the interests of parties to the securitization. In addition, they are generally consistent with industry efforts while taking into account proposed legislative and regulatory initiatives.

*Capital Structure and Financial Assets.*

For all securitizations, the benefits of the Rule should be available only to securitizations that are readily understood by the market, increase liquidity of the financial assets and reduce consumer costs. Consistent with New Regulation AB, the documents governing the securitization will be required to provide that there be financial asset level disclosure as appropriate to the securitized financial assets for any resecuritizations (securitizations supported by other securitization obligations). These disclosures must include full disclosure of the obligations, including the structure and the assets supporting each of the underlying securitization obligations, and not just the obligations that are transferred in the re-securitization. This requirement applies to all re-securitizations, including static re-securitizations as well as managed collateralized debt obligations.

The Rule provides that securitizations that are unfunded or synthetic transactions are not eligible for expedited consent under the Rule. To support sound lending, the documents governing all securitizations must require that payments of principal and interest on the obligations be primarily dependent on the performance of the financial assets supporting the securitization and that such payments not be contingent on market or credit events that are independent of the assets supporting the securitization, except for interest rate or currency mismatches between the financial assets and the obligations to investors.

For RMBS only, the Rule limits the capital structure of the securitization to six tranches or less to discourage complex and opaque structures. The most senior tranche could include time-based sequential pay or planned amortization and companion sub-tranches, which are not viewed as separate tranches for the purpose of the six tranche requirement. This condition will not prevent an issuer from creating the economic equivalent of multiple tranches by re-securitizing one or more tranches, so long as they meet the conditions set forth in the rule, including adequate disclosure in connection with the re-securitization. In addition, RMBS cannot include leveraged tranches that introduce market risks (such as leveraged super senior tranches). Although the financial assets transferred into an RMBS will be permitted to benefit from asset level credit support, such as guarantees (including guarantees provided by governmental agencies, private companies, or government-sponsored enterprises), co-signers, or insurance, the RMBS cannot benefit from external credit support at the issuing entity or pool level. It is intended that guarantees permitted at the asset level include guarantees of payment or collection, but not credit default swaps or similar items. The temporary payment of principal and interest, however, can be supported by liquidity facilities. These conditions are designed to limit both the complexity and the leverage of an RMBS and therefore the systemic risks introduced by them in the market. In addition, the Rule provides that the securitization obligations can be enhanced by credit support or guarantees provided by Specified GSEs. However, as noted in the discussion of the definitions above, a securitization that is wholly guaranteed by a Specified GSE is not subject to the Rule and thus not eligible for the safe harbor.

Comments in response to the NPR expressed concern that a limitation on the number of tranches of an RMBS would negatively affect the ability of securitizations to meet investor objectives and maximize offering proceeds. In addition, commenters argued that there should be no restriction on external third party pool level credit support, while one commenter stated that guarantees in RMBS transactions should be permitted at the loan level only if issued by regulated third parties with proven capacity to ensure prudent loan origination and satisfy their obligations.

In formulating the Rule, the FDIC was mindful of the need to permit innovation and accommodate financing needs, and thus attempted to strike a balance between permitting multi-tranche structures for RMBS transactions, on the one hand, and promoting readily understandable securitization structures and limiting overleveraging of residential mortgage assets, on the other hand.

The FDIC is of the view that permitting pool level, external credit support in an RMBS can lead to overleveraging of assets, as investors might focus on the credit quality of the credit support provider as opposed to the sufficiency of the financial asset pool to service the securitization obligations. However, the Rule has been revised to permit pool level credit support by Specified GSEs.

Finally, although the Rule excludes unfunded and synthetic securitizations from the safe harbor, the FDIC does not view the inclusion of existing credit lines that are not fully drawn in a securitization as causing such securitization to be an "unfunded securitization." The provision is intended to emphasize that the Rule applies only where there is an actual transfer of financial assets. In addition, to the extent an unfunded or synthetic transaction qualifies for treatment as a qualified financial contract under Section (11)(e) of the FDI Act, it would not need the benefits of the safe harbor provided in the Rule in an FDIC receivership.[7]

[7] 12 U.S.C. 1821(e)(10).

*Disclosure*

For all securitizations, disclosure serves as an effective tool for increasing the demand for high quality financial assets and thereby establishing incentives for robust financial asset underwriting and origination practices. By increasing transparency in securitizations, the Rule will enable investors (which may include banks) to decide whether to invest in a securitization based on full information with respect to the quality of the asset pool and thereby provide additional liquidity only for sustainable origination practices.

The data must enable investors to analyze the credit quality for the specific asset classes that are being securitized. The documents governing securitizations must, at a minimum, require disclosure for all issuances to include the types of information required under current Regulation AB (17 CFR 229.1100–1123) or any successor disclosure requirements with the level of specificity that applies to public issuances, even if the obligations are issued in a private placement or are not otherwise required to be registered.

The documents governing securitizations that will qualify under the Rule must require disclosure of the structure of the securitization and the credit and payment performance of the obligations, including the relevant capital or tranche structure and any liquidity facilities and credit enhancements. The disclosure must be required to include the priority of payments and any specific subordination features, as well as any waterfall triggers or priority of payment reversal features. The disclosure at issuance will also be required to include the representations and warranties made with respect to the financial assets and the remedies for breach of such representations and warranties, including any relevant timeline for cure or repurchase of financial assets, and policies governing delinquencies, servicer advances, loss mitigation and write offs of financial assets. The documents must also require that periodic reports provided to investors include the credit performance of the obligations and financial assets, including periodic and cumulative financial asset performance data, modification data, substitution and removal of financial assets, servicer advances, losses that were allocated to each tranche and remaining balance of financial assets supporting each tranche as well as the percentage coverage for each tranche in relation to the securitization as a whole. Where appropriate for the type of financial assets included in the pool, reports must also include asset level information that may be relevant to investors (*e.g.* changes in occupancy, loan delinquencies, defaults, etc.). The FDIC recognizes that for certain asset classes, such as credit card receivables, the disclosure of asset level information is less informative and, thus, will not be required.

The securitization documents must also require disclosure to investors of the nature and amount of compensation paid to any mortgage or other broker, the servicer(s), rating agency or third-party advisor, and the originator or sponsor, and the extent to which any risk of loss on the underlying financial assets is retained by any of them for such securitization. The documents must also require disclosure of changes to this information while obligations are outstanding. This disclosure should enable investors to assess potential conflicts of interests and how the compensation structure affects the quality of the assets securitized or the securitization as a whole.

For RMBS, loan level data as to the financial assets securing the mortgage loans, such as loan type, loan structure, maturity, interest rate and location of property, will also be required to be disclosed by the sponsor. Sponsors of securitizations of residential mortgages will be required to affirm compliance in all material respects with applicable statutory and regulatory standards for origination of mortgage loans, including that the mortgages in the securitization pool are underwritten at the fully indexed rate relying on documented income [8] and comply with supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such other or additional guidance applicable at the time of loan origination. None of the disclosure conditions should be construed as requiring the disclosure of personally identifiable information of obligors or information that would violate applicable privacy laws.

The Rule also requires sponsors to disclose a third party due diligence report on compliance with such standards and the representations and warranties made with respect to the financial assets.

Finally, the Rule requires that the securitization documents require the disclosure by servicers of any ownership interest of the servicer or any affiliate of the servicer in other whole loans secured by the same real property that secures a loan included in the financial asset pool. This provision does not require disclosure of interests held by servicers or their affiliates in the securitization securities. This provision is intended to give investors information to evaluate potential servicer conflicts of interest that might impede the servicer's actions to maximize value for the benefit of investors.

*Documentation and Recordkeeping*

For all securitizations, the operative agreements are required to use as appropriate available standardized documentation for each available asset class. It is not possible to define in advance when use of standardized documentation will be appropriate, but certainly when there is general market use of a form of documentation for a particular asset class, or where a trade group has formulated standardized documentation generally accepted by the industry, such documentation must be used.

The Rule also requires that the securitization documents define the contractual rights and responsibilities of the parties, including but not limited to representations and warranties, ongoing disclosure requirements and any measures to avoid conflicts of interest. The documents are also required to provide authority for the parties to fulfill their rights and responsibilities under the securitization contracts.

Additional conditions apply to RMBS to address a significant issue that has been demonstrated in the mortgage crisis by requiring that servicers have the authority to mitigate losses on mortgage loans consistent with maximizing the net present value of the mortgages. Therefore, for RMBS, contractual provisions in the servicing agreement must provide servicers with the authority to modify loans to address reasonably foreseeable defaults and to take other action to maximize the value and minimize losses on the securitized financial assets. The documents must require servicers to apply industry best

[8] Institutions should verify and document the borrower's income (both source and amount), assets and liabilities. For the majority of borrowers, institutions should be able to readily document income using recent W–2 statements, pay stubs, and/or tax returns. Stated income and reduced documentation loans should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Reliance on such factors also should be documented. Mitigating factors might include situations where a borrower has substantial liquid reserves or assets that demonstrate repayment capacity and can be verified and documented by the lender. A higher interest rate is not considered an acceptable mitigating factor.

practices related to asset management and servicing.

The RMBS documents may not give control of servicing discretion to a particular class of investors. The documents must require that the servicer act for the benefit of all investors rather for the benefit of any particular class of investors. Consistent with the forgoing, the documents must require the servicer to commence action to mitigate losses no later than ninety (90) days after an asset first becomes delinquent unless all delinquencies on such asset have been cured. A servicer must also be required to maintain sufficient records of its actions to permit appropriate review of its actions.

The FDIC believes that a prolonged period of servicer advances in a market downturn misaligns servicer incentives with those of the RMBS investors. Servicing advances also serve to aggravate liquidity concerns, exposing the market to greater systemic risk. Occasional advances for late payments, however, are beneficial to ensure that investors are paid in a timely manner. To that end, the servicing agreement for RMBS must not require the primary servicer to advance delinquent payments of principal and interest by borrowers for more than three (3) payment periods unless financing or reimbursement facilities to fund or reimburse the primary servicers are available. However, such facilities shall not be dependent for repayment on foreclosure proceeds.

*Compensation*

The compensation requirements of the Rule apply only to RMBS. Due to the demonstrated issues in the compensation incentives in RMBS, in this asset class the Rule seeks to realign compensation to parties involved in the rating and servicing of residential mortgage securitizations.

The securitization documents are required to provide that any fees payable credit rating agencies or similar third-party evaluation companies must be payable in part over the five (5) year period after the initial issuance of the obligations based on the performance of surveillance services and the performance of the financial assets, with no more than sixty (60) percent of the total estimated compensation due at closing. Thus payments to rating agencies must be based on the actual performance of the financial assets, not their ratings.

A second area of concern is aligning incentives for proper servicing of the mortgage loans. Therefore, the documents must require that compensation to servicers must include incentives for servicing, including payment for loan restructuring or other loss mitigation activities, which maximizes the net present value of the financial assets in the RMBS.

Responses to the NPR stated that compensation to rating agencies should not be linked to performance of a securitization because such linkage will interfere with the neutral ratings process, and a rating agency expressed the concern that such linkage might give rating agencies an incentive to delay rating actions that would alert the market to a deterioration. Concern was also expressed that this provision could incentivize a rating agency to rate a transaction at a level that is lower than the level that the rating agency believes to be the appropriate level.

The FDIC notes that rating agencies must have procedures in place to protect analytic independence and ensure the integrity of their ratings. The comments misconstrue the precise terms of the safe harbor requirement, which requires that compensation must be linked to the performance of the assets, not the ratings. Accordingly, there is no incentive to delay ratings actions.

*Origination and Retention Requirements*

To provide further incentives for quality origination practices, several conditions address origination and retention requirements for all securitizations. For all securitizations, the sponsor must retain an economic interest in a material portion, defined as not less than five (5) percent, of the credit risk of the financial assets. The retained interest may be either in the form of an interest of not less than five (5) percent in each credit tranche or in a representative sample of the securitized financial assets equal to not less than five (5) percent of the principal amount of the financial assets at transfer. This retained interest cannot be sold, pledged or hedged during the life of the transaction, except for the hedging of interest rate or currency risk. If required to retain an economic interest in the asset pool without hedging the credit risk of such portion, the sponsor will be less likely to originate low quality financial assets. The Rule provides that upon the effective date of final regulations required by Section 941(b) of the Dodd-Frank legislation, such final regulations shall exclusively govern the requirement to retain an economic interest in a portion of the credit risk of the financial assets under the Rule.

The Rule requires that RMBS securitization documents require that a reserve fund be established in an amount equal to at least five (5) percent of the cash proceeds due to the sponsor and that this reserve be held for twelve (12) months to cover any repurchases required for breaches of representations and warranties. This reserve fund will ensure that the sponsor bears a significant risk for poorly underwritten loans during the first year of the securitization.

In addition, the securitization documents must include a representation that residential mortgage loans in an RMBS have been originated in all material respects in compliance with statutory, regulatory and originator underwriting standards in effect at the time of origination and were underwritten at the fully indexed rate and rely on documented income and comply with all existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such other or additional regulations or guidance applicable at the time of loan origination.

The FDIC believes that requiring the sponsor to retain an economic interest in the credit risk relating to each credit tranche or in a representative sample of financial assets will help ensure quality origination practices. A risk retention requirement that did not cover all types of exposure would not be sufficient to create an incentive for quality underwriting at all levels of the securitization. The recent economic crisis made clear that, if quality underwriting is to be assured, it will require true risk retention by sponsors, and that the existence of representations and warranties or regulatory standards for underwriting will not alone be sufficient.

*Additional Conditions*

Paragraph (c) of the Rule includes general conditions for all securitizations and the transfer of financial assets. These conditions also include requirements that are consistent with good banking practices and are necessary to make the transactions comply with established banking law.[9]

The transaction should be an arms-length, bona fide securitization transaction and the documents must limit sales to affiliates, other than to wholly-owned subsidiaries which are consolidated with the sponsor for accounting and capital purposes, and insiders of the sponsor. The securitization agreements must be in

[9] *See,* 12 U.S.C. 1823(e).

writing, approved by the board of directors of the bank or its loan committee (as reflected in the minutes of a meeting of the board of directors or committee), and have been, continuously, from the time of execution, in the official record of the bank. The securitization also must have been entered into in the ordinary course of business, not in contemplation of insolvency and with no intent to hinder, delay or defraud the bank or its creditors.

The Rule applies only to transfers made for adequate consideration. The transfer and/or security interest need to be properly perfected under the UCC or applicable state law. The FDIC anticipates that it will be difficult to determine whether a transfer complying with the Rule is a sale or a security interest, and therefore expects that a security interest will be properly perfected under the UCC, either directly or as a backup.

The governing documents must require that the sponsor separately identify in its financial asset data bases the financial assets transferred into a securitization and maintain an electronic or paper copy of the closing documents in a readily accessible form, and that the sponsor maintain a current list of all of its outstanding securitizations and issuing entities, and the most recent Form 10–K or other periodic financial report for each securitization and issuing entity. The documents must also provide that if acting as servicer, custodian or paying agent, the sponsor is not permitted to commingle amounts received with respect to the financial assets with its own assets except for the time necessary to clear payments received, and in event for more than two business days. The documents must require the sponsor to make these records available to the FDIC promptly upon request. This requirement will facilitate the timely fulfillment of the receiver's responsibilities upon appointment and will expedite the receiver's analysis of securitization assets. This will also facilitate the receiver's analysis of the bank's assets and determination of which assets have been securitized and are therefore potentially eligible for expedited access by investors.

In addition, the Rule requires that the transfer of financial assets and the duties of the sponsor as transferor be evidenced by an agreement separate from the agreement governing the sponsor's duties, if any, as servicer, custodian, paying agent, credit support provider or in any capacity other than transferor.

*The Safe Harbor*

Paragraph (d)(1) of the Rule continues the safe harbor provision that was provided by the Securitization Rule with respect to participations so long as the participation satisfies the conditions for sale accounting treatment set forth by generally accepted accounting principles. In addition, last-in first-out participations are specifically included in the safe harbor, provided that they satisfy requirements for sale accounting treatment other than the pari-passu, proportionate interest requirement that is not satisfied solely as a result of the last-in first-out structure.

Paragraph (d)(2) of the Rule provides that for (i) any participation or securitization for which transfers of financial assets are made on or before December 31, 2010 or (ii) obligations of revolving trusts or master trusts which issued one or more obligations on or before the date of adoption of this Rule, or (iii) obligations issued under open commitments up to the maximum amount of such commitments as of the date of adoption of this Rule if one or more obligations are issued under such commitments by December 31, 2010, the FDIC as conservator or receiver will not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership the transferred financial assets notwithstanding that the transfer of such financial assets does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods subsequent to November 15, 2009, so long as such transfer satisfied the conditions for sale accounting treatment under generally accepted accounting principles in effect for reporting periods prior to November 15, 2009. This provision is intended to continue the safe harbor provided by the Transition Rule.

Paragraph (d)(3) of the Rule addresses transfers of financial assets made in connection with a securitization for which transfers of financial assets were made after December 31, 2010 or securitizations from a master trust or revolving trust established after the date of adoption of this Rule or from an open commitment not satisfying the requirements of paragraph (d)(2), that (in each case) satisfy the conditions for sale accounting treatment under GAAP in effect for reporting periods after November 15, 2009. For such securitizations, the FDIC as conservator or receiver will not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets, provided that such securitizations comply with the conditions set forth in paragraphs (b) and (c) of the Rule.

Paragraph (d)(4) of the Rule addresses transfers of financial assets in connection with a securitization for which transfers of financial assets were made after December 31, 2010 or securitizations from a master trust or revolving trust established after the date of adoption of the Rule or from an open commitment not satisfying the requirements of paragraph (d)(2) or (d)(3), that (in each case) satisfy the conditions set forth in paragraphs (b) and (c), but where the transfer does not satisfy the conditions for sale accounting treatment under GAAP in effect for reporting periods after November 15, 2009.

Paragraph (d)(4)(i) provides that if the FDIC is in monetary default due to its failure to pay or apply collections from the financial assets received by it in accordance with the securitization documents, and remains in monetary default for ten (10) business days after actual delivery of a written notice to the FDIC requesting exercise of contractual rights because of such default, the FDIC consents to the exercise of such contractual rights, including any rights to obtain possession of the financial assets or the exercise of self-help remedies as a secured creditor, provided that no involvement of the receiver or conservator is required, other than consents, waivers or the execution of transfer documents reasonably requested in the ordinary course of business in order facilitate the exercise of such contractual rights. This paragraph also provides that the consent to the exercise of such contractual rights shall serve as full satisfaction for all amounts due.

Paragraph (d)(4)(ii) provides that if the FDIC as conservator or receiver gives a written notice of repudiation of the securitization agreement pursuant to which assets were transferred and the FDIC does not pay the damages due by reason of such repudiation within ten (10) business days following the effective date of the notice, the FDIC consents to the exercise of any contractual rights, including any rights to obtain possession of the financial assets or the exercise of self-help remedies as a secured creditor, provided that no involvement of the receiver or conservator is required other than consents, waivers or the execution of transfer documents reasonably requested in the ordinary course of business in order facilitate the exercise

of such contractual rights. Paragraph 4(d)(ii) also provides that the damages due for these purposes shall be an amount equal to the par value of the obligations outstanding on the date of receivership less any payments of principal received by the investors through the date of repudiation, plus unpaid, accrued interest through the date of repudiation to the extent actually received through payments on the financial assets received through the date of repudiation, and that upon receipt of such payment all liens on the financial assets created pursuant to the securitization documents shall be released.

In computing amounts payable as repudiation damages, consistent with the FDI Act the FDIC will not give effect to any provisions of the securitization documents increasing the amount payable based on the appointment of the FDIC as receiver or conservator.[10]

Comments as to the scope of the safe harbor expressed concern with the risk of repudiation by the FDIC, in particular, the risk that the FDIC would repudiate an issuer's securitization obligations and liquidate the financial assets at a time when the market value of such assets was less than the amount of the outstanding obligations owed to investors, thus exposing investors to market value risks relating to the securitization asset pool.

The Rule addresses this concern. It clarifies that repudiation damages will be equal to the par value of the obligations as of the date of receivership, less payments of principal received by the investors to the date of repudiation, plus unpaid, accrued interest through the date of repudiation to the extent actually received through payments on the financial assets received through the date of repudiation. The Rule also provides that the FDIC consents to the exercise of remedies by investors, including self-help remedies as secured creditors, in the event that the FDIC repudiates a securitization transfer agreement and does not pay damages in such amount within ten business days following the effective date of notice of repudiation. Thus, if the FDIC repudiates and the investors are not paid the par value of the securitization obligations, plus unpaid, accrued interest through the date of repudiation to the extent actually received through payments on the financial assets received through the date of repudiation, they will be permitted to obtain the asset pool. Accordingly, exercise by the FDIC of its repudiation rights will not expose investors to market value risks relating to the asset pool.

The comments also included a request that the safe harbor not condition the FDIC's consent to the exercise of secured creditor remedies on there being no involvement of the receiver or conservator. The Rule clarifies that the FDIC will give ordinary course consents and waivers in connection with the exercise of secured creditor remedies.

Comments also included concern that non-proportionate participation arrangements, such as LIFO participations, entered into after September 30, 2010 that do not satisfy the criteria for "participating interests" under the 2009 GAAP Modifications would no longer qualify for sale treatment because the safe harbor is available only to participations which satisfy sale accounting treatment. The vast majority of participations are expected to satisfy the sale accounting requirement. The Rule includes an additional provision to address LIFO participations.

*Consent to Certain Payments and Servicing*

Paragraph (e) provides that prior to repudiation or, in the case of monetary default, prior to the effectiveness of the consent referred to in paragraph (d)(4)(i), the FDIC consents to the making of, or if acting as servicer agrees to make, required payments to the investors during the stay period imposed by 12 U.S.C. 1821(e)(13)(C). The Rule also provides that the FDIC consents to any servicing activity required in furtherance of the securitization (subject to the FDIC's rights to repudiate the servicing agreements), in connection with securitizations that meet the conditions set forth in paragraphs (b) and (c) of the Rule.

*Miscellaneous*

Paragraph (f) requires that any party requesting the FDIC's consent pursuant to paragraph (d)(4), provide notice to the FDIC together with a statement of the basis upon the request is made, together with copies of all documentation supporting the request. This includes a copy of the applicable agreements (such as the transfer agreement and the security agreement) and of any applicable notices under the agreements.

Paragraph (g) of the Rule provides that the conservator or receiver will not seek to avoid an otherwise legally enforceable agreement that is executed by an insured depository institution in connection with a securitization solely because the agreement does not meet the "contemporaneous" requirement of 12 U.S.C. 1821(d)(9), 1821(n)(4)(I), or 1823(e).

Paragraph (h) of the Rule provides that the consents set forth in the Rule will not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract except as specifically set forth in the Rule, and nothing contained in the section will alter the claims priority of the securitized obligations.

Paragraph (i) provides that except as specifically set forth in the Rule, the Rule does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. The Rule should not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The right to consent under 12 U.S.C. 1821(e)(13)(C) or 12 U.S.C. 1825(b)(2) may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank. The Rule can be repealed by the FDIC upon 30 days notice provided in the **Federal Register**, but any repeal will not apply to any issuance that complied with the Rule before such repeal.

## V. Regulatory Procedure

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide a Regulatory Flexibility Analysis, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605. The FDIC hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities, as that term applies to insured depository institutions.

[10] *See,* 12 U.S.C. 1821(e)(13).

*B. Paperwork Reduction Act*

This rule contains new information collection requirements subject to the Paperwork Reduction Act (PRA).

The burden estimates for the applications are as follows:

1. 10K Annual Report

*Non Reg AB Compliant:*
*Estimated Number of Respondents:* 50.
*Affected Public:* FDIC-insured depository institutions.
*Frequency of Response:* 1 time per year.
*Average Time per Response:* 27 hours.
*Estimated Annual Burden:* 1350 hours.
*Reg AB Compliant:*
*Estimated Number of Respondents:* 50.
*Affected Public:* FDIC-insured depository institutions.
*Frequency of Response:* 1 time per year.
*Average Time per Response:* 4.5 hours.
*Estimated Annual Burden:* 225 hours.

2. 8K—Disclosure Form

*Non Reg AB Compliant:*
*Estimated Number of Respondents:* 50.
*Affected Public:* FDIC-insured depository institutions.
*Frequency of Response:* 2 times per year.
*Estimated Number of Annual Responses:* 100.
*Average Time per Response:* 27 hours.
*Estimated Annual Burden:* 2,700 hours.
*Reg AB Compliant:*
*Estimated Number of Respondents:* 50.
*Affected Public:* FDIC-insured depository institutions.
*Frequency of Response:* 2 times per year.
*Estimated Number of Annual Responses:* 100.
*Average Time per Response:* 4.5 hour.
*Estimated Annual Burden:* 450 hours.

3. 10D Reports

*Non Reg AB Compliant:*
*Estimated Number of Respondents:* 50.
*Affected Public:* FDIC-insured depository institutions.
*Frequency of Response:* 5 times per year.
*Estimated Number of Annual Responses:* 250.
*Average Time per Response:* 27 hours.
*Estimated Annual Burden:* 6750 hours.
*Reg AB Compliant:*
*Estimated Number of Respondents:* 50.
*Affected Public:* FDIC-insured depository institutions.
*Frequency of Response:* 5 times per year.
*Estimated Number of Annual Responses:* 250.
*Average Time per Response:* 4.5 hours.
*Estimated Annual Burden:* 1,125 hours.

4. 12b–25

*Estimated Number of Respondents:* 100.
*Affected Public:* FDIC-insured depository institutions.
*Frequency of Response:* 1 time per year.
*Estimated Number of Annual Responses:* 100.
*Average Time per Response:* 2.5 hours.
*Estimated Annual Burden:* 250 hours.

*C . Small Business Regulatory Enforcement Fairness Act*

The Office of Management and Budget has determined that the rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 ("SBREFA") (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the rule may be reviewed.

**List of Subjects in 12 CFR Part 360**

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends 12 CFR part 360 as follows:

## PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 continues to read as follows:

**Authority:** 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Revise § 360.6 to read as follows:

**§ 360.6 Treatment of financial assets transferred in connection with a securitization or participation.**

(a) *Definitions.*

(1) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(2) *Investor* means a person or entity that owns an obligation issued by an issuing entity.

(3) *Issuing entity* means an entity that owns a financial asset or financial assets transferred by the sponsor and issues obligations supported by such asset or assets. Issuing entities may include, but are not limited to, corporations, partnerships, trusts, and limited liability companies and are commonly referred to as special purpose vehicles or special purpose entities. To the extent a securitization is structured as a multi-step transfer, the term issuing entity would include both the issuer of the obligations and any intermediate entities that may be a transferee. Notwithstanding the foregoing, a Specified GSE or an entity established or guaranteed by a Specified GSE shall not constitute an issuing entity.

(4) *Monetary default* means a default in the payment of principal or interest when due following the expiration of any cure period.

(5) *Obligation* means a debt or equity (or mixed) beneficial interest or security that is primarily serviced by the cash flows of one or more financial assets or financial asset pools, either fixed or revolving, that by their terms convert into cash within a finite time period, or upon the disposition of the underlying financial assets, and by any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders issued by an issuing entity. The term may include beneficial interests in a grantor trust, common law trust or similar issuing entity to the extent that such interests satisfy the criteria set forth in the preceding sentence, but does not include LLC interests, partnership interests, common or preferred equity, or similar instruments evidencing ownership of the issuing entity.

(6) *Participation* means the transfer or assignment of an undivided interest in all or part of a financial asset, that has all of the characteristics of a "participating interest," from a seller, known as the "lead," to a buyer, known as the "participant," without recourse to the lead, pursuant to an agreement between the lead and the participant. "Without recourse" means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

(7) *Securitization* means the issuance by an issuing entity of obligations for which the investors are relying on the cash flow or market value characteristics and the credit quality of transferred financial assets (together with any external credit support

permitted by this section) to repay the obligations.

(8) *Servicer* means any entity responsible for the management or collection of some or all of the financial assets on behalf of the issuing entity or making allocations or distributions to holders of the obligations, including reporting on the overall cash flow and credit characteristics of the financial assets supporting the securitization to enable the issuing entity to make payments to investors on the obligations. The term "servicer" does not include a trustee for the issuing entity or the holders of obligations that makes allocations or distributions to holders of the obligations if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer.

(9) *Specified GSE* means each of the following:

(i) The Federal National Mortgage Association and any affiliate thereof;

(ii) Federal Home Loan Mortgage Corporation and any affiliate thereof;

(iii) The Government National Mortgage Association; and

(iv) Any federal or state sponsored mortgage finance agency.

(10) *Sponsor* means a person or entity that organizes and initiates a securitization by transferring financial assets, either directly or indirectly, including through an affiliate, to an issuing entity, whether or not such person owns an interest in the issuing entity or owns any of the obligations issued by the issuing entity.

(11) *Transfer* means:

(i) The conveyance of a financial asset or financial assets to an issuing entity or

(ii) The creation of a security interest in such asset or assets for the benefit of the issuing entity.

(b) *Coverage.* This section shall apply to securitizations that meet the following criteria:

(1) *Capital Structure and Financial Assets.* The documents creating the securitization must define the payment structure and capital structure of the transaction.

(i) *Requirements applicable to all securitizations:*

(A) The securitization shall not consist of re-securitizations of obligations or collateralized debt obligations unless the documents creating the securitization require that disclosures required in paragraph (b)(2) of this section are made available to investors for the underlying assets supporting the securitization at initiation and while obligations are outstanding; and

(B) The documents creating the securitization shall require that payment of principal and interest on the securitization obligation must be primarily based on the performance of financial assets that are transferred to the issuing entity and, except for interest rate or currency mismatches between the financial assets and the obligations, shall not be contingent on market or credit events that are independent of such financial assets. The securitization may not be an unfunded securitization or a synthetic transaction.

(ii) *Requirements applicable only to securitizations in which the financial assets include any residential mortgage loans:*

(A) The capital structure of the securitization shall be limited to no more than six credit tranches and cannot include "sub-tranches," grantor trusts or other structures. Notwithstanding the foregoing, the most senior credit tranche may include time-based sequential pay or planned amortization and companion sub-tranches; and

(B) The credit quality of the obligations cannot be enhanced at the issuing entity or pool level through external credit support or guarantees. However, the credit quality of the obligations may be enhanced by credit support or guarantees provided by Specified GSEs and the temporary payment of principal and/or interest may be supported by liquidity facilities, including facilities designed to permit the temporary payment of interest following appointment of the FDIC as conservator or receiver. Individual financial assets transferred into a securitization may be guaranteed, insured or otherwise benefit from credit support at the loan level through mortgage and similar insurance or guarantees, including by private companies, agencies or other governmental entities, or government-sponsored enterprises, and/or through co-signers or other guarantees.

(2) *Disclosures.*

The documents shall require that the sponsor, issuing entity, and/or servicer, as appropriate, shall make available to investors, information describing the financial assets, obligations, capital structure, compensation of relevant parties, and relevant historical performance data set forth in paragraph (b)(2) of this section.

(i) *Requirements applicable to all securitizations:*

(A) The documents shall require that, on or prior to issuance of obligations and at the time of delivery of any periodic distribution report and, in any event, at least once per calendar quarter, while obligations are outstanding, information about the obligations and the securitized financial assets shall be disclosed to all potential investors at the financial asset or pool level, as appropriate for the financial assets, and security-level to enable evaluation and analysis of the credit risk and performance of the obligations and financial assets. The documents shall require that such information and its disclosure, at a minimum, shall comply with the requirements of Securities and Exchange Commission Regulation AB, 17 CFR 229.1100 through 1123 (to the extent then in effect) or any successor disclosure requirements for public issuances, even if the obligations are issued in a private placement or are not otherwise required to be registered. Information that is unknown or not available to the sponsor or the issuer after reasonable investigation may be omitted if the issuer includes a statement in the offering documents disclosing that the specific information is otherwise unavailable;

(B) The documents shall require that, on or prior to issuance of obligations, the structure of the securitization and the credit and payment performance of the obligations shall be disclosed, including the capital or tranche structure, the priority of payments and specific subordination features; representations and warranties made with respect to the financial assets, the remedies for and the time permitted for cure of any breach of representations and warranties, including the repurchase of financial assets, if applicable; liquidity facilities and any credit enhancements permitted by this rule, any waterfall triggers or priority of payment reversal features; and policies governing delinquencies, servicer advances, loss mitigation, and write-offs of financial assets;

(C) The documents shall require that while obligations are outstanding, the issuing entity shall provide to investors information with respect to the credit performance of the obligations and the financial assets, including periodic and cumulative financial asset performance data, delinquency and modification data for the financial assets, substitutions and removal of financial assets, servicer advances, as well as losses that were allocated to such tranche and remaining balance of financial assets supporting such tranche, if applicable, and the percentage of each tranche in relation to the securitization as a whole; and

(D) In connection with the issuance of obligations, the documents shall require that the nature and amount of compensation paid to the originator,

sponsor, rating agency or third-party advisor, any mortgage or other broker, and the servicer(s), and the extent to which any risk of loss on the underlying assets is retained by any of them for such securitization be disclosed. The securitization documents shall require the issuer to provide to investors while obligations are outstanding any changes to such information and the amount and nature of payments of any deferred compensation or similar arrangements to any of the parties.

(ii) *Requirements applicable only to securitizations in which the financial assets include any residential mortgage loans:*

(A) Prior to issuance of obligations, sponsors shall disclose loan level information about the financial assets including, but not limited to, loan type, loan structure (for example, fixed or adjustable, resets, interest rate caps, balloon payments, etc.), maturity, interest rate and/or Annual Percentage Rate, and location of property; and

(B) Prior to issuance of obligations, sponsors shall affirm compliance in all material respects with applicable statutory and regulatory standards for origination of mortgage loans, including that the mortgages are underwritten at the fully indexed rate relying on documented income, and comply with supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such other or additional guidance applicable at the time of loan origination. Sponsors shall disclose a third party due diligence report on compliance with such standards and the representations and warranties made with respect to the financial assets; and

(C) The documents shall require that prior to issuance of obligations and while obligations are outstanding, servicers shall disclose any ownership interest by the servicer or an affiliate of the servicer in other whole loans secured by the same real property that secures a loan included in the financial asset pool. The ownership of an obligation, as defined in this regulation, shall not constitute an ownership interest requiring disclosure.

(3) *Documentation and Recordkeeping.* The documents creating the securitization must specify the respective contractual rights and responsibilities of all parties and include the requirements described in paragraph (b)(3) of this section and use as appropriate any available standardized documentation for each different asset class.

(i) *Requirements applicable to all securitizations.* The documents shall define the contractual rights and responsibilities of the parties, including but not limited to representations and warranties and ongoing disclosure requirements, and any measures to avoid conflicts of interest; and provide authority for the parties, including but not limited to the originator, sponsor, servicer, and investors, to fulfill their respective duties and exercise their rights under the contracts and clearly distinguish between any multiple roles performed by any party.

(ii) *Requirements applicable only to securitizations in which the financial assets include any residential mortgage loans:*

(A) Servicing and other agreements must provide servicers with authority, subject to contractual oversight by any master servicer or oversight advisor, if any, to mitigate losses on financial assets consistent with maximizing the net present value of the financial asset. Servicers shall have the authority to modify assets to address reasonably foreseeable default, and to take other action to maximize the value and minimize losses on the securitized financial assets. The documents shall require that the servicers apply industry best practices for asset management and servicing. The documents shall require the servicer to act for the benefit of all investors, and not for the benefit of any particular class of investors, that the servicer must commence action to mitigate losses no later than ninety (90) days after an asset first becomes delinquent unless all delinquencies on such asset have been cured, and that the servicer maintains records of its actions to permit full review by the trustee or other representative of the investors; and

(B) The servicing agreement shall not require a primary servicer to advance delinquent payments of principal and interest for more than three payment periods, unless financing or reimbursement facilities are available, which may include, but are not limited to, the obligations of the master servicer or issuing entity to fund or reimburse the primary servicer, or alternative reimbursement facilities. Such "financing or reimbursement facilities" under this paragraph shall not be dependent for repayment on foreclosure proceeds.

(4) *Compensation.* The following requirements apply only to securitizations in which the financial assets include any residential mortgage loans. Compensation to parties involved in the securitization of such financial assets must be structured to provide incentives for sustainable credit and the long-term performance of the financial assets and securitization as follows:

(i) The documents shall require that any fees or other compensation for services payable to credit rating agencies or similar third-party evaluation companies shall be payable, in part, over the five (5) year period after the first issuance of the obligations based on the performance of surveillance services and the performance of the financial assets, with no more than sixty (60) percent of the total estimated compensation due at closing; and

(ii) The documents shall provide that compensation to servicers shall include incentives for servicing, including payment for loan restructuring or other loss mitigation activities, which maximizes the net present value of the financial assets. Such incentives may include payments for specific services, and actual expenses, to maximize the net present value or a structure of incentive fees to maximize the net present value, or any combination of the foregoing that provides such incentives.

(5) *Origination and Retention Requirements.*

(i) *Requirements applicable to all securitizations.*

(A) Prior to the effective date of regulations required under new Section 15G of the Securities Exchange Act, 15 U.S.C. 78a *et seq.,* added by Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the documents shall require that the sponsor retain an economic interest in a material portion, defined as not less than five (5) percent, of the credit risk of the financial assets. This retained interest may be either in the form of an interest of not less than five (5) percent in each of the credit tranches sold or transferred to the investors or in a representative sample of the securitized financial assets equal to not less than five (5) percent of the principal amount of the financial assets at transfer. This retained interest may not be sold or pledged or hedged, except for the hedging of interest rate or currency risk, during the term of the securitization.

(B) Upon the effective date of regulations required under new Section 15G of the Securities Exchange Act, 15 U.S.C. 78a *et seq.,* added by Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, such final regulations shall exclusively govern the requirement to retain an economic interest in a portion of the credit risk of the financial assets under this rule.

(ii) *Requirements applicable only to securitizations in which the financial assets include any residential mortgage loans:*

(A) The documents shall require the establishment of a reserve fund equal to at least five (5) percent of the cash proceeds of the securitization payable to the sponsor to cover the repurchase of any financial assets required for breach of representations and warranties. The balance of such fund, if any, shall be released to the sponsor one year after the date of issuance.

(B) The documents shall include a representation that the assets shall have been originated in all material respects in compliance with statutory, regulatory, and originator underwriting standards in effect at the time of origination. The documents shall include a representation that the mortgages included in the securitization were underwritten at the fully indexed rate, based upon the borrowers' ability to repay the mortgage according to its terms, and rely on documented income and comply with all existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such other or additional regulations or guidance applicable to insured depository institutions at the time of loan origination. Residential mortgages originated prior to the issuance of such guidance shall meet all supervisory guidance governing the underwriting of residential mortgages then in effect at the time of loan origination.

(c) *Other requirements.* (1) The transaction should be an arms length, bona fide securitization transaction. The documents shall require that the obligations issued in a securitization shall not be predominantly sold to an affiliate (other than a wholly-owned subsidiary consolidated for accounting and capital purposes with the sponsor) or insider of the sponsor;

(2) The securitization agreements are in writing, approved by the board of directors of the bank or its loan committee (as reflected in the minutes of a meeting of the board of directors or committee), and have been, continuously, from the time of execution in the official record of the bank;

(3) The securitization was entered into in the ordinary course of business, not in contemplation of insolvency and with no intent to hinder, delay or defraud the bank or its creditors;

(4) The transfer was made for adequate consideration;

(5) The transfer and/or security interest was properly perfected under the UCC or applicable state law;

(6) The transfer and duties of the sponsor as transferor must be evidenced in a separate agreement from its duties, if any, as servicer, custodian, paying agent, credit support provider or in any capacity other than the transferor; and

(7) The documents shall require that the sponsor separately identify in its financial asset data bases the financial assets transferred into any securitization and maintain an electronic or paper copy of the closing documents for each securitization in a readily accessible form, a current list of all of its outstanding securitizations and issuing entities, and the most recent Form 10–K, if applicable, or other periodic financial report for each securitization and issuing entity. The documents shall provide that to the extent serving as servicer, custodian or paying agent for the securitization, the sponsor shall not comingle amounts received with respect to the financial assets with its own assets except for the time, not to exceed two business days, necessary to clear any payments received. The documents shall require that the sponsor shall make these records readily available for review by the FDIC promptly upon written request.

(d) *Safe harbor*—(1) Participations. With respect to transfers of financial assets made in connection with participations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment under generally accepted accounting principles, except for the "legal isolation" condition that is addressed by this section. The foregoing paragraph shall apply to a last-in, first-out participation, provided that the transfer of a portion of the financial asset satisfies the conditions for sale accounting treatment under generally accepted accounting principles that would have applied to such portion if it had met the definition of a "participating interest," except for the "legal isolation" condition that is addressed by this section.

(2) *Transition period safe harbor.* With respect to:

(i) Any participation or securitization for which transfers of financial assets were made on or before December 31, 2010 or

(ii) Any obligations of revolving trusts or master trusts, for which one or more obligations were issued as of the date of adoption of this rule, or

(iii) Any obligations issued under open commitments up to the maximum amount of such commitments as of the date of adoption of this rule if one or more obligations were issued under such commitments on or before December 31, 2010, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership the transferred financial assets notwithstanding that the transfer of such financial assets does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, provided that such transfer satisfied the conditions for sale accounting treatment under generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the "legal isolation" condition that is addressed by this paragraph and the transaction otherwise satisfied the provisions of § 360.6 in effect prior to the effective date of this regulation.

(3) *For securitizations meeting sale accounting requirements.* With respect to any securitization for which transfers of financial assets were made after December 31, 2010, or from a master trust or revolving trust established after adoption of this rule or from any open commitments that do not meet the requirements of paragraph (d)(2) of this section, and which complies with the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment under generally accepted accounting principles in effect for reporting periods after November 15, 2009, except for the "legal isolation" condition that is addressed by this paragraph (d)(3).

(4) *For securitization not meeting sale accounting requirements.*

With respect to any securitization for which transfers of financial assets were made after December 31, 2010, or from a master trust or revolving trust established after adoption of this rule or from any open commitments that do not

meet the requirements of paragraph (d)(2) or (d)(3) of this section, and which complies with the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section, but where the transfer does not satisfy the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods after November 15, 2009:

(i) *Monetary default.* If at any time after appointment, the FDIC as conservator or receiver is in a monetary default under a securitization due to its failure to pay or apply collections from the financial assets received by it in accordance with the securitization documents, whether as servicer or otherwise, and remains in monetary default for ten (10) business days after actual delivery of a written notice to the FDIC pursuant to paragraph (f) of this section requesting the exercise of contractual rights because of such monetary default, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) and 12 U.S.C. 1825(b)(2) to the exercise of any contractual rights in accordance with the documents governing such securitization, including but not limited to taking possession of the financial assets and exercising self-help remedies as a secured creditor under the transfer agreements, provided no involvement of the receiver or conservator is required other than such consents, waivers, or execution of transfer documents as may be reasonably requested in the ordinary course of business in order to facilitate the exercise of such contractual rights. Such consent shall not waive or otherwise deprive the FDIC or its assignees of any seller's interest or other obligation or interest issued by the issuing entity and held by the FDIC or its assignees, but shall serve as full satisfaction of the obligations of the insured depository institution in conservatorship or receivership and the FDIC as conservator or receiver for all amounts due.

(ii) *Repudiation.* If the FDIC as conservator or receiver provides a written notice of repudiation of the securitization agreement pursuant to which the financial assets were transferred, and the FDIC does not pay damages, defined in this paragraph, within ten (10) business days following the effective date of the notice, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) and 12 U.S.C. 1825(b)(2) to the exercise of any contractual rights in accordance with the documents governing such securitization, including but not limited to taking possession of the financial assets and exercising self-help remedies as a secured creditor under the transfer agreements, provided no involvement of the receiver or conservator is required other than such consents, waivers, or execution of transfer documents as may be reasonably requested in the ordinary course of business in order to facilitate the exercise of such contractual rights. For purposes of this paragraph, the damages due shall be in an amount equal to the par value of the obligations outstanding on the date of appointment of the conservator or receiver, less any payments of principal received by the investors through the date of repudiation, plus unpaid, accrued interest through the date of repudiation in accordance with the contract documents to the extent actually received through payments on the financial assets received through the date of repudiation. Upon payment of such repudiation damages, all liens or claims on the financial assets created pursuant to the securitization documents shall be released. Such consent shall not waive or otherwise deprive the FDIC or its assignees of any seller's interest or other obligation or interest issued by the issuing entity and held by the FDIC or its assignees, but shall serve as full satisfaction of the obligations of the insured depository institution in conservatorship or receivership and the FDIC as conservator or receiver for all amounts due.

(iii) *Effect of repudiation.* If the FDIC repudiates or disaffirms a securitization agreement, it shall not assert that any interest payments made to investors in accordance with the securitization documents before any such repudiation or disaffirmance remain the property of the conservatorship or receivership.

(e) *Consent to certain actions.* Prior to repudiation or, in the case of a monetary default referred to in paragraph (d)(4)(i) of this section, prior to the effectiveness of the consent referred to therein, the FDIC as conservator or receiver consents pursuant to 12 U.S.C. 1821(e)(13)(C) to the making of, or if serving as servicer, shall make, the payments to the investors to the extent actually received through payments on the financial assets (but in the case of repudiation, only to the extent supported by payments on the financial assets received through the date of the giving of notice of repudiation) in accordance with the securitization documents, and, subject to the FDIC's rights to repudiate such agreements, consents to any servicing activity required in furtherance of the securitization or, if acting as servicer the FDIC as receiver or conservator shall perform such servicing activities in accordance with the terms of the applicable servicing agreements, with respect to the financial assets included in securitizations that meet the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section.

(f) *Notice for consent.* Any party requesting the FDIC's consent as conservator or receiver under 12 U.S.C. 1821(e)(13)(C) and 12 U.S.C. 1825(b)(2) pursuant to paragraph (d)(4)(i) of this section shall provide notice to the Deputy Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street, NW., F–7076, Washington, DC 20429–0002, and a statement of the basis upon which such request is made, and copies of all documentation supporting such request, including without limitation a copy of the applicable agreements and of any applicable notices under the contract.

(g) *Contemporaneous requirement.* The FDIC will not seek to avoid an otherwise legally enforceable agreement that is executed by an insured depository institution in connection with a securitization or in the form of a participation solely because the agreement does not meet the "contemporaneous" requirement of 12 U.S.C. 1821(d)(9), 1821(n)(4)(I), or 1823(e).

(h) *Limitations.* The consents set forth in this section do not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract except as specifically set forth herein. Nothing contained in this section alters the claims priority of the securitized obligations.

(i) *No waiver.* Except as specifically set forth herein, this section does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. Nor shall this section be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers or other conveyances taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(j) *No assignment.* The right to consent under 12 U.S.C. 1821(e)(13)(C) or 12 U.S.C. 1825(b)(2), may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank.

(k) *Repeal.* This section may be repealed by the FDIC upon 30 days notice provided in the **Federal Register**, but any repeal shall not apply to any issuance made in accordance with this section before such repeal.

By order of the Board of Directors.

Dated at Washington, DC, this 27th day of September 2010.

**Robert E. Feldman,**

*Executive Secretary, Federal Deposit Insurance Corporation.*

[FR Doc. 2010–24595 Filed 9–28–10; 4:15 pm]

**BILLING CODE 6714–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2010–0907; Directorate Identifier 2010–SW–044–AD; Amendment 39–16436; AD 2010–20–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France (Eurocopter) Model AS332C, L, L1, and L2 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter model helicopters. This action requires replacing each affected hydraulic pump with an airworthy hydraulic pump. This amendment is prompted by the loss of the proper functioning of a hydraulic pump because of the deterioration of the pump seals and the loss of hydraulic fluid caused by incorrect positioning of the piston liner. The actions specified in this AD are intended to prevent loss of hydraulic power and subsequent loss of control of the helicopter.

**DATES:** Effective October 15, 2010.

Comments for inclusion in the Rules Docket must be received on or before November 29, 2010.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

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

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

*Examining the Docket:* You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5355, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No. 2010–0043R1–E, dated March 26, 2010, to correct an unsafe condition for the specified Eurocopter model helicopters. EASA advises of the loss of the right-hand (RH) hydraulic power system on an AS332L2 helicopter. The pilot saw the hydraulic system "low level" warning light come on during the approach phase. Investigation revealed a hydraulic fluid leak from the hydraulic pump casing due to deterioration of the pump seals resulting from an incorrectly positioned compensating piston liner. EASA states that this non-compliant repair process was used by the following repair stations: HELIKOPTER SERVICE, ASTEC HELICOPTER SERVICE, and HELI-ONE. They further state that if this condition occurs on both pumps of a helicopter, it could result in loss of the RH and left-hand (LH) hydraulic power systems and consequently may lead to the loss of helicopter controllability.

### Related Service Information

Eurocopter has issued an Emergency Alert Service Bulletin (EASB) with two numbers (01.00.78 and 01.00.43), dated March 11, 2010. EASB No. 01.00.78 applies to United States type-certificated Model AS332C, L, L1, and L2 helicopters; civil Model AS332C1 not type-certificated in the United States; and military Model AS332B, B1, M, M1, and F1 helicopters that are not type-certificated in the United States. EASB No. 01.00.43 applies to military Model AS532A2, U2, UC, AC, UL, AL, SC, and UE helicopters that are not type-certificated in the United States. The EASB specifies identifying affected hydraulic pumps, prohibiting flights for all helicopters fitted with two of the affected hydraulic pumps until at least one of the affected pumps is replaced, replacing all affected hydraulic pumps with airworthy pumps within 10 months, and returning any affected hydraulic pump to have it checked and, where necessary, reconditioned.

EASA classified this EASB as mandatory and issued EASA Emergency AD No. 2010–0043R1–E, dated March 26, 2010, to ensure the continued airworthiness of these helicopters.

### FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

### Differences Between This AD and the EASA AD

We refer to flight hours as hours time-in-service (TIS). We require each affected hydraulic pump be replaced with an airworthy pump within 15 hours TIS. We do not use the calendar date used in the EASA AD because that date has already passed.

### FAA's Determination and Requirements of This AD

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is

being issued to prevent loss of the hydraulic power system and subsequent loss of control of the helicopter. This AD requires, within 15 hours TIS, replacing each affected hydraulic pump with an airworthy hydraulic pump or, if the replacement hydraulic pump is one to which this AD applies, the hydraulic pump must have been overhauled or repaired after February 1, 2010.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, replacing each affected hydraulic pump with an airworthy hydraulic pump is required within 15 hours TIS, a very short compliance time, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Costs of Compliance

We estimate that this AD will affect about 6 helicopters of U. S. registry. We also estimate that it will take about ½ work-hour to review maintenance records for the presence of an affected hydraulic pump and 2 work-hours to change out a hydraulic pump. The average labor rate is $85 per work-hour. Required parts will cost about $40,448 to replace a hydraulic pump. Based on these figures, we estimate the cost of this AD on U.S. operators is $122,109, assuming 3 hydraulic pumps are replaced.

### Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2010–0907; Directorate Identifier 2010–SW–044–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

### Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

### Authority for This Rulemaking

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2010–20–02 EUROCOPTER FRANCE:** Amendment 39–16436; Docket No. FAA–2010–0907; Directorate Identifier 2010–SW–044–AD.

*Applicability:* Model AS332C, L, L1, and L2 helicopters, certificated in any category, with a MESSIER–BUGATTI hydraulic pump, part number C24160045, C24160045–1, C24160045–100, C24160046, C24160046–1, or C24160046–100, installed, which was overhauled or repaired by HELIKOPTER SERVICE, ASTEC HELICOPTER SERVICE, or HELI-ONE on or before February 1, 2010.

*Compliance:* Within 15 hours time-in-service, unless accomplished previously.

To prevent loss of the hydraulic power system and subsequent loss of control of the helicopter, do the following:

(a) Replace each affected hydraulic pump with an airworthy hydraulic pump. Do not install any hydraulic pump to which this AD applies unless the hydraulic pump has been overhauled or repaired after February 1, 2010 and is airworthy.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager; Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Ed Cuevas, Aviation Safety Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5355, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 2913: Hydraulic Pump.

(d) This amendment becomes effective on October 15, 2010.

**Note:** The subject of this AD is addressed in European Aviation Safety Agency Emergency AD No. 2010–0043R1–E, dated March 26, 2010, and Eurocopter Emergency Alert Service Bulletin No. 01.00.78 and No. 01.00.43, dated March 11, 2010.

Issued in Fort Worth, Texas, on September 9, 2010.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2010–24475 Filed 9–29–10; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 30745; Amdt. No. 3392]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective September 30, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 30, 2010.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 17, 2010.

**John M. Allen,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, title 14, Code

of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective October 21 2010*

Daytona Beach, FL, Daytona Beach Intl, RNAV (GPS) Z RWY 7L, Orig-B
Lewiston, ID, Lewiston-Nez Perce County, RNAV (RNP) RWY 30, Orig-A
Rock Hill, SC, Rock Hill/York Co/Bryant Field, ILS OR LOC RWY 2, Amdt 1A

*Effective November 18, 2010*

Atmore, AL, Atmore Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Batesville, AR, Batesville Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Batesville, AR, Batesville Rgnl, LOC RWY 8, Amdt 1
Batesville, AR, Batesville Rgnl, RNAV (GPS) RWY 8, Amdt 1A
Batesville, AR, Batesville Rgnl, RNAV (GPS) RWY 26, Amdt 1
Springdale, AR, Springdale Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Rifle, CO, Garfield County Rgnl, ILS RWY 26, Amdt 2
Rifle, CO, Garfield County Rgnl, LOC/DME–A, Amdt 8
Rifle, CO, Garfield County Rgnl, RNAV (GPS) W RWY 26, Amdt 1
Rifle, CO, Garfield County Rgnl, RNAV (GPS) X RWY 26, Amdt 1
Rifle, CO, Garfield County Rgnl, RNAV (GPS) Y RWY 8, Amdt 1
Rifle, CO, Garfield County Rgnl, RNAV (RNP) Y RWY 26, Amdt 1
Rifle, CO, Garfield County Rgnl, RNAV (RNP) Z RWY 8, Amdt 1
Rifle, CO, Garfield County Rgnl, RNAV (RNP) Z RWY 26, Amdt 1
Rifle, CO, Garfield County Rgnl, SQUAT THREE GRAPHIC OBSTACLE DP
Rifle, CO, Garfield County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 9
Rifle, CO, Garfield County Rgnl, VOR/DME–C, Amdt 2
Augusta, GA, Augusta Rgnl at Bush Field, RNAV (GPS)–A, Orig
Valdosta, GA, Valdosta Rgnl, ILS OR LOC RWY 35, Amdt 7
Valdosta, GA, Valdosta Rgnl, RNAV (GPS) RWY 4, Orig
Valdosta, GA, Valdosta Rgnl, RNAV (GPS) RWY 17, Amdt 1
Valdosta, GA, Valdosta Rgnl, RNAV (GPS) RWY 35, Amdt 1
Valdosta, GA, Valdosta Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Flora, IL, Flora Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Litchfield, IL, Litchfield Muni, NDB RWY 9, Amdt 6, CANCELLED
Litchfield, IL, Litchfield Muni, NDB RWY 27, Amdt 8, CANCELLED
Johnson, KS, Stanton County Muni, NDB RWY 17, Amdt 2
Johnson, KS, Stanton County Muni, RNAV (GPS) RWY 17, Amdt 1
Johnson, KS, Stanton County Muni, RNAV (GPS) RWY 35, Amdt 1
Johnson, KS, Stanton County Muni, Takeoff Minimums and Obstacle DP, Orig
Olathe, KS, Johnson County Executive, RNAV (GPS) RWY 36, Amdt 1A
Bowling Green. KY. Bowling Green-Warren County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Minden, LA, Minden-Webster, Takeoff Minimums and Obstacle DP, Orig
Cumberland, MD, Greater Cumberland Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5
West Plains, MO, West Plains Rgnl, RNAV (GPS) RWY 18, Amdt 1
West Plains, MO, West Plains Rgnl, RNAV (GPS) RWY 36, Amdt 1
West Plains, MO, West Plains Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
West Plains, MO, West Plains Rgnl, VOR RWY 36, Amdt 1
Tunica, MS, Tunica Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Valley City, ND, Barnes County Muni, NDB OR GPS RWY 31, Amdt 3, CANCELLED
Portales, NM, Portales Muni, NDB RWY 1, Amdt 1, CANCELLED
Bucyrus, OH, Port Bucyrus-Crawford County, Takeoff Minimums and Obstacle DP, Amdt 2
Cleveland, OH, Burke Lakefront, Takeoff Minimums and Obstacle DP, Amdt 5
Cleveland, OH, Cleveland-Hopkins Intl, Takeoff Minimums and Obstacle DP, Amdt 16
Cleveland, OH, Cuyahoga County, Takeoff Minimums and Obstacle DP, Amdt 1
Lima, OH, Lima Allen County, ILS OR LOC RWY 28, Amdt 4A
Lima, OH, Lima Allen County, RNAV (GPS) RWY 28, Amdt 1A
Lima, OH, Lima Allen County, VOR RWY 28, Amdt 16A
Medina, OH, Medina Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Mt. Gilead, OH, Morrow County, Takeoff Minimums and Obstacle DP, Amdt 2
Napoleon, OH, Henry County, Takeoff Minimums and Obstacle DP, Orig
Painesville, OH, Concord Airpark, Takeoff Minimums and Obstacle DP, Amdt 3
Tiffin, OH, Seneca County, RNAV (GPS) RWY 6, Orig-A
Tiffin, OH, Seneca County, VOR RWY 6, Amdt 9A
Van Wert, OH, Van Wert County, NDB RWY 9, Amdt 3A
Willoughby, OH, Willoughby Lost Nation Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Perry, OK, Perry Muni, Takeoff Minimums and Obstacle DP, Orig
Arlington, TX, Arlington Muni, ILS OR LOC/DME RWY 34, Amdt 1
Arlington, TX, Arlington Muni, RNAV (GPS) RWY 34, Amdt 2
Arlington, TX, Arlington Muni, VOR/DME RWY 34, Amdt 2
College Station, TX, Easterwood Field, RNAV (GPS) RWY 10, Orig-A
College Station, TX, Easterwood Field, VOR OR TACAN RWY 10, Amdt 19A
Jasper, TX, Jasper County-Bell Field, NDB RWY 18, Amdt 10, CANCELLED
Toledo, WA, Ed Carlson Memorial Field-South Lewis Co, ATASY ONE Graphic Obstacle DP
Toledo, WA, Ed Carlson Memorial Field-South Lewis Co, RNAV (GPS) RWY 6, Orig
Toledo, WA, Ed Carlson Memorial Field-South Lewis Co, RNAV (GPS) RWY 24, Orig
Toledo, WA, Ed Carlson Memorial Field-South Lewis Co, Takeoff Minimums and Obstacle DP, Orig
Eagle River, WI, Eagle River Union, NDB RWY 22, Amdt 6, CANCELLED
Wausau, WI, Wausau Downtown, Takeoff Minimums and Obstacle DP, Amdt 5
Williamson, WV, Mingo County Rgnl, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. 2010–24119 Filed 9–29–10; 8:45 am]
BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## 14 CFR Part 97

**[Docket No. 30746; Amdt. No. 3393]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective September 30, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of September 30, 2010.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 17, 2010.

**John M. Allen,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 21–Oct–10 | KY | LOUISVILLE | LOUISVILLE INTL-STANDIFORD FIELD. | 0/8285 | 9/7/10 | THIS NOTAM, PUBLISHED IN TL 10–21, IS HEREBY RESCINDED IN ITS ENTIRETY. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 21–Oct–10 | CA | HALF MOON BAY | HALF MOON BAY | 0/0656 | 9/7/10 | RNAV (GPS) Y RWY 30, ORIG. |
| 21–Oct–10 | CA | HALF MOON BAY | HALF MOON BAY | 0/0657 | 9/7/10 | RNAV (GPS) Y RWY 12, ORIG. |
| 21–Oct–10 | CA | HALF MOON BAY | HALF MOON BAY | 0/0658 | 9/7/10 | RNAV (GPS) Z RWY 12, ORIG. |
| 21–Oct–10 | CA | HALF MOON BAY | HALF MOON BAY | 0/0659 | 9/7/10 | RNAV (GPS) Z RWY 30, ORIG. |
| 21–Oct–10 | RI | BLOCK ISLAND | BLOCK ISLAND STATE | 0/0748 | 9/7/10 | RNAV (GPS) RWY 10, ORIG–A. |
| 21–Oct–10 | RI | BLOCK ISLAND | BLOCK ISLAND STATE | 0/0752 | 9/7/10 | VOR/DME RWY 10, AMDT 5A. |
| 21–Oct–10 | VA | RICHMOND | RICHMOND INTL | 0/0805 | 9/7/10 | VOR RWY 25, AMDT 16A. |
| 21–Oct–10 | VA | RICHMOND | RICHMOND INTL | 0/0806 | 9/7/10 | VOR RWY 20, AMDT 1A. |
| 21–Oct–10 | VA | RICHMOND | RICHMOND INTL | 0/0807 | 9/7/10 | VOR RWY 16, AMDT 27A. |
| 21–Oct–10 | GA | GRIFFIN | GRIFFIN-SPALDING COUNTY | 0/2036 | 9/7/10 | GPS RWY 14, ORIG–A. |
| 21–Oct–10 | GA | GRIFFIN | GRIFFIN-SPALDING COUNTY | 0/2037 | 9/7/10 | GPS RWY 32, ORIG–A. |
| 21–Oct–10 | VA | FREDERICKSBURG | SHANNON | 0/2537 | 9/7/10 | GPS RWY 24, ORIG–B. |
| 21–Oct–10 | VA | FREDERICKSBURG | SHANNON | 0/2539 | 9/7/10 | NDB RWY 24, AMDT 2B. |
| 21–Oct–10 | AL | TALLADEGA | TALLADEGA MUNI | 0/3032 | 9/7/10 | VOR/DME RWY 3, AMDT 5. |
| 21–Oct–10 | VA | SALUDA | HUMMEL FIELD | 0/4180 | 9/14/10 | GPS RWY 1, ORIG–A. |
| 21–Oct–10 | VA | CHASE CITY | CHASE CITY MUNI | 0/4228 | 9/14/10 | RNAV (GPS) RWY 18, ORIG. |
| 21–Oct–10 | VA | CHASE CITY | CHASE CITY MUNI | 0/4229 | 9/14/10 | RNAV (GPS) RWY 36, ORIG–A. |
| 21–Oct–10 | MA | BOSTON | GEN EDWARD LAWRENCE LOGAN INTL. | 0/5055 | 9/7/10 | VOR/DME RWY 33L, AMDT 2C. |
| 21–Oct–10 | MA | BOSTON | GEN EDWARD LAWRENCE LOGAN INTL. | 0/5057 | 9/7/10 | VOR/DME RWY 27, AMDT 2B. |
| 21–Oct–10 | MA | BOSTON | GEN EDWARD LAWRENCE LOGAN INTL. | 0/5058 | 9/7/10 | VOR/DME RWY 15R, AMDT 2A. |
| 21–Oct–10 | MA | BOSTON | GEN EDWARD LAWRENCE LOGAN INTL. | 0/5088 | 9/7/10 | ILS RWY 22L, AMDT 7. |
| 21–Oct–10 | MA | BOSTON | GEN EDWARD LAWRENCE LOGAN INTL. | 0/5089 | 9/7/10 | VOR/DME OR GPS A, ORIG–A. |
| 21–Oct–10 | MA | BOSTON | GEN EDWARD LAWRENCE LOGAN INTL. | 0/5092 | 9/7/10 | ILS RWY 27, AMDT 2. |
| 21–Oct–10 | FL | TAMPA | TAMPA INTL | 0/8288 | 9/13/10 | RNAV (GPS) RWY 36L, AMDT 1. |
| 21–Oct–10 | CA | HAYWARD | HAYWARD EXECUTIVE | 0/8839 | 9/7/10 | LOC/DME RWY 28L, AMDT 1B. |
| 21–Oct–10 | CA | HAYWARD | HAYWARD EXECUTIVE | 0/8843 | 9/7/10 | VOR/DME OR GPS B, AMDT 1C. |

[FR Doc. 2010–24109 Filed 9–29–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

**[Docket No. FDA–2010–N–0002]**

### Implantation or Injectable Dosage Form New Animal Drugs; Dexmedetomidine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Orion Corp. The supplemental NADA provides for veterinary prescription use of dexmedetomidine hydrochloride injectable solution as a preanesthetic to general anesthesia in cats.

**DATES:** This rule is effective September 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Orion Corp., Orionintie 1, 02200 Espoo, Finland, filed a supplement to NADA 141–267 for DEXDOMITOR (dexmedetomidine hydrochloride). The supplemental NADA provides for veterinary prescription use of dexmedetomidine hydrochloride injectable solution as a preanesthetic to general anesthesia in cats. The supplemental application is approved as of August 16, 2010, and the regulations in 21 CFR 522.558 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of the safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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 522**

Animal drugs.

■ 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 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. In § 522.558, revise paragraph (c)(2)(ii) to read as follows:

**§ 522.558 Dexmedetomidine.**

* * * * *

(c) * * *

(2) * * *

(ii) *Indications for use.* For use as a sedative and analgesic to facilitate clinical examinations, clinical procedures, minor surgical procedures, and minor dental procedures; and as a preanesthetic to general anesthesia.

* * * * *

Dated: September 24, 2010.

**Steven D. Vaughn,**

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

[FR Doc. 2010–24494 Filed 9–29–10; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 558

**[Docket No. FDA–2010–N–0002]**

## New Animal Drugs for Use in Animal Feeds; Melengestrol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to more accurately reflect the recent approval of two supplemental new animal drug applications (NADAs) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The supplemental NADAs provided for increased levels of monensin in two-way Type C medicated feeds containing melengestrol acetate and monensin, and in three-way Type C medicated feeds containing melengestrol acetate, monensin, and tylosin phosphate for heifers fed in confinement for slaughter. These amendments are being made to improve the accuracy of the regulations.

**DATES:** This rule is effective September 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Suzanne J. Sechen, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8105, email: *suzanne.sechen@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplements to NADA 125–476 for use of liquid MGA 500 (melengestrol acetate) and RUMENSIN (monensin, USP) single-ingredient Type A medicated articles to make two-way Type C medicated feeds and to NADA 138–870 for use of liquid MGA 500, RUMENSIN, and TYLAN (tylosin phosphate) single-ingredient Type A medicated articles to make three-way Type C medicated feeds for heifers fed in confinement for slaughter. The supplemental NADAs provided for use of increased levels of monensin, previously approved for single-ingredient monensin Type C medicated feeds under NADA 95–735 (72 FR 653, January 8, 2007). The supplements were approved in October 2009 and the regulations were amended in § 558.342 (21 CFR 558.342) (74 FR 59911, November 19, 2009; 74 FR 61029, November 23, 2009).

Labeling submitted with these supplements also provided for use of a dry MGA 200 Type A medicated article in formulating both the two-way and three-way combination feeds with increased levels of monensin. This was consistent with the February 2009 supplemental approvals under NADA 125–476 and NADA 138–870 of these same two-way and three-way combinations using dry MGA 200 for conditions of use that had been originally approved under Pharmacia & Upjohn Co.'s NADA 124–309 and NADA 138–792. Approval of these supplements in this manner was intended, in part, to simplify administration of the two-way and three-way combinations under a single NADA file for each combination and to treat Pharmacia & Upjohn's applications in a manner consistent with similar applications held by other sponsors. As of February 2009, NADA 124–309 and NADA 138–792 no longer contained the most current approved labeling and were administratively considered part of NADA 125–476 and NADA 138–870, respectively.

FDA has noticed that the regulations in § 558.342 contain entries for use of monensin in these two-way and three-way combinations at the lower use levels. At this time, the regulations are being amended to reflect the conditions of use described in labeling approved in October 2009 under NADA 125–476 and NADA 138–870. These amendments are being made to improve the accuracy of the regulations.

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 558**

Animal drugs, Animal feeds.

■ 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 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

### § 558.342 [Amended]

■ 2. In § 558.342, in the table in paragraphs (e)(1)(v), (e)(1)(vi), and (e)(1)(vii), in the "Sponsor" column, remove "000009,".

Dated: September 24, 2010.

**Steven D. Vaughn,**

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

[FR Doc. 2010–24480 Filed 9–29–10; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

**[TD 9501]**

**RIN 1545–BI28**

## Furnishing Identifying Number of Tax Return Preparer

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document contains final regulations under section 6109 of the Internal Revenue Code (Code) that provide guidance on how the IRS will define the identifying number of tax return preparers and set forth requirements on tax return preparers to furnish an identifying number on tax returns and claims for refund of tax they prepare. Additional provisions of the regulations provide that tax return preparers must apply for and regularly renew their preparer identifying number as the IRS may prescribe in forms, instructions, or other guidance.

**DATES:** *Effective Date:* These regulations are effective on September 30, 2010.

*Applicability Date:* For dates of applicability, see § 1.6109–2(i).

**FOR FURTHER INFORMATION CONTACT:** Stuart Murray at (202) 622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2176. The collection of information in these final regulations is in § 1.6109–2(d) and (e). This information is required in order for the IRS to issue identifying numbers to tax return preparers who are eligible to receive them.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document contains final amendments to regulations under section 6109 of the Code relating to furnishing a tax return preparer's identifying number on tax returns and claims for refund of tax. Section 6109(a)(4) requires tax return preparers to furnish on tax returns and claims for refund of tax an identifying number, as prescribed, to ensure proper identification of the preparer, the preparer's employer, or both. In addition, section 6109(c) authorizes the Secretary "to require such information as may be necessary to assign an identifying number to any person." The requirement to furnish an identifying number on tax returns and claims for refund of tax applies to information returns described in § 301.7701–15(b)(4) and to electronically filed tax returns.

In 2009 the IRS conducted a comprehensive review of tax return preparers, culminating in Publication 4832, *Return Preparer Review* (Rev. 12–2009) (the Report). The Report recommended that tax return preparers be required to obtain and use a preparer tax identification number (PTIN) as the exclusive preparer identifying number. The Report also recommended that the IRS establish new eligibility standards to prepare tax returns—including testing, continuing education, and Federal tax compliance checks. The proposed regulations adopted several of the recommendations made in the Report. The Treasury Department and the IRS conclude that adopting these provisions in the final regulations will increase tax compliance and help to ensure that tax return preparers are knowledgeable, skilled, and ethical.

To implement recommendations made in the Report, on March 26, 2010, the Treasury Department and the IRS published in the **Federal Register** (75 FR 14539) a notice of proposed rulemaking (REG–134235–08) proposing amendments to § 1.6109–2 regarding the identifying number that a tax return preparer must furnish on tax returns and claims for refund of tax. A public hearing was held on the proposed regulations on May 6, 2010. The IRS received written public comments responding to the proposed regulations.

### Summary of Comments and Explanation of Revisions

Over 200 written comments were received in response to the notice of proposed rulemaking. All comments were considered and are available for public inspection. Most of the comments are summarized in this preamble.

*1. Requiring the Use of PTINs*

The final regulations adopt the proposed amendments to § 1.6109–2, which provide that for tax returns or refund claims filed after December 31, 2010, tax return preparers must obtain and exclusively use the identifying number prescribed by the IRS in forms, instructions, or other guidance, rather than a social security number (SSN), as the identifying number to be included with the tax return preparer's signature on a tax return or claim for refund. Prior to these final regulations, the identifying number of a tax return preparer was the tax return preparer's SSN or an alternative number as prescribed by the IRS. The alternative number that the IRS has prescribed is a PTIN. After December 31, 2010, tax return preparers can only use a PTIN (or other number that the IRS prescribes in the future as a replacement to the PTIN) and may not use an SSN as a preparer identifying number unless the IRS directs otherwise. For tax returns or claims for refund filed before January 1, 2011, the identifying number of a tax return preparer will remain the preparer's SSN or PTIN.

The requirement to use a PTIN will allow the IRS to better identify tax return preparers, centralize information, and effectively administer the rules relating to tax return preparers. The final regulations will also benefit taxpayers and tax return preparers and help maintain the confidentiality of SSNs. Most of the comments received

on the notice of proposed rulemaking support the requirement to use a PTIN as the exclusive identifying number for tax return preparers beginning next year.

Under the final regulations, a tax return preparer must sign and furnish a PTIN on a tax return or claim for refund if the tax return preparer has primary responsibility for the overall substantive accuracy of the preparation of the tax return or claim for refund. If a signing tax return preparer has an employment arrangement or association with another person, then that other person's employer identification number (EIN) must also be included on the tax return or refund claim.

Tax return preparers who are required but fail to include a PTIN on a tax return or refund claim, or fail to include the EIN of any person with whom they have an employment arrangement or association, are subject to a penalty under section 6695(c), unless the failure to include an identifying number is due to reasonable cause and not due to willful neglect.

a. Supervised Tax Return Preparers Who Do Not Sign Tax Returns

The proposed regulations provided that for purposes of the provisions of § 1.6109–2 that would be applicable after December 31, 2010, the term *tax return preparer* means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. The proposed regulations further provided that a tax return preparer for purposes of these provisions excludes an individual who is not defined as a nonsigning tax return preparer in § 301.7701–15(b)(2). A nonsigning tax return preparer is defined in § 301.7701–15(b)(2) as any tax return preparer who, while not a signing tax return preparer (the individual who has the primary responsibility for the overall substantive accuracy of the preparation of a tax return or claim for refund of tax), prepares all or a substantial portion of a tax return or claim for refund.

Some commentators recommended that individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund should not be required to obtain a PTIN if they do not sign the tax return or claim for refund and if they act under the supervision of another tax return preparer who substantively reviews the tax return or claim for refund and signs it. Commentators explained, for example, that in some accounting firms, employees who have passed the Uniform Certified Public Accountant Examination and are working toward their license as a certified public accountant are often involved in, or assist with, the preparation of tax returns. Although these employees do not sign tax returns or claims for refund as a tax return preparer, under the regulations as proposed, they are tax return preparers who must have a PTIN after December 31, 2010, if they prepare all or substantially all of a tax return or claim for refund. The commentators proposed an exemption for these individuals.

The Chief Counsel for Advocacy of the Small Business Administration (SBA) submitted similar comments, on behalf of small businesses, on the proposed amendments to § 1.6109–2 as applied to tax return preparers who do not sign tax returns or claims for refund, in particular the provisions requiring tax return preparers to obtain and renew a PTIN as the IRS may prescribe. The SBA heard from small accounting firms that those firms would incur a substantial financial burden if the regulations include certified public accountant candidates and other paraprofessional employees who are involved in tax return preparation under the supervision of a certified public accountant who is a signing tax return preparer. The SBA also observed that requiring these individuals to register with the IRS as tax return preparers would not improve the accuracy of tax returns prepared in small accounting firms because the firms and certified public accountants within these firms are already subject to ethical and competency rules administered by state boards of accountancy, as well as Treasury Department Circular No. 230, 31 CFR Part 10. The SBA recommended that the regulations either exclude outright employees of firms engaged in certified public accountancy who are nonsigning tax return preparers or exclude these employees if they are supervised by a certified public accountant, attorney, or enrolled agent.

These final regulations are intended to address two overarching objectives. The first overarching objective is to provide some assurance to taxpayers that a tax return was prepared by an individual who has passed a minimum competency examination to practice before the IRS as a tax return preparer, has undergone certain suitability checks, and is subject to enforceable rules of practice. The second overarching objective is to further the interests of tax administration by improving the accuracy of tax returns and claims for refund and by increasing overall tax compliance.

The final regulations define a *tax return preparer* in § 1.6109–2(g) as an individual who prepares for compensation, or assists in preparing, all or substantially all of a tax return or claim for refund of tax. The final regulations retain this definition from the proposed regulations without including the requested exemption. It is critical to the IRS's tax administration efforts that, in the first instance, the IRS is readily able to identify all individuals who are involved in preparing all or substantially all of a tax return or claim for refund. Additionally, by requiring regular renewal of a PTIN, tax return preparers will confirm their continuing competence and suitability to be tax return preparers. Accordingly, were the Treasury Department and the IRS to provide an exemption in these regulations for a sizeable segment of tax return preparers, it would undercut effective oversight by the IRS of the tax return preparer community. An exemption for some tax return preparers, as requested in the comments, would allow the exempt individuals to prepare tax returns and claims for refund without identifying themselves to the IRS as tax return preparers and without undergoing competency examinations and suitability checks and being subject to enforceable rules of practice.

b. Licensed Tax Return Preparers, Tax Return Preparers of Longstanding, and Those Who Prepare a Small Number of Tax Returns

In the proposed regulations, no distinction was made between tax return preparers licensed by a state authority as tax return preparers and unlicensed tax return preparers. A number of comments were received from state-licensed tax return preparers, particularly from those who are Licensed Tax Preparers or Licensed Tax Consultants in Oregon. These comments almost uniformly requested that state-licensed tax return preparers be "grandfathered" into the regulations and not be required to apply for a PTIN, renew an existing PTIN, or comply with requirements that the IRS may prescribe to obtain or renew a PTIN after December 31, 2010. Other commentators asked that the IRS consider an exemption from the regulations for tax return preparers who have been preparers for a certain period of years or who prepare annually a volume of tax returns below a certain (relatively small) number. Some commentators, however, were opposed to exemptions or grandfather provisions.

The Report discussed at some length state licensing and regulation of tax

return preparers, including state-by-state descriptions, but in the Report's recommendations, exemptions were not made for tax return preparers licensed or otherwise regulated under a state program. The Report also concluded that the IRS would not provide "grandfather" exemptions based on experience in preparing tax returns. The proposed regulations, consistent with the Report's recommendations, did not include any exemption for state-based licensure, length of experience, or number of tax returns prepared.

After careful consideration of the comments received on this issue, the final regulations do not include any exemption for state-based licensure, length of experience, or number of tax returns prepared. The Treasury Department and the IRS conclude that tax return preparers who prepare tax returns and claims for refund for compensation should be subject to uniform standards of qualification and practice. When obtaining the services of a tax return preparation business, taxpayers should be assisted by tax return preparers subject to the same Federal regulations, regardless of a taxpayer's state of residence or variable circumstances such as the size of the business or the number of years a tax return preparer has been in the industry.

c. Volunteers and Other Unpaid Tax Return Preparers

The proposed regulations did not include volunteers and other unpaid tax return preparers as tax return preparers required to obtain a PTIN. Consistent with the definition of a tax return preparer under section 7701(a)(36), which requires a compensation element for an individual to be a tax return preparer, the definition of *tax return preparer* in the proposed regulations excluded an individual described in § 301.7701–15(f), which lists, among others, any individual who provides assistance in the preparation of tax returns as part of a Volunteer Income Tax Assistance (VITA), Tax Counseling for the Elderly (TCE), or Low-Income Taxpayer Clinic (LITC) program. Section 301.7701–15(f)(1)(xii) also excludes from the definition of a tax return preparer anyone who prepares a tax return or claim for refund without an explicit or implicit agreement for compensation. An insubstantial gift, favor, or service received for the preparation of a tax return or refund claim is not considered compensation.

Several commentators recommended that the final regulations require volunteer tax return preparers to obtain a PTIN. According to the commentators, putting volunteers under the regulations would provide several benefits, including increased tax compliance and improvement of the volunteer programs. Although commentators suggested that the PTIN and other requirements applicable to paid tax return preparers also apply to volunteers, it was noted that associated fees could be waived for volunteers. The comments also noted that extending the regulations to all tax return preparers who hold themselves out to the public as tax return preparers would unambiguously include individuals who prepare tax returns for customers purportedly for "free" but incident to a customer's purchase of a product or other service.

The final regulations adopt the same definition of tax return preparer as in the proposed regulations. The Treasury Department and the IRS conclude that the final regulations are properly limited to paid tax return preparers. The focus on paid tax return preparation in the Report and in these regulations is consistent with both the current reality of tax return preparation and applicable legal provisions, including § 301.7701–15(f). As noted by the figures in the Report, volunteer tax return preparers are a small fraction of all tax return preparers and the tax returns prepared by volunteers are a small fraction of all prepared tax returns.

Only volunteers or other truly unpaid tax return preparers, however, are not tax return preparers for purposes of these regulations. As an example, individuals who prepare tax returns without compensation for relatives or friends as a personal favor are not within the definition of the term *tax return preparer.*

The Treasury Department and the IRS conclude that arrangements for tax return preparation as part of a sales transaction are inherently agreements to prepare tax returns for compensation under these regulations, notwithstanding any claim by tax return preparers that the tax return or refund claim preparation is not separately compensated. No change in these regulations is necessary to reflect this result. As a result, an individual who, in connection with a sale of goods or services, prepares all or substantially all of a tax return or claim for refund filed after December 31, 2010, and who does not furnish a valid PTIN on the tax return or claim for refund may be liable for the section 6695(c) penalty, unless the failure to furnish a valid PTIN was due to reasonable cause and not due to willful neglect.

d. Tax Return Preparation Software

The proposed regulations did not specifically include any provisions on commercially available tax return preparation software or software developers. Several commentators expressed the concern that some tax return preparers use tax return preparation software to prepare multiple "self-prepared" tax returns for clients in order to hide the tax return preparers' involvement and avoid identifying themselves on the tax returns. The commentators proposed that the final regulations include limits on the purchase or use of software, such as a requirement built into the software to enter a PTIN to use the software to prepare more than one tax return.

The final regulations do not include any provisions with respect to software. Software developers are not tax return preparers for purposes of these final regulations, and the regulation of software is beyond the scope of these amendments to § 1.6109–2.

e. Requiring the Use of a PTIN After December 31, 2010

Under the proposed regulations, the amendments to § 1.6109–2 would apply to tax returns and claims for refund filed after December 31, 2010. For tax returns and claims for refund filed before then, the existing provisions of § 1.6109–2 apply. Some commentators questioned whether, as a matter of implementation, January 1, 2011, is a realistic date for the requirements of these regulations. The final regulations maintain the distinction between tax returns and claims for refund filed on or before December 31, 2010, and those filed after that date. To the extent a transitional period may be necessary, the Treasury Department and the IRS may, under § 1.6109–2(h) of the final regulations, prescribe in other guidance interim procedures for tax return preparers to apply for a PTIN or register with the IRS.

*2. Eligibility To Receive a PTIN*

a. Foreign Tax Return Preparers

The proposed regulations did not specifically address foreign tax return preparers who prepare tax returns or refund claims. A frequent question in the public comments was whether the regulations as proposed would apply to foreign tax return preparers. These commentators also asked whether foreign tax return preparers who do not have an SSN will be eligible for a PTIN. Currently, both Form W–7P, "Application for Preparer Tax Identification Number," and the existing online process at *http://www.irs.gov* that can be used to apply for a PTIN require an applicant to provide the applicant's SSN. Many foreign tax return preparers

are uncertain as to how they will obtain a PTIN, if they are required to have a PTIN.

The final regulations apply to tax return preparers regardless of United States or foreign citizenship or residency. The IRS will establish a process to obtain a PTIN for tax return preparers who do not have SSNs. The Treasury Department and the IRS intend to issue transitional guidance before December 31, 2010, which describes the process to obtain a PTIN for foreign and other tax return preparers who do not have SSNs.

b. User Fees

The proposed regulations provided that, in applying for a PTIN, tax return preparers must pay a user fee that the IRS prescribes in forms, instructions, or other guidance. The proposed regulations also provided for the IRS to prescribe the manner for renewing a PTIN, including the payment of a user fee. Some commentators objected to the proposed requirement of a user fee to obtain or renew a PTIN. Sole proprietors and small preparation firms commented that a user fee, combined with the potential costs of minimum competency testing and for continuing education, would materially increase their business expenses.

The final regulations adopt the proposed provisions under which the IRS may prescribe requirements to apply for or renew a PTIN, including the payment of a user fee. By statute (31 U.S.C. 9701), Congress authorized Federal agencies to establish user fees. The Treasury Department and the IRS will prescribe in regulations the requirement to pay a user fee, the amount of any fee, and the time and manner of payment. A user fee to obtain or renew a PTIN will be necessary to recover the costs that the IRS will incur to implement and administer the processes to apply for and renew a PTIN. The amount of a user fee will be reasonable and based on accepted methods of calculation that reflect the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant factors.

*3. Terminology*

a. Preparation of All or Substantially All of a Tax Return or Claim for Refund

The requirement to obtain a PTIN applies to individuals who for compensation prepare, or assist in preparing, all or substantially all of a tax return or claim for refund. Section 1.6109–2(g) of the proposed regulations identified the following non-exclusive list of factors to determine whether an individual prepared or assisted in preparing all or substantially all of a tax return or claim for refund:

The complexity of the work performed by the individual relative to the overall complexity of the tax return or claim for refund of tax;

The amount of the items of income, deductions, or losses attributable to the work performed by the individual relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax; and

The amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax.

Examples are included in the proposed regulations to illustrate the provisions of paragraph (g). The final regulations retain these provisions, including the examples, consistent with the definition of a tax return preparer adopted in paragraph (g) of the final regulations. As explained, this definition of tax return preparer for purposes of these regulations is necessary for meaningful oversight of tax return preparation. The factors in paragraph (g) provide guidance for applying the test of whether an individual has prepared or assisted with preparing all or substantially all of a tax return or claim for refund. Paragraph (g) of the final regulations, however, also adds a sentence not in the proposed regulations to clarify that the preparation of a form, statement, or schedule, such as Schedule EIC (Form 1040), "Earned Income Credit," may constitute the preparation of all or substantially all of a tax return or claim for refund based on the application of the factors in paragraph (g).

Paragraph (h) of the final regulations clarifies that the IRS may specify in other appropriate guidance the returns, schedules, and other forms to which these regulations will apply.

b. Registered Tax Return Preparers

As provided in the proposed regulations, to obtain a PTIN or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the IRS under 31 U.S.C. 330 and Circular 230. This requirement will apply after December 31, 2010, unless the IRS prescribes exceptions, such as for a transitional period, as necessary for effective tax administration. A number of the comments noted a concern that the term *registered tax return preparer* is likely to cause confusion in the marketplace for tax return preparation. The commentators are concerned that this designation for a certain group of tax return preparers, when listed with attorneys, certified public accountants, and enrolled agents, may lead the public to mistakenly infer that registered tax return preparers have credentials and qualifications similar to those of attorneys, certified public accountants, and enrolled agents. Several commentators observed that some registered tax return preparers might even attempt to exploit this confusion to their commercial advantage. To avoid the potential for misperception, the commentators advocate that the IRS explain the distinctions between registered tax return preparers and other practitioners authorized to practice before the IRS under Circular 230. At least one commentator also recommended changing the term to "authorized tax return preparers."

The final regulations adopt the term *registered tax return preparer.* The Treasury Department and the IRS conclude that the term does not reasonably imply that registered tax return preparers are authorized to practice law or certified public accountancy or act as enrolled agents or that the term will cause material confusion or misunderstanding by the public.

The role of registered tax return preparers and their authority to practice before the IRS will be addressed in amendments to Circular 230. The requirements and process to become a registered tax return preparer will be set forth in forms, instructions, and other appropriate guidance. In that regard, some commentators that employ tax return preparers requested that the IRS allow the employers to mass register their employees (with a means for employers to subsequently validate through the IRS an employee's standing as a registered tax return preparer with a current PTIN). The purpose of these final regulations, however, is not to provide guidance on the specific process for registration.

**Special Analyses**

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It has been determined that a final regulatory flexibility analysis under 5

U.S.C. 604 is required for this final rule. The analysis is set forth under the heading, "Final Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy submitted comments on the notice of proposed rulemaking, which are discussed elsewhere in this preamble.

*Final Regulatory Flexibility Analysis*

When an agency either promulgates a final rule that follows a required notice of proposed rulemaking or promulgates a final interpretative rule involving the internal revenue laws as described in 5 U.S.C. 603(a), the Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the agency to "prepare a final regulatory flexibility analysis." A final regulatory flexibility analysis must, pursuant to 5 U.S.C. 604(a), contain the five elements listed in this final regulatory flexibility analysis. For purposes of this final regulatory flexibility analysis, a small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(6). The Treasury Department and the IRS conclude that the final regulations (together with other contemplated guidance provided for in these regulations) will impact a substantial number of small entities and the economic impact will be significant.

*A Statement of the Need for, and the Objectives of, the Final Rule*

The final regulations are necessary for tax administration. The final regulations are needed to identify tax return preparers and the tax returns and claims for refund that they prepare, to aid the IRS's oversight of tax return preparers, and to administer requirements intended to ensure that tax return preparers are competent, trained, and conform to rules of practice. Mandating a single type of identifying number for all tax return preparers and assigning a prescribed identifying number to registered tax return preparers is critical to effective oversight.

Taxpayers' reliance on paid tax return preparers has grown steadily in recent decades, and a large number of U.S. taxpayers rely on paid tax return preparers for assistance in meeting the taxpayers' income tax filing obligations. Beyond preparing tax returns, tax return preparers also help educate taxpayers about the tax laws and facilitate electronic filing. Tax return preparers provide advice to taxpayers, identify items or issues for which the law or guidance is unclear, and inform taxpayers of the benefits and risks of positions taken on a tax return, and the tax treatment or reporting of items and transactions. Competent tax return preparers who are well educated in the rules and subject matter of their field can prevent costly errors, potentially saving a taxpayer from unwanted problems later on and relieving the IRS from expending valuable examination and collection resources.

Given the important role that tax return preparers play in Federal tax administration, the IRS has a significant interest in being able to accurately identify tax return preparers and monitor their tax return preparation activities. The final regulations, therefore, enable the IRS to more accurately identify tax return preparers and improve the IRS's ability to associate filed tax returns and refund claims with the responsible tax return preparer. The final regulations are intended to accomplish this result, and thereby advance tax administration, by requiring all individuals who are paid to prepare all or substantially all of a tax return or claim for refund of tax to obtain a preparer identifying number prescribed by the IRS. Pursuant to the final regulations, the IRS will require individuals who sign tax returns or claims for refund to furnish the tax return preparer's PTIN on a tax return or claim for refund when the return or refund claim is signed. The final regulations also provide that the IRS may require tax return preparers to apply for, and regularly renew, their PTINs. Under the final regulations, the IRS may prescribe a user fee payable when applying for a number and for renewal.

*Summaries of the Significant Issues Raised in the Public Comments Responding to the Initial Regulatory Flexibility Analysis and of the Agency's Assessment of the Issues, and a Statement of Any Changes Made to the Rule as a Result of the Comments*

The IRS did not receive specific comments from the public responding to the initial regulatory flexibility analysis in the proposed regulations that preceded these final regulations. The IRS did receive comments from the public on the proposed amendments to § 1.6109–2. A summary of the comments is set forth elsewhere in this preamble, along with the Treasury Department's and the IRS's assessment of the issues raised in the comments and descriptions of any revisions resulting from the comments.

*A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why an Estimate Is Not Available*

The final regulations apply to individuals who prepare tax returns and claims for refund of tax. The estimated number of paid tax return preparers is as high as 1.2 million, which means the final regulations are likely to impact a large number of individuals. Most paid tax return preparers are employed by firms. A substantial number of paid tax return preparers are employed at small tax return preparation firms or are self-employed tax return preparers. Any economic impact of these regulations on small entities generally will be on self-employed tax return preparers who prepare and sign tax returns or on small businesses that employ one or more individuals who prepare tax returns.

The appropriate NAICS codes for PTINs are those that relate to tax preparation services (NAICS code 541213), other accounting services (NAICS code 541219), offices of lawyers (NAICS code 541110), and offices of certified public accountants (NAICS code 541211). Entities identified as tax preparation services and offices of lawyers are considered small under the SBA's size standards (13 CFR 121.201) if their annual revenue is less than $7 million. Entities identified as other accounting services and offices of certified public accountants are considered small under the SBA's size standards if their annual revenue is less than $8.5 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these final regulations are tax return preparers operating as, or employed by, small entities.

*A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of a Report or Record*

The final regulations do not directly impose any reporting, recordkeeping, or similar requirements on any small entities. Rather, the final regulations provide that the IRS may prescribe in forms, instructions, or other guidance (including regulations) requirements for PTINs issued to tax return preparers, regular renewal of PTINs, and payment of a user fee when applying for or renewing a PTIN. In addition, other guidance may require certain tax return preparers to complete competency testing, complete continuing education

courses, and adhere to established rules of practice governing attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents.

Applying for a PTIN and subsequent renewal will require reporting of certain information, but they are not expected to require recordkeeping. No particular or special professional skills will be necessary. These activities also will not require the purchase or use of any special business equipment or software. To the extent it will be necessary to apply for a PTIN (or similar identifying number that may subsequently replace a PTIN) online at *http://www.irs.gov*, most if not all tax return preparation businesses have computers and Internet access. The IRS estimates that applying for a PTIN will take 10 to 20 minutes per individual, with an average of 15 minutes per individual.

Under amendments to Circular 230 that the IRS will issue to implement recommendations in the Report, tax return preparers who apply to be registered tax return preparers and who regularly renew their status may be subject to recordkeeping requirements because they may be required to maintain specified records, such as documentation and educational materials relating to completion of continuing education courses. These requirements do not involve any specific professional skills other than general recordkeeping abilities already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that tax return preparers will annually spend approximately 30 minutes to 1 hour in maintaining records relating to the continuing education requirements, depending on individual circumstances.

A separate regulation addressing reasonable user fees has been proposed. Tax return preparers may be required to pay a user fee when first applying for a PTIN and at every renewal. Small entities may be affected by these costs if the entities choose to pay some or all of these fees for their employees.

Under the amendments to Circular 230, tax return preparers may also incur costs for commercial continuing education courses and minimum competency examinations, plus incidental costs, such as for travel and accommodations, in order to maintain their status as registered tax return preparers under Circular 230. Course prices can vary greatly, from free to hundreds of dollars. Many small tax return preparation firms may choose, as with the user fee, to bear these costs for their employees. In some cases, small entities may lose sales and profits while their employed tax return preparers attend training or educational classes or are studying and sitting for examinations. Some small entities that employ tax return preparers may even need to alter their business operations if a significant number of their employees cannot satisfy the necessary registration and competency requirements. The Treasury Department and the IRS conclude, however, that only a small percentage of small entities, if any, may need to cease doing business or radically change their business model due to the final regulations.

Although each of the reporting and recordkeeping requirements and the costs identified above (in connection with the final regulations and the other anticipated guidance necessary to implement the Report) is not expected to singly result in a significant economic impact, taken together it is anticipated that they may have a significant economic impact on a substantial number of small entities.

*A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting Any Alternative Adopted in the Final Rule and Why Other Significant Alternatives Affecting the Impact on Small Entities That the Agency Considered Were Rejected*

The Treasury Department and the IRS are not aware of any steps that could be taken to minimize the economic impact on small entities that would also be consistent with the objectives of these final regulations. These regulations do not impose any more requirements on small entities than are necessary to effectively administer the internal revenue laws. Further, the regulations do not subject small entities to any requirements that are not also applicable to larger entities covered by the regulations.

The Treasury Department and the IRS have determined that there are no viable alternatives to the final regulations that would enable the IRS to accurately identify tax return preparers, other than through the use of a PTIN, as provided in the regulations.

The Treasury Department and the IRS considered alternatives at multiple points. These final regulations are, in large measure, an outgrowth of, and in part carry out, the Report, which extensively reviewed different approaches to improving how the IRS oversees and interacts with tax return preparers. As part of the Report, the IRS received a large volume of comments on the issue of increased oversight of tax return preparers generally and on the proposed recommendation requiring tax return preparers to use a uniform prescribed identifying number. The comments were received from all categories of interested stakeholders, including tax professional groups representing large and small entities, IRS advisory groups, tax return preparers, and the public. The input received from this large and diverse community overwhelmingly expressed support for the proposed requirements.

Among the alternatives contemplated at the time were:

(1) Requiring all paid tax return preparers to comply with the ethical standards in Circular 230 or an ethics code similar to Circular 230, but not requiring any paid preparers to demonstrate their qualification and competency;

(2) Requiring tax return preparers who are not currently authorized to practice before the IRS to register with the IRS, complete annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination;

(3) Requiring all paid tax return preparers to pass a minimum competency examination and meet other registration requirements; and

(4) Requiring all paid tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other registration requirements, but "grandfather in" tax return preparers who have accurately and competently prepared tax returns for a certain period of years.

These and other issues were raised in the public comments to the proposed regulations and were carefully considered in developing the final regulations. After consideration of all of the various alternatives and the responses received in the public comment process, the Treasury Department and the IRS conclude that the provisions of the final regulations will most effectively promote sound tax administration. Establishing a single, prescribed identifying number for tax return preparers will enable the IRS to accurately identify tax return preparers, match preparers with the tax returns and claims for refund they prepare, and better administer the tax laws with respect to tax return preparers and their clients.

Under the final regulations and the additional guidance described, the IRS will establish a process intended to assign PTINs only to qualified, competent, and ethical tax return

preparers. The testing requirements that may be set forth in other guidance will establish a benchmark of minimum competency necessary for tax return preparers to obtain their professional credentials, while the purpose of the continuing education provisions is to require tax return preparers to remain current on the Federal tax laws and continue to develop their tax knowledge. The extension in other, prospective guidance of the rules in Circular 230 to any paid tax return preparer will require all practitioners to meet certain ethical standards and allow the IRS to suspend or otherwise appropriately discipline tax return preparers who engage in unethical or disreputable conduct. Accordingly, the implementation of qualification and competency standards is expected to increase tax compliance and allow taxpayers to be confident that the tax return preparers to whom they turn for assistance are knowledgeable, skilled, and ethical.

**Drafting Information**

The principal author of these final regulations is Stuart Murray of the Office of the Associate Chief Counsel, Procedure and Administration.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.6109–2 also issued under 26 U.S.C. 6109(a). * * *

■ **Par. 2.** Section 1.6109–2 is amended by revising the section heading, revising paragraphs (a)(2) and (d), and adding paragraphs (e), (f), (g), (h), and (i) to read as follows:

**§ 1.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund and related requirements.**

(a) * * *

(2)(i) For tax returns or claims for refund filed on or before December 31, 2010, the identifying number of an individual tax return preparer is that individual's social security number or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) For tax returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number or such other number prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

* * * * *

(d) Beginning after December 31, 2010, all tax return preparers must have a preparer tax identification number or other prescribed identifying number that was applied for and received at the time and in the manner, including the payment of a user fee, as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. Except as provided in paragraph (h) of this section, beginning after December 31, 2010, to obtain a preparer tax identification number or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder.

(e) The Internal Revenue Service may designate an expiration date for any preparer tax identification number or other prescribed identifying number and may further prescribe the time and manner for renewing a preparer tax identification number or other prescribed identifying number, including the payment of a user fee, as set forth in forms, instructions, or other appropriate guidance. The Internal Revenue Service may provide that any identifying number issued by the Internal Revenue Service prior to the effective date of this regulation will expire on December 31, 2010, unless properly renewed as set forth in forms, instructions, or other appropriate guidance, including these regulations.

(f) As may be prescribed in forms, instructions, or other appropriate guidance, the IRS may conduct a Federal tax compliance check on a tax return preparer who applies for or renews a preparer tax identification number or other prescribed identifying number.

(g) Only for purposes of paragraphs (d), (e), and (f) of this section, the term *tax return preparer* means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. Factors to consider in determining whether an individual is a tax return preparer under this paragraph (g) include, but are not limited to, the complexity of the work performed by the individual relative to the overall complexity of the tax return or claim for refund of tax; the amount of the items of income, deductions, or losses attributable to the work performed by the individual relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax; and the amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax. The preparation of a form, statement, or schedule, such as Schedule EIC (Form 1040), "Earned Income Credit," may constitute the preparation of all or substantially all of a tax return or claim for refund based on the application of the foregoing factors. A tax return preparer does not include an individual who is not otherwise a tax return preparer as that term is defined in § 301.7701–15(b)(2), or who is an individual described in § 301.7701–15(f). The provisions of this paragraph (g) are illustrated by the following examples:

*Example 1.* Employee A, an individual employed by Tax Return Preparer B, assists Tax Return Preparer B in answering telephone calls, making copies, inputting client tax information gathered by B into the data fields of tax preparation software on a computer, and using the computer to file electronic returns of tax prepared by B. Although Employee A must exercise judgment regarding which data fields in the tax preparation software to use, A does not exercise any discretion or independent judgment as to the clients' underlying tax positions. Employee A, therefore, merely provides clerical assistance or incidental services and is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

*Example 2.* The facts are the same as in *Example 1,* except that Employee A also interviews B's clients and obtains from them information needed for the preparation of tax returns. Employee A determines the amount and character of entries on the returns and whether the information provided is sufficient for purposes of preparing the returns. For at least some of B's clients, A obtains information and makes determinations that constitute all or substantially all of the tax return. Employee A is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in

forms, instructions, or other appropriate guidance. Employee A is a tax return preparer even if Employee A relies on tax preparation software to prepare the return.

*Example 3.* C is an employee of a firm that prepares tax returns and claims for refund of tax for compensation. C is responsible for preparing a Form 1040, "U.S. Individual Income Tax Return," for a client. C obtains the information necessary for the preparation of the tax return during a meeting with the client, and makes determinations with respect to the proper application of the tax laws to the information in order to determine the client's tax liability. C completes the tax return and sends the completed return to employee D, who reviews the return for accuracy before signing it. Both C and D are tax return preparers required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

*Example 4.* E is an employee at a firm which prepares tax returns and claims for refund of tax for compensation. The firm is engaged by a corporation to prepare its Federal income tax return on Form 1120, "U.S. Corporation Income Tax Return." Among the documentation that the corporation provides to E in connection with the preparation of the tax return is documentation relating to the corporation's potential eligibility to claim a recently enacted tax credit for the taxable year. In preparing the return, and specifically for purposes of the new tax credit, E (with the corporation's consent) obtains advice from F, a subject matter expert on this and similar credits. F advises E as to the corporation's entitlement to the credit and provides his calculation of the amount of the credit. Based on this advice from F, E prepares the corporation's Form 1120 claiming the tax credit in the amount recommended by F. The additional credit is one of many tax credits and deductions claimed on the tax return, and determining the credit amount does not constitute preparation of all or substantially all of the corporation's tax return under this paragraph (g). F will not be considered to have prepared all or substantially all of the corporation's tax return, and F is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. The analysis is the same whether or not the tax credit is a substantial portion of the return under § 301.7701–15 of this chapter (as opposed to substantially all of the return), and whether or not F is in the same firm with E. E is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

(h) The Internal Revenue Service, through forms, instructions, or other appropriate guidance, may prescribe exceptions to the requirements of this section, including the requirement that an individual be authorized to practice before the Internal Revenue Service before receiving a preparer tax identification number or other prescribed identifying number, as necessary in the interest of effective tax administration. The Internal Revenue Service, through other appropriate guidance, may also specify specific returns, schedules, and other forms that qualify as tax returns or claims for refund for purposes of these regulations.

(i) *Effective/applicability date.* Paragraph (a)(1) of this section is applicable to tax returns and claims for refund filed after December 31, 2008. Paragraph (a)(2)(i) of this section is applicable to tax returns and claims for refund filed on or before December 31, 2010. Paragraph (a)(2)(ii) of this section is applicable to tax returns and claims for refund filed after December 31, 2010. Paragraph (d) of this section is applicable to tax return preparers after December 31, 2010. Paragraphs (e) through (h) of this section are effective after September 30, 2010.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by revising the entry for "1.6109–2" in the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.6109–2 ..... | 1545–2176 |
| * * * * * | |

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 11, 2010.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2010–24653 Filed 9–28–10; 11:15 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 300**

**[TD 9503]**

**RIN 1545–BI71**

## User Fees Relating to Enrollment and Preparer Tax Identification Numbers

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document contains amendments to the regulations relating to the imposition of certain user fees on certain tax practitioners. The final regulations establish a new user fee for individuals who apply for or renew a preparer tax identification number (PTIN). The final regulations affect individuals who apply for or renew a PTIN.

**DATES:** *Effective Date:* These regulations are effective on September 30, 2010.

*Applicability Date:* For dates of applicability see §§ 300.1(d), 300.2(d), 300.3(d), 300.4(d), 300.5(d), 300.6(d), 300.7(d), 300.8(d), and 300.9(d).

**FOR FURTHER INFORMATION CONTACT:** Concerning the final regulations, Emily M. Lesniak at (202) 622–4570; concerning cost methodology Eva J. Williams at (202) 435–5514 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains final regulations relating to the imposition of a user fee to apply for or renew a PTIN and the reorganization of the effective date provisions under §§ 300.0 through 300.8. Section 300.9 establishes a $50 user fee to apply for or renew a PTIN. The Independent Offices Appropriations Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations establishing user fees for services provided by the agency. Regulations prescribing user fees are subject to the policies of the President, which are currently set forth in the Office of Management and Budget Circular A–25 (the OMB Circular), 58 FR 38142 (July 15, 1993). The OMB Circular requires agencies seeking to impose user fees for providing special benefits to identifiable recipients to calculate the full cost of providing those benefits.

On September 30, 2010, the Treasury Department and the IRS published in the **Federal Register** final regulations under section 6109 (TD 9501) that

require tax return preparers who prepare all or substantially all of a tax return or claim for refund to use a PTIN as their identifying number. These regulations also provide that to be eligible to receive a PTIN, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer.

On July 23, 2010, the Treasury Department and the IRS published in the **Federal Register** (75 FR 43110) a notice of proposed rulemaking (REG–139343–08) proposing amendments to part 300 of title 26 of the Code of Federal Regulations. New § 300.9 of these regulations proposed to establish a $50 user fee to apply for or renew a PTIN. These regulations do not include any fees charged by the vendor, which vendor fee is now calculated to be $14.25. Additionally, these regulations proposed to reorganize the effective date provisions of §§ 300.0 through 300.8. A public hearing regarding the proposed regulations was held on August 24, 2010. The IRS also received written public comments in response to the proposed regulations.

After careful consideration of all written public comments and statements made during the public hearing, the Treasury Department and the IRS have decided to adopt without modification the proposed regulations that establish a $50 user fee to apply for or renew a PTIN, recovering the full cost to the IRS for administering the PTIN application and renewal program. The Treasury Department and the IRS also have decided to adopt without modification the proposed regulations reorganizing the effective date provisions under §§ 300.0 through 300.8.

**Summary of Comments**

Over 10,000 written comments were received in response to the notice of proposed rulemaking. The comments were considered and are available for public inspection upon request. The comments related to the $50 user fee to apply for or renew a PTIN, the related PTIN regulations under section 6109, or the proposed amendments to regulations governing practice before the IRS under 31 CFR part 10 (Circular 230). No comments were received regarding the reorganization of the effective date provisions. Many of the comments are summarized in this preamble.

To the extent comments received with respect to the user fee regulation raise issues pertaining to the PTIN regulations under section 6109 or Circular 230, the Treasury Department and the IRS are considering and addressing those comments in connection with the relevant regulations. Accordingly, the summary of comments below addresses only those comments that seek modification or clarification of the user fee as set forth in the proposed regulations.

*1. Tax Return Preparers Who Already Are Subject to Fees*

The Treasury Department and the IRS received numerous comments stating that tax return preparers who are attorneys, certified public accountants, or enrolled agents already are required to maintain licenses and pay numerous fees associated with obtaining and maintaining their licenses. Some commentators also stated that regulation of currently unenrolled tax return preparers or imposing a user fee to apply for or renew a PTIN for currently unenrolled tax return preparers was acceptable, but individuals who are regulated currently should not be required to obtain a PTIN or pay a user fee. Other similar comments requested that licensed tax consultants in Oregon be grandfathered into the new regulatory scheme and that individuals who currently have a PTIN be exempt from the requirements to apply for and renew a PTIN.

Having a PTIN is a special benefit that allows specified tax return preparers to prepare all or substantially all of a tax return or claim for refund for compensation. The OMB Circular encourages user fees for government-provided services that confer special benefits on identifiable recipients over and above those benefits received by the general public. A user fee must be set at an amount that allows the agency to recover the full cost of providing the special services unless the Office of Management and Budget grants an exception.

The same special benefit is conferred on all persons who obtain a PTIN, and the cost to the government is the same for providing PTINs to attorneys, certified public accountants, and enrolled agents as it is for providing PTINs to formerly unenrolled tax return preparers. Under the OMB Circular, absent special approval, the IRS must recover the full costs for providing the special benefits associated with a PTIN. The IRS cannot charge a user fee solely to tax return preparers who are not otherwise licensed as an attorney, certified public accountant, or enrolled agent. Although many comments sought exceptions to the user fee, one commentator encouraged the Treasury Department and the IRS to maintain a uniform user fee for obtaining a PTIN. Consequently, the Treasury Department and the IRS are adopting the proposed regulations and requiring all tax return preparers to pay a user fee to apply for or renew a PTIN.

*2. Calculation of the User Fee*

The Treasury Department and the IRS received a comment that the proposed regulations do not comply with the provisions of IOAA because a PTIN is not a service or thing of value to a tax return preparer. The commentator also stated that the proposed regulations do not comply with the general policies for implementing user fees, as provided in the OMB Circular, because providing a PTIN to a tax return preparer benefits the general public by tracking incompetent and unscrupulous tax return preparers and that the IRS already meets a goal of the OMB Circular because it is already self-sustaining, as the IRS collects more taxes than it costs to run the agency.

The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are currently set forth in the OMB Circular. The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services.

The user fee was determined to be consistent with the IOAA and the OMB Circular. A PTIN both confers a special benefit on an identifiable recipient and is a service or thing of value to a tax return preparer. A PTIN confers a special benefit because without a PTIN, a tax return preparer could not receive compensation for preparing all or substantially all of a federal tax return or claim for refund. Because only attorneys, certified public accountants, enrolled agents, and registered tax return preparers are eligible to obtain a PTIN, only a subset of the general public is entitled to a PTIN and the special benefit of receiving compensation for the preparation of a return that it confers. This analysis is consistent with the current practice of charging a user fee on individuals seeking to become enrolled agents. Being an enrolled agent confers special benefits; and, therefore,

the IRS currently charges a user fee on applicants seeking those special benefits.

Further, while it is anticipated that requiring tax return preparers to obtain a PTIN will benefit tax administration generally, only the tax return preparer who receives the PTIN can take advantage of the special benefit associated with having a PTIN. The OMB Circular provides that a government agency should recover the full cost of providing a special benefit when the general public receives a benefit as a necessary consequence of the government providing a special benefit to an identifiable recipient.

The OMB Circular also provides that one of the objectives of establishing a user fee is to "ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining." As described above, the issuance of a PTIN provides a special benefit to the specific tax return preparer who receives the PTIN. The administration of the PTIN application and renewal program requires the use of IRS services, goods, and resources. For the PTIN application and renewal program to be self-sustaining, the IRS must charge a user fee to recover the costs of providing the special benefits associated with PTIN. The fact that the IRS collects tax revenue for use by the government as a whole does not affect the analysis of whether the PTIN application and renewal program is self-sustaining. Thus, the Treasury Department and the IRS are complying with the provisions of the IOAA and the OMB Circular by implementing a user fee to recover the costs associated with the issuance of PTINs.

*3. Renewing a PTIN*

Several commentators objected to renewing their PTIN on a yearly basis and requested longer renewal periods. At this time the Treasury Department and the IRS have determined that an annual renewal of a PTIN is the most effective procedure. The user fee to renew a PTIN is, however, part of the larger implementation of recommendations in Publication 4832, "Return Preparer Review," which was published on January 4, 2010, to be effective for the 2011 Federal tax filing season (January–April 2011). These recommendations include revisions to Circular 230 implementing the registered tax return preparer program and revisions to the regulations under section 6109 requiring all tax return preparers to obtain and use a PTIN as their identifying number. As these programs are implemented, the IRS will continually monitor their administration and make appropriate adjustments to increase effectiveness. Thus, in the future, the Treasury Department and the IRS will review the requirement to annually renew a PTIN and will make modifications, as appropriate.

*4. The Amount of the User Fee*

Many commentators objected to the amount of the user fee. Some stated that the user fee should be smaller or that tax return preparers who prepare a limited number of returns should pay a smaller user fee. Other commentators characterized the user fee as a tax or a revenue raiser.

As stated earlier in this preamble, under the OMB Circular, the IRS must recover the full cost of providing a PTIN. The full cost to the government to administer the PTIN application and renewal program was calculated to be $50 per application or renewal. The user fee does not provide funds beyond the cost to process PTIN applications. Thus, the user fee to apply for or renew a PTIN does not provide additional revenue to the IRS that can be allocated to other programs. The PTIN user fee merely offsets costs the IRS incurs to provide the special benefits associated with having a PTIN.

The cost of processing PTIN applications is not affected by the number of tax returns that a tax return preparer prepares during a given tax season. For example, the cost to the IRS to process the PTIN applications of individuals who prepare over 500 tax returns per year, approximately 100 tax returns per year, or under 10 tax returns per year is the same. The IRS will perform the same tax compliance and suitability checks on these individuals and will provide these individuals with the same PTIN support services. The IRS must also maintain the same data in its PTIN database regarding these individuals and develop the same reconsideration process for these individuals in the event their PTIN applications are denied. Because the cost to the IRS is not dependent on the quantity of returns that an individual tax return preparer prepares, the final regulations adopt the $50 user fee for all tax return preparers to apply for or renew a PTIN.

*5. Burden Imposed by the User Fee*

Some commentators stated that the $50 user fee will be a burden on their businesses or that the cost to apply for or renew a PTIN will be passed on to clients. The IRS recognizes that some individuals who prepare a small number of tax returns may stop preparing tax returns or that the PTIN user fee may be passed on to clients. The IRS, however, believes that the implementation of the registered tax return preparer program and the requirement to use a PTIN as provided in the section 6109 regulations will benefit taxpayers and tax administration as a whole. The registered tax return preparer program will ensure that tax return preparers meet and maintain a minimum level of competency. The requirement to use a PTIN will provide the IRS an effective way to monitor tax return preparers and enforce the regulation of tax return preparers. The Treasury Department and the IRS believe that a user fee to apply for or renew a PTIN is necessary to recover the cost that the IRS will incur to implement and administer the PTIN application and renewal program.

Other commentators suggested that the user fee to apply for or renew a PTIN would cause some tax return preparers to revert to using their social security number when preparing tax returns rather than a PTIN, which would contravene the identity protection currently provided by PTINs. The regulations under section 6109, however, require tax return preparers to use a PTIN as their sole identifying number when preparing tax returns or claims for refund for compensation. Thus, tax return preparers are not allowed to use their social security numbers as an identifying number when preparing tax returns or claims for refund.

*6. Use of a Third Party Vendor*

Several commentators objected to providing identifying information to the third party vendor, and numerous commentators objected to paying a separate fee to the vendor.

The third party vendor is statutorily and contractually obligated to protect all personally identifiable information. The vendor is subject to the confidentiality and disclosure provisions of section 6103. The vendor also must comply with the provisions of the Federal Information Security Management Act; the E–Government Act of 2002; IRS Acquisitions Procedures; the Federal Acquisitions Regulations; the Taxpayer Browsing Protection Act of 1997; and the Privacy Act of 1974, which is codified at 5 U.S.C. 552a, regarding all non-tax information. The vendor must comply with numerous policies of the Office of Management and Budget, including OMB Circular No. A–130, Security and Federal Automated Information Resources Appendix III; OMB Circular policy M–06–16, Protection of Sensitive Agency

Information; OMB Circular Policy M–06–15, Safeguarding Personally Identifiable Information; and OMB Circular Policy M–06–19, Reporting Incidents Involving Personally Identifiable Information.

The vendor faces significant consequences for the unauthorized inspection or disclosure of confidential tax information. These consequences include, among others, that an officer or employee of the vendor may be subject to civil damages; civil or criminal sanctions, such as sanctions imposed by 18 U.S.C. 641 and 3571; or penalties as prescribed in sections 7213, 7213A, and 7431.

The vendor's fee, currently set at $14.25, covers the costs incurred by the vendor to administer the application and renewal process. These costs are separate from the costs to the IRS for administering the PTIN application and renewal program, which are recovered in the $50 user fee. The respective fees pay for different aspects of administering the PTIN program, each of which is essential to providing PTINs to tax return preparers. Additionally, under the vendor's contract with the IRS, the vendor's fee is reviewed and approved by the IRS.

After consideration of all of the public comments and statements made during the public hearing, the Treasury Department and the IRS have adopted the proposed regulations in full.

**Effective/Applicability Date**

The Administrative Procedure Act provides that substantive rules generally will not be effective until thirty days after the final regulations are published in the **Federal Register** (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds that there is good cause for an earlier effective date.

This regulation is part of the IRS' effort to implement the recommendations in the "Return Preparer Review." The review concluded that obtaining more complete and accurate information on individual tax return preparers and improved IRS oversight of tax return preparers and their preparation of tax returns and claims for refund is necessary for effective tax administration. The PTIN is the mechanism that allows the IRS to obtain more complete and accurate information on tax return preparers. Thus, the issuance of a PTIN is a threshold requirement to implementing the recommendations in the report.

This regulation must be effective significantly in advance of the beginning of the 2011 filing season to enable the IRS to charge a user fee to recover the cost of administering the program under which all individuals who prepare all or substantially all of a tax return or claim for refund of tax are required to obtain a PTIN for use during the 2011 Federal tax filing season. For all tax return preparers to receive a PTIN prior to the 2011 filing season, the IRS must begin registering preparers as quickly as possible. Thus, the Treasury Department and the IRS find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Special Analyses**

It has been determined that these final regulations are a significant regulatory action as defined in Executive Order 12866.

It has been determined that a final regulatory flexibility analysis under 5 U.S.C. 604 is required for this final rule. The analysis is set forth under the heading, "Final Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit comments on the notice of proposed rulemaking.

*Final Regulatory Flexibility Analysis*

When an agency either promulgates a final rule that follows a required notice of proposed rulemaking or promulgates a final interpretative rule involving the internal revenue laws as described in 5 U.S.C. 603(a), the Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the agency to "prepare a final regulatory flexibility analysis." A final regulatory flexibility analysis must, pursuant to 5 U.S.C. 604(a), contain the five elements listed in this final regulatory flexibility analysis. For purposes of this final regulatory flexibility analysis, a small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(6). The Treasury Department and the IRS conclude that the final regulations (together with other contemplated guidance provided for in these regulations) will impact a substantial number of small entities and the economic impact will be significant.

*A Statement of the Need for, and the Objectives of, The Final Rule*

The final regulations are necessary to recover the full cost to the IRS associated with administering the PTIN application and renewal program and providing the special benefits that are associated with obtaining a PTIN.

The Treasury Department and the IRS are implementing regulatory changes that increase the oversight of the tax return preparer industry. These regulatory changes are based upon findings and recommendations made by the IRS in the "Return Preparer Review." Based upon findings in the review, all individuals who prepare all or substantially all of a tax return or claim for refund will be required to use a PTIN as their identifying number. Except as provided in any transitional period, only attorneys, certified public accountants, enrolled agents, or registered tax return preparers may apply for a PTIN. Thus, only attorneys, certified public accountants, enrolled agents, and registered tax return preparers will be eligible to prepare all or substantially all of a tax return or claim for refund. By limiting the individuals who may prepare all or substantially all of a tax return or claim for refund to individuals who have a PTIN, the IRS is providing a special benefit to the individuals who obtain a PTIN.

The objective of the final regulations is to recover the costs to the government that are associated with providing this special benefit. The costs to the government include the development and maintenance of the IRS information technology system that interfaces with the vendor; the development and maintenance of internal applications; IRS customer service support activities, which include development and maintenance of an IRS Web site and call center staffing; and personnel, administrative, and management support needed to evaluate and address tax compliance issues, investigate and address conduct and suitability issues, and otherwise support and enforce the programs that require individuals to apply for or renew a PTIN.

*Summaries of the Significant Issues Raised in the Public Comments Responding to the Initial Regulatory Flexibility Analysis and of the Agency's Assessment of the Issues, and a Statement of Any Changes Made to the Rule as a Result of the Comments*

A summary of the comments is set forth elsewhere in this preamble, along with the Treasury Department's and the

IRS' assessment of the issues raised in the comments.

*A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why an Estimate Is Not Available*

The final regulations affect all individuals who want to become a registered tax return preparer under the new oversight rules in Circular 230. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of applicants and registered tax return preparers owning a small business or a small entity employing applicants or registered tax return preparers.

The final regulations further affect all individual tax return preparers who are required to apply for or renew a PTIN. Only individuals, not businesses, can apply for or renew a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who owns a small business and who is required to apply for or renew a PTIN, or a small business otherwise employing an individual tax return preparer who is required to apply for or renew a PTIN, to prepare all or substantially all of a tax return or claim for refund.

The appropriate NAICS codes for the registered tax return preparer program and PTINs are those that relate to tax preparation services (NAICS code 541213), other accounting services (NAICS code 541219), offices of lawyers (NAICS code 541110), and offices of certified public accountants (NAICS code 541211). Entities identified as tax preparation services and offices of lawyers are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $7 million. Entities identified as other accounting services and offices of certified public accountants are considered small under the Small Business Administration size standards if their annual revenue is less than $8.5 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

*A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of a Report or Record*

No reporting or recordkeeping requirements are projected to be associated with the final regulation.

*A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting Any Alternative Adopted in the Final Rule and Why Other Significant Alternatives Affecting the Impact on Small Entities That the Agency Considered Were Rejected*

The Treasury Department and the IRS are not aware of any steps that could be taken to minimize the economic impact on small entities that would also be consistent with the objectives of these final regulations. These regulations do not impose any more requirements on small entities than are necessary to effectively administer the internal revenue laws. Further, the regulations do not subject small entities to any requirements that are not also applicable to larger entities covered by the regulations.

The Treasury Department and the IRS have determined that there are no viable alternatives to the final regulations.

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. The OMB Circular implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. As Congress has not appropriated funds to the registered tax return preparer program or the PTIN application and renewal program, there are no viable alternatives to the imposition of user fees.

**Drafting Information**

The principal author of these final regulations is Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

**List of Subjects in 26 CFR Part 300**

Reporting and recordkeeping requirements, User fees.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 300 is amended as follows:

## PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read in part as follows:

**Authority:** 31 U.S.C. 9701.

■ **Par. 2.** Section 300.0 is amended by
■ 1. Adding paragraph (b)(9).
■ 2. Removing paragraph (c).
■ The addition reads as follows:

**§ 300.0 User fees; in general.**

* * * * *

(b) * * *

(9) Applying for a preparer tax identification number.

■ **Par. 3.** Section 300.1 is amended by adding paragraph (d) to read as follows:

**§ 300.1 Installment agreement fee.**

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning March 16, 1995, except that the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007.

■ **Par. 4.** Section 300.2 is amended by adding paragraph (d) to read as follows:

**§ 300.2 Restructuring or reinstatement of installment agreement fee.**

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning March 16, 1995, except that the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007.

■ **Par. 5.** Section 300.3 is amended by adding paragraph (d) to read as follows:

**§ 300.3 Offer to compromise fee.**

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 1, 2003.

■ **Par. 6.** Section 300.4 is amended by adding paragraph (d) to read as follows:

**§ 300.4 Special enrollment examination fee.**

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

■ **Par. 7.** Section 300.5 is amended by adding paragraph (d) to read as follows:

**§ 300.5 Enrollment of enrolled agent fee.**

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

■ **Par. 8.** Section 300.6 is amended by adding paragraph (d) to read as follows:

**§ 300.6 Renewal of enrollment of enrolled agent fee.**

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

■ **Par. 9.** Section 300.7 is amended by adding paragraph (d) to read as follows:

**§ 300.7 Enrollment of enrolled actuary fee.**

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 22, 2008.

■ **Par. 10.** Section 300.8 is amended by adding paragraph (d) to read as follows:

**§ 300.8 Renewal of enrollment of enrolled actuary fee.**

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 22, 2008.

■ **Par. 11.** Section 300.9 is added to read as follows:

**§ 300.9 Fee for obtaining a preparer tax identification number.**

(a) *Applicability.* This section applies to the application for and renewal of a preparer tax identification number pursuant to 26 CFR 1.6109–2(d).

(b) *Fee.* The fee to apply for or renew a preparer tax identification number is $50 per year, which is the cost to the government for processing the application for a preparer tax identification number and does not include any fees charged by the vendor.

(c) *Person liable for the fee.* The individual liable for the application or renewal fee is the individual applying for and renewing a preparer tax identification number from the IRS.

(d) *Effective/applicability date.* This section is applicable beginning September 30, 2010.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 24, 2010.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2010–24652 Filed 9–28–10; 11:15 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2009–0616; FRL–8844–1]**

# Spinosad; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation revises tolerances for residues of spinosad in or on hog, fat; hog, meat; hog, meat byproducts; poultry meat byproducts. Elanco Animal Health (A Division of Eli Lilly & Company) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 30, 2010. Objections and requests for hearings must be received on or before November 29, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0616. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Samantha Hulkower, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0683; e-mail address: *hulkower.samantha@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Electronic Access to Other Related Information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

### *C. How Can I File an Objection or Hearing Request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0616 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 29, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2

may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0616, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 26, 2009 (74 FR 55003) (FRL–8794–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7543) by Elanco Animal Health (A Division of Eli Lilly & Company), 2001 West Main Street, Greenfield, IN 46140. The petition requested that 40 CFR 180.495 be amended by reducing established tolerances for residues of the insecticide spinosad, a fermentation product of *Saccharopolyspora spinosa*, which consists of two related active ingredients: Spinosyn A (Factor A: CAS No. 131929–60–7) or 2–[(6–deoxy–2,3,4–tri-*O*-methyl-a-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS No. 131929–63–0) or 2–[(6–deoxy–2,3,4–tri-*O*-methyl-a-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, in or on milk from 7 parts per million (ppm) to 5 ppm; milk, fat from 80 ppm to 40 ppm; cattle, goat, and sheep, fat from 50 ppm to 30 ppm; hog, meat from 1.5 ppm to 0.2 ppm; hog, meat byproducts from 8 ppm to 0.6 ppm; and hog, fat from 33 ppm to 2.0 ppm. The petition additionally requested increases in the existing tolerances for residues of spinosad in or on poultry meat byproducts from 0.1 ppm to 0.2 ppm and poultry, fat from 1.3 ppm to 1.5 ppm. That notice referenced a summary of the petition prepared by Elanco Animal Health, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has concluded that revision of the proposed tolerances in or on hog, fat from 2.0 ppm to 5.0 ppm; hog, meat from 0.2 ppm to 0.50 ppm; hog, meat byproducts from 0.6 ppm to 2.0 ppm; poultry, meat byproducts from 0.10 ppm to 0.20 ppm is necessary and revision of the currently-established ruminant fat (i.e., cattle, goat, and sheep) and poultry, fat tolerances, as proposed by Elanco Animal Health in the petition, is unnecessary. The reason for these changes are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for spinosad including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with spinosad follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Spinosad has low acute toxicity via the oral and dermal routes of exposure. It is not a dermal sensitizer, nor inhalation, primary eye, or primary skin irritant. In subchronic toxicity studies conducted in mice treatment-related findings included vacuolation of cells of the lymphoid organs, liver, kidney, stomach, female reproductive tract, and epididymis, and less severely in the heart, lung, pancreas, adrenal cortex, bone marrow, tongue, pituitary gland, and anemia. In rats, thyroid follicle epithelial cell vacuolation, anemia, multifocal hepatocellular granuloma, cardiomyopathy, and splenic histiocytosis were observed following subchronic exposure, in dogs microscopic changes in a variety of tissues, anemia, and possible liver damage were seen with short-term repeated dosing. In a chronic feeding study in dogs, increases in serum alanine aminotransferase, aspartate aminotransferase, and triglycerides levels, and the presence of tissue abnormalities, including vacuolated cell aggregations, arteritis, and glandular cell vacuolation (parathyroid) were seen. Vacuolation of thyroid follicular cells, increased absolute and relative thyroid weights were observed in a chronic oral toxicity study in rats. Spinosad is classified as "not likely to be carcinogenic to humans" based on lack of evidence for carcinogenicity of spinosad in mice and rats. No neurotoxic effects were seen in the acute or subchronic neurotoxicity study in rats. In developmental toxicity studies, there is no evidence of increased susceptibility following *in utero* exposures in rats and rabbits. In the 2–generation reproduction study, no adverse effects were observed on the offspring at dose levels that produced parental toxicity.

Specific information on the studies received and the nature of the adverse effects caused by spinosad as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Spinosad and Spinetoram. Human-Health Risk Assessment for Direct-Spray

Use on Poultry and Discontinuation by Voluntary Cancellation of the Cattle Pour-On and Direct Cattle Spray Registrations," p. 12 in docket ID number EPA–HQ–OPP–2009–0616.

*B. Toxicological Points of Departure/ Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors (U/SF) are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for spinosad used for human risk assessment can be found at *http://www.regulations.gov* in document "Spinosad and Spinetoram. Human-Health Risk Assessment for Direct-Spray Use on Poultry and Discontinuation by Voluntary Cancellation of the Cattle Pour-On and Direct Cattle Spray Registrations," p. 5 in docket ID number EPA–HQ–OPP–2009–0616.

The Agency has concluded that spinosad should be considered toxicologically identical to another pesticide, spinetoram. This conclusion is based on the following: Spinetoram and spinosad are large molecules with nearly identical structures; and the toxicological profiles for each are similar (generalized systemic toxicity) with similar doses and endpoints chosen for human-health risk assessment. Spinosad and spinetoram should be considered toxicologically identical in the same manner that metabolites are generally considered toxicologically identical to the parent. Although, as just stated, the doses and endpoints for spinosad and spinetoram are similar, they are not identical due to variations in dosing levels used in the spinetoram and spinosad toxicological studies. EPA compared the spinosad and spinetoram doses and endpoints for each exposure scenario and selected the lower of the two doses for use in human risk assessment.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to spinosad/spinetoram, EPA considered exposure under the petitioned-for tolerances as well as all existing spinosad/spinetoram tolerances in 40 CFR 180.495 and 180.635. EPA assessed dietary exposures from spinosad in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for spinosad; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Survey of Food Intake by Individuals (CSFII). As to residue levels in food, the chronic analysis assumed 100 percent crop treated (PCT) for all food crop commodities excluding those listed below where PCT estimates were incorporated to refine the livestock dietary burden estimates; used average field-trial residues for apple, *Brassica* leafy vegetables, citrus, fruiting vegetables, herbs, banana, grape, several cereal grains, and strawberry; used tolerance-level residues for the remaining food crop commodities; and used Dietary Exposure Evaluation Model DEEM(™) (ver. 7.81) default processing factors for all commodities excluding orange juice, field corn (meal, starch, flour, and oil), grape juice, and wheat (flour and germ) where the results from processing factors were assumed; and modeled drinking water estimates. Tolerance level hog and poultry residues were assumed while the ruminant residue estimates were refined through the incorporation of average residues from the feeding/dermal magnitude of the residue studies and incorporation of the following projected combined spinosad/spinetoram PCT estimates to refine the ruminant dietary burden: Leaves of root and tuber vegetables – 50%; grain sorghum grain – 5%; soybean seed – 5%; and sweet corn forage – 39%.

Spinosad is registered for application to all of the same crops as spinetoram, with similar pre-harvest and retreatment intervals, and application rates greater than or equal to spinetoram. Further, both products control the same pest species. For this reason, EPA concluded it would overstate exposure to assume that residues of both spinosad and spinetoram would appear on the same food. Rather, EPA aggregated exposure by either assuming that all commodities contain spinosad residues (because side-by-side spinetoram and spinosad residue data indicated that spinetoram residues were less than or equal to spinosad residues) or summing the percentage of a crop that would be treated with spinosad and the percentage that would be treated with spinetoram.

iii. *Cancer*. Based on the lack of evidence of carcinogenicity in rats and mice, EPA has classified spinosad as "not likely to be carcinogenic to humans;" therefore a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

• Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.

• Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.

• Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate

does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Tolerance level hog and poultry residues were assumed while the ruminant residue estimates were refined through the incorporation of average residues from the feeding/dermal magnitude of the residue studies and incorporation of the following projected combined spinosad/spinetoram PCT estimates to refine the ruminant dietary burden uses as follows: 39% sweet corn forage; 50% leaves of root and tuber vegetables; 5% sorghum grain; and 5% soybean seed meal.

In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which spinosad may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for spinosad in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of spinosad. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of spinosad/spinetoram for acute exposures are estimated to be 14.419 parts per billion (ppb) for surface water and 0.072 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 6.171 ppb for surface water and 0.072 ppb for ground water. EDWCs for spinosad for acute exposures are estimated to be 34.5 parts per billion (ppb) for surface water and 1.1 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 10.5 ppb for surface water and 1.1 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 10.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Spinosad is currently registered for the following uses that could result in residential exposures: Application to turfgrass and ornamentals. EPA assessed residential exposure using the following assumptions: The Agency has concluded that spinosad and spinetoram are toxicologically equivalent; therefore, residential exposure to both spinosad and spinetoram was evaluated. Spinosad is currently registered for homeowner application to turf grass and ornamentals. Spinetoram is registered for homeowner applications to gardens, lawns/ornamentals and turf grass. Since spinosad and spinetoram control the same pests, EPA concludes that these products will not be used for the same uses in combination with each other and thus combining spinosad and spinetoram residential exposures would overstate exposure.

There is potential for residential handler and post-application exposures to both spinosad and spinetoram. However, since no dermal endpoints for either spinetoram or spinosad were identified, only short-term incidental oral exposures to toddlers are anticipated from the registered turf and ornamental application scenarios for spinosad and spinetoram and short-term inhalation exposure to handler/applicators is anticipated for the registered home garden, turf, and ornamental application scenarios.

Based on the low application rates, granular formulation, and/or low vapor pressure, quantitative residential inhalation post-application exposure assessments were not performed for spinosad or spinetoram. The Agency notes that the spinetoram residential-handler inhalation MOEs were ≥4,300,000 for house garden, home lawns and ornamental use; based on this and the low vapor pressure for spinosad, the Agency anticipates the post-application residential inhalation risks to be negligible.

EPA notes that for spinosad the registered fruit fly bait application scenario permits application to non-crop vegetation and this use may result in residential exposures. Based on the application rates (fruit fly bait – 0.0003 pounds active ingredients/acre (lb ai/acre); turf/ornamental – 0.41 lbs ai/acre), EPA concludes that residential exposure resulting from the fruit fly application will be insignificant when compared to the exposure resulting from homeowner uses on the turf/ornamentals. Therefore, quantitative analysis of the residential exposure resulting from the fruit fly bait application was not performed. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular

pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found spinosad/spinetoram to share a common mechanism of toxicity with any other substances, and spinosad/spinetoram does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that spinosad/spinetoram does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

*D. Safety Factor for Infants and Children*

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of rat and rabbit fetuses to *in-utero* exposure to spinosad or spinetoram. In the spinosad and spinetoram rat and rabbit developmental toxicity studies, no developmental toxicity was observed at dose levels that did not induce maternal toxicity. In the spinosad 2–generation reproduction studies, maternal and offspring toxicity were equally severe, indicating no evidence of increased susceptibility. In the spinetoram 2–generation reproduction study, no adverse effects were observed on the offspring at dose levels that produced parental toxicity. Therefore, there is no evidence of increased susceptibility and there are no concerns or residual uncertainties for pre-natal and/or post-natal toxicity.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for spinetoram is complete, except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Harmonized Test Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for valuation of the requirements under the FQPA.

There was some evidence of adverse effects on the organs of the immune system at the LOAEL in three short-term studies with spinosad or spinetoram. In these studies, anemia was observed in multiple species (rats, mice and dogs) with the presence of histiocytic aggregates of macrophages in various organs and tissues (lymph nodes, spleen, thymus, and bone marrow). Aggregation of macrophages was indicative of immune stimulation in response to insults of the chemical exposure and was considered secondary effects of the toxic effect to the hematopoetic system. Therefore, these effects are not considered to be indicative of frank immunotoxicity. In the chronic study with dogs, areteritis and necrosis of the areterial walls of the thymus was seen in one female dog at the highest dose tested (HDT). This finding is attributed to the exacerbation of the spontaneous arteritis present in genetically predisposed Beagle dogs ("Beagle Pain Syndrome"), not immunotoxicity. Further, a clear NOAEL was attained in each of these studies, and the observed histopathologies were generally observed in the presence of other organ toxicity. In addition, spinosad and spinetoram do not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic.

Based on the considerations in this Unit, EPA does not believe that conducting a special series 870.7800 immunotoxicity study will result in a POD less than the NOAEL of 2.49 mg/kg/day already set for spinosad and spinetoram. Consequently, an additional database UF does not need to be applied.

ii. There is no indication that spinosad is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that spinosad results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments utilized 100 PCT and tolerance-level residues, and DEEM™ default processing factors for all registered and proposed crop commodities and all food commodities from livestock except commodities from ruminants. EPA used PCT information when calculating livestock dietary burdens for ruminants from sweet corn forage, leaves of root and tuber vegetables, sorghum grain, and soybean seed meal. EPA believes that the PCT estimates used are conservative estimates. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to spinosad/spinetoram in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by spinosad/spinetoram.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, spinosad is not expected to pose an acute risk.

2. *Chronic risk*. Since there are no registered/proposed uses which result in chronic residential exposures, the chronic aggregate exposure assessment consists of exposure from food and water. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spinosad and spinetoram from food and water will utilize 94% of the cPAD for children 1–2 years old the population group receiving the greatest exposure.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water

(considered to be a background exposure level).

Spinosad and spinetoram are currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to spinosad and spinetoram.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of ≥160 for all population subgroups. As the aggregate MOEs are greater than 100 for all population subgroups, including infants and children, short-term aggregate exposure to spinosad and spinetoram is not of concern to EPA.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Spinosad and spinetoram are not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from the exposure to spinosad and spinetoram through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in rats and mice at doses that were judged to be adequate to assess the carcinogenic potential, spinosad and spinetoram were classified as "not likely to be carcinogenic to humans," and are not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to spinosad and spinetoram residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate methods are available for enforcement of the ruminant and hog tolerances. Method RES 94094 (GRM 95.03; ruminant and hog); Method RES 95114 (ruminant and hog); GRM 95.15 (poultry). Data pertaining to Multiresidue Methods (MRMs) testing of spinosyns A, D, B, and K and N-demethyl spinosyn D were forwarded to the Food and Drug Administration (FDA) for review.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex does have a MRLs for combined residues of spinosyn A and D in/on fat from mammals other than marine at 2 ppm and edible offal at 0.5 ppm and Canada does have MRLs for residues of spinosyn A and D in/on hog fat at 5.0 ppm, hog meat byproducts at 1.0 ppm, and hog meat at 0.2 ppm. For the most part, these international tolerances are lower than the level of the hog tolerances being established today. The Codex values were set in 2004. At that time only the diets of cattle (beef and dairy) were considered in establishing the MRLs, which were then considered adequate for all mammals, including hogs. However, the United States calculates hog exposure based on specific diets for finishing and breeder hogs. These diets are high in grains and grain byproducts and would not have included forages and other commodities present in the cattle diet. The diets considered were different, leading to different calculated exposures, leading to different MRL/tolerance estimates for the hog commodities. Accordingly, given the manner in which the Codex values were chosen, EPA does not believe it is appropriate to harmonize with the Codex levels.

### *C. Revisions to Petitioned-For Tolerances*

Elanco Animal Health requested registration for direct spray of Elector PSP (EPA Reg. No. 72642–2) to poultry and discontinuation by voluntary cancellation of the cattle pour-on and direct cattle spray registrations for Elector Insect Control Product (EPA Reg. No. 72642–1). The petitioner also requested an increase in the currently-established poultry fat (1.3 ppm to 1.5 ppm), poultry meat (0.10 ppm to 0.2 ppm), and poultry meat byproducts (0.10 ppm to 0.2 ppm) tolerances and a decrease in the currently-established milk (7.0 ppm to 5 ppm), milk fat (85 ppm to 40 ppm), hog fat (33 ppm to 2.0 ppm), hog meat (1.5 ppm to 0.2 ppm), hog meat byproducts (8.0 ppm to 0.6 ppm), and ruminant fat (cattle, goat, and sheep – 50 ppm to 30 ppm) tolerances (tolerances for combined residues of spinosyns A and D).

With the elimination of cattle pour-on and direct cattle spray uses, ruminants may be exposed to spinosad via consumption of treated feed, premise application, and through the feed-through (cattle only) and ear tag uses (cattle only). Based on the elimination of the cattle dermal application scenario and a recalculation of spinosad residues in ruminant commodities from the consumption of treated feed, the petitioner requested a reduction in the milk, milk fat, and ruminant (cattle, goat, and sheep) fat tolerances. Based on a comparison of the estimated total residue without the dermal/premise application and the currently-established tolerances, the EPA concludes that revision of the currently-established ruminant tolerances is unnecessary. Since elimination of the dermal uses does not necessitate a change in the current ruminant tolerances, the EPA concludes that residues resulting from premise treated are insignificant when compared to the residue estimates from the other routes of exposure.

The petitioner requested a reduction in the hog fat, meat, and meat byproducts tolerances. The current hog tolerances were established as part of the registration for application of spinosad to stored grains where a hog dietary burden of 41.2 ppm was calculated. As a conservative surrogate for residues following premise treatment, the results from the cattle dermal magnitude of the residue study were used (residue data following only premise treatment are not available). EPA notes that hogs have a significantly lower maximum reasonably balanced dietary burden (MRDB) than ruminants and the residues resulting from the premise treatment were therefore considered when establishing a tolerance (this is on contrast to ruminants where residues resulting from premise treatment were not

considered). Based on these calculations, the EPA concludes that hog tolerance should be lowered as follows: Hog, meat – 0.50 ppm; hog, fat – 5.0 ppm; and hog, meat byproducts – 2.0 ppm.

As part of the current request, the petitioner submitted a poultry magnitude of the residue study monitoring spinosad residues following both the proposed dermal application scenario (0.9x) and the currently-registered premise treatment (1x). Based on these data and the current poultry MRDB, the EPA concludes that the poultry meat byproducts tolerance should be increased to 0.20 ppm (tolerance for the combined residues of spinosyns A and D). All other poultry tolerances remain adequate.

## V. Conclusion

Therefore, tolerances are established for residues of spinosad in or on poultry at 0.20 ppm poultry, meat byproducts; and tolerances are increased as indicated for the following established commodities: Hog, fat 5.0 ppm; hog, meat 0.50 ppm; hog, meat byproducts 2.0 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.495 is amended by revising the following entries in the table in paragraph (a) to read as follows:

**§ 180.495 Spinosad; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * | * * |
| Hog, fat | 5.0 |
| Hog, meat byproducts | 2.0 |
| Hog, meat | 0.50 |
| * * * | * * |
| Poultry, meat byproducts | 0.20 |
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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2007–0677; FRL–8845–7]**

## Fluoxastrobin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fluoxastrobin in or on multiple commodities which are identified and discussed later in this document. Arysta LifeScience North America, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 30, 2010. Objections and requests for hearings must be received on or before November 29, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0677. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some

information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** John Bazuin, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7381; e-mail address: *bazuin.john@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Electronic Access to Other Related Information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

### *C. How Can I File an Objection or Hearing Request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0677 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 29, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2007–0677, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Summary of Petitioned-For Tolerances

In the **Federal Register** of October 7, 2009 (74 FR 51597) (FRL–8792–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7567) by Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513. The petition requested that 40 CFR 180.609 be amended by establishing tolerances for residues of the fungicide fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime in or on aspirated grain fractions at 15 parts per million (ppm); meat byproducts (cattle, goat, horse, sheep) at 0.2 ppm; sweet corn, forage at 13 ppm; sweet corn (kernels plus cob with husks removed) at 0.02 ppm; sweet corn, stover at 10 ppm; wheat, bran at 0.2 ppm; wheat, forage at 7.0 ppm; wheat, grain at 0.09 ppm; wheat, hay at 17 ppm; and wheat, straw at 11 ppm. The proposed tolerance in or on aspirated grain fractions is actually a decrease in the pre-existing tolerance for fluoxastrobin and its Z isomer in 40 CFR 180.609 of 20 ppm. The proposed meat byproduct tolerances are actually changes in the tolerance expression from fluoxastrobin, its Z isomer, and its phenoxy-hydroxypyrimidine metabolite, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol to fluoxastrobin and its Z isomer and an increase in the pre-existing tolerance levels in 40 CFR 180.609 of 0.10 ppm for meat byproducts of cattle, goat, horse, and sheep. That notice referenced a summary of the petition prepared by Arysta LifeScience North America, LLC, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has made the following changes to the proposed fluoxastrobin tolerances. Minor changes have been made to several commodity names to conform them to the Agency's Food and Feed Commodity Vocabulary. The tolerance expression for the meat byproduct commodities has been corrected to add the phenoxy-hydroxypyrimidine metabolite. The proposed tolerance of 0.02 ppm in or on sweet corn, kernels plus cob with husks removed and of 0.2 ppm in or on wheat, bran have been reduced and the proposed tolerance of 15 ppm in or on aspirated grain fractions has been increased. The reasons for these changes are explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA

determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluoxastrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluoxastrobin follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fluoxastrobin has a low order of acute toxicity via the oral, dermal and inhalation routes of exposure. Fluoxastrobin is a moderate eye irritant but is neither a dermal irritant nor a skin sensitizer.

Fluoxastrobin appears to have mild or low toxicity following repeated administration in all tested species other than the dog. In both the 90–day and 1–year oral feeding dog studies, there was liver toxicity in the form of cholestasis as evidenced by hepatocytomegaly and cytoplasmic granular changes associated with increased liver weight and increased serum liver alkaline phospatase (ALP). In addition, several phase I and phase II liver drug metabolizing enzymes were induced. Other toxicity in dogs included body weight loss or reduced gain, decreased food efficiency, and effects on kidneys including increased relative weight in females and degeneration of proximal tubular epithelium in males. The no observed adverse effect level (NOAEL) of 1.5 milligrams/kilograms/day (mg/kg/day) in the 1–year dog study was used for setting the chronic reference dose (RfD).

The liver appeared to be a target organ in other studies, as well, but the toxicological relevance of liver findings in species other than the dog is questionable. For example, among the changes noted in the treated animals were increased liver weight in the mouse and rat, and hypertrophy and cytoplasmic changes in the mouse, but there were no increases in any of the serum liver enzymes including ALP.

In the 90–day oral toxicity study in rats, the urinary system in males was a target organ as evidenced by increased kidney weight and histopathology findings in kidneys, urinary bladder, and urethra including the presence of calculi in the urethra and kidneys. In another rat study, there were markedly increased urinary pHs in males in addition to increased urinary calcium excretion in the form of calcium oxalate crystals. Kidney changes were also seen in a 90–day mouse feeding study with increased kidney weights and tubular hypertrophy in females. Following 90–day administration in dogs, there was degeneration of the proximal tubular epithelium in males.

The adrenal glands seem to be another target organ in males of the 90–day rat study where vacuolation was seen in the zona fasciculata of the adrenal cortex. In another 30–day rat feeding study, adrenal cortical cytomegaly with fine vacuolization was seen in all high dose males and the responses were comparable between the groups treated with the pure fluoxastrobin E- or 2:1 E/Z-isomers. The adrenal changes are not likely to be endocrine related effects.

In the rat and rabbit developmental toxicity studies and the 2–generation reproduction rat study, there was no increased susceptibility to prenatal or postnatal exposure to fluoxastrobin and no effects on reproduction.

Fluoxastrobin is not acutely neurotoxic in rats up to a single high dose of 2,000 mg/kg/day or by repeated dietary feeding in the rat subchronic neurotoxicity screening study where the top dose was nearly half the limit dose of 1,000 mg/kg/day. Other studies in rats including the subchronic, chronic toxicity/carcinogenicity, 2–generation reproduction, and developmental toxicity were tested to or above the limit dose with no indication of clinical signs, histopathology or other signs of toxicity that could be attributed to neurotoxicity. Also, in both the 90–day and 1–year dog studies, neurologic examinations, including mental status/behavior, gait characteristics, postural status and reactions, and spinal/cranial reflexes, were carried out and were found to be within normal limits.

Fluoxastrobin is not immunotoxic based on repeated dosing studies in rats and mice. In the 90–day oral toxicity rat study, there was no difference between the control and treated animals in spleen cell count, macrophage activities after PMA stimulation and plaque-forming cell assay after challenge with sheep erythrocytes. Slight decreases were noted in IgG concentration in the high dose males but not females. An unacceptable subchronic immunotoxicity study in mice found no apparent decrease on B-cell activated, T-cell mediated IgM response to sheep red blood cell (SRBC) at doses as high as 2,383 mg/kg/day.

Fluoxastrobin and major metabolites were negative in a battery of genotoxicity tests.

The carcinogenic potential of fluoxastrobin was adequately tested in rats and mice of both sexes. The results demonstrated a lack of treatment-related increase in tumor incidence in rats or mice. There was no mutagenicity concern and no structure activity relationship alert. It was concluded that there was no incidence of carcinogenicity for fluoxastrobin.

Specific information on the studies received and the nature of the adverse effects caused by fluoxastrobin as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of September 16, 2005 (70 FR 54640) (FRL–7719–9).

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a

reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fluoxastrobin used for human risk assessment can be found in "Fluoxastrobin. Human Health Risk Assessment for Proposed Uses on Sweet Corn, Field Corn/Sweet Corn Grown for Seed, and Wheat; Revised Tolerances on Peanut and Refined Peanut Oil Based on a Peanut Processing Study; and Label Revision Allowing Homeowner Residential Application to Turf Grasses," p. 23 in docket ID number EPA–HQ–OPP–2007–0677.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fluoxastrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing fluoxastrobin tolerances in 40 CFR 180.609. EPA assessed dietary exposures from fluoxastrobin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for fluoxastrobin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA performed an unrefined (food and drinking water) exposure assessment. The assumptions of this dietary assessment included tolerance level residues and 100% crop treated. Based on processing studies, the processing factors for tomato puree, potato chips, dry potato (granules/flakes), and potato flour were reduced to 1. Separate tolerances were set for peanut oil, wheat bran and tomato paste; therefore, the processing factors for these commodities were set at 1. For all other processed commodities, Dietary Exposure Evaluation Model version 7.81 default processing factors were assumed.

iii. *Cancer*. Based on the data summarized in Unit III.A., EPA has concluded that fluoxastrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for floxastrobin. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluoxastrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluoxastrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models the estimated drinking water concentrations (EDWCs) of fluoxastrobin for chronic exposures for non-cancer assessments are estimated to be 33 parts per billion (ppb) for surface water and less than 1 ppb for ground water. The modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 33 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluoxastrobin has previously been registered for the following uses that could result in post-application residential exposures: Turf, including lawns and golf courses. However, applications to residential turf have previously been restricted to certified pest control operators. Under consideration in the current risk assessment is a proposed label that would allow homeowner residential application to turf, which would result in residential handler exposure. Residential handlers may be exposed via loading and applying granular fluoxastrobin for spot treatments and/or broadcast control of turf diseases.

EPA assessed residential application exposure using the following assumptions: Because of the potential for application four times per year, exposure duration is expected to be short-term and intermediate-term. A short-term dermal endpoint was not identified so only intermediate-term dermal risks were assessed. Short- and intermediate-term inhalation risks were also assessed. Homeowner residential applicators are expected to be adults.

There is also the potential for homeowners and their families (of varying ages) to be exposed as a result of entering areas that have previously been treated with fluoxastrobin. Exposure might occur on areas such as lawns used by children or recreational areas such as golf courses used by adults and youths. Potential routes of exposure include dermal (adults and children) and incidental oral ingestion (children). Since no acute hazard has been identified, an assessment of episodic granular ingestion was not conducted. While it is assumed that most residential use will result in short-term (1 to 30 days) postapplication exposures, it is believed that intermediate-term exposures (greater than 30 days up to 180 days) are also possible. The best data and methodology currently available were used in the fluoxastrobin residential assessment. Since chemical-specific data were not available, the Agency used the current approaches for residential assessment, many of which include recent upgrades to the standard operating procedures (SOPs). For example, for the hand-to-mouth calculations for children (three to less than six years old), a 5% transferability factor was applied to calculate residue levels appropriate for this exposure pathway. Overall, the Agency believes that the calculated risks represent screening level estimates. Estimates are thought to be conservative, even when measures of central tendency (e.g., most transfer coefficients) are used, because values that would be considered to be in the lower percentile aspect of any input parameter have not been used in the calculations. In addition, maximum application rates have been used for all scenarios. The risk estimates also assume no dissipation of residues after day zero and do not take into account the periodic growth and cutting of the grass. Actual residues should be considerably lower, which is why intermediate-term exposures are unlikely. Further, because a short-term dermal toxicity endpoint was not identified, the intermediate-term

endpoint was used for all dermal risk estimates, even though the residential exposure duration is believed to be mostly short-term based on the use pattern. Finally, based on the Agency's current practices, a quantitative post-application inhalation exposure assessment was not performed at this time, primarily because fluoxastrobin has a very low vapor pressure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found fluoxastrobin to share a common mechanism of toxicity with any other substances, and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluoxastrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

### *D. Safety Factor for Infants and Children*

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The toxicity database for fluoxastrobin, including acceptable developmental toxicity studies in rats and rabbits, as well as a 2–generation reproductive toxicity study, provides no indication of prenatal and/or postnasal sensitivity.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children is adequately protected if the FQPA SF is reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluoxastrobin is complete except for a functional immunotoxicity study as required by the recent changes to the pesticide data requirements. The Agency does have an immunotoxicity study for fluoxastrobin but it has deficiencies that make it unacceptable at this time. Nonetheless, the Agency does not believe that conducting a new immunotoxicity study will result in a lower NOAEL than the regulatory dose for risk assessment because available data showed no apparent decrease in B-cell activated, T-cell mediated immunoglobulin M (IgM) response to sheep red blood cells (SRBC) at doses as high as 2,383 mg/kg/day. The Agency therefore believes that no additional safety factor is needed to account for the lack of this study, but the registrant will be required to upgrade it.

ii. There is no indication that fluoxastrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fluoxastrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessments utilized tolerance-level residues and 100 PCT information for all commodities. Use of these screening-level assessment values helps ensure that chronic exposures and risks will not be underestimated. EPA additionally made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluoxastrobin in drinking water. EPA used similarly conservative assumptions to assess residential post-application exposure of children as well as incidental oral exposure of toddlers to fluoxastrobin. These assessments will not underestimate the exposure and risks posed by fluoxastrobin.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluoxastrobin is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluoxastrobin from food and water will utilize 42% of the cPAD for children (1-2 years old), the population subgroup receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluoxastrobin is not expected.

3. *Short- and intermediate-term risk*. Fluoxastrobin is currently registered for uses that could result in both short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures of adults and children to fluoxastrobin. Short- and intermediate-term aggregate exposure assessments take into account short-and intermediate-term residential exposure, respectively, plus chronic exposure to food and water (considered a background exposure level). Because all short- and intermediate-term quantitative hazard assessments (via the dermal and incidental oral routes) for fluoxastrobin are based on the same endpoint, a screening-level, conservative aggregate risk assessment was conducted that combined the short-term incidental oral and intermediate-term exposure estimates (i.e., the highest exposure estimates) in the risk assessments for adults. The Agency believes that most residential exposure will be short-term, based on the use pattern.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs of 470 for adult males; 510 for adult females (13-

49 years old); 220 for children (1-2 years old), short-term; and 210 for children (1-2 years old), intermediate-term. Residential exposure for adults is intermediate-term dermal exposure from application of the product plus post-application dermal exposure plus short- and intermediate-term inhalation exposure from application of the product. Short-term residential exposure for children is incidental oral exposure. Intermediate-term residential exposure for children is post-application dermal exposure and post-application incidental oral exposure. Because EPA's level of concern for fluoxastrobin is a MOE of 100 or below, these residential MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population*. As is explained in Unit III.A., the Agency has concluded that fluoxastrobin is not likely to be carcinogenic to humans. Therefore cancer risk is not of concern for this chemical.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to fluoxastrobin residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry) is available to enforce the tolerance expression. Method No. 00604 is available for plant commodities and Method No. 00691 is available for animal commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. There are currently no Codex or Canadian maximum residue limits (MRLs) or tolerances for fluoxastrobin in or on sweet corn or wheat.

### *C. Revisions to Petitioned-For Tolerances*

EPA converted "aspirated grain fractions" to "grain, aspirated grain fractions"; "sweet corn (kernels plus cob with husks removed)" to "corn, sweet, kernel plus cob with husks removed"; "sweet corn, forage" to "corn, sweet, forage"; "sweet corn, stover" to "corn, sweet, stover"; "meat byproducts (cattle, goat, horse, sheep)" to "cattle, meat byproducts", "goat, meat byproducts", "horse, meat byproducts", and "sheep, meat byproducts" to conform them to the Agency's Food and Feed Commodity Vocabulary. EPA also corrected the tolerance expression for the meat byproduct commodities from fluoxastrobin and its Z isomer to fluoxastrobin, its Z isomer, and its phenoxy-hydroxypyrimidine metabolite, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol. The proposed tolerance of 0.02 ppm in or on sweet corn, kernels plus cob with husks removed has been reduced to 0.01 ppm in or on corn, sweet, kernel plus cob with husks removed, based on the highest observed residues in the sweet corn crop field trials and the limit of quantitation of the residue method of 0.01 ppm for combined residues of fluoxastrobin and its Z isomer. The proposed tolerance of 0.2 ppm in or on wheat, bran has been reduced to 0.15 ppm and the proposed tolerance of 15 ppm in or on aspirated grain fractions has been increased to 60 ppm in or on grain, aspirated grain fractions because the wheat field trials indicate that the highest average field trial residue of 0.11 ppm for wheat grain is 0.11 ppm and the wheat processing study indicates that residues of fluoxastrobin may concentrate in wheat, bran (1.3x) and aspirated grain fractions (518x). This is also an increase in the pre-existing tolerance of 20 ppm for fluoxastrobin in or on aspirated grain fractions.

## V. Conclusion

Therefore, tolerances are established for residues of fluoxastrobin, (1E)-[2[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime and its Z isomer, (1Z)-[2[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on corn, sweet, forage at 13 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 10 ppm; wheat, bran at 0.15 ppm; wheat, forage at 7.0 ppm; wheat, hay at 17 ppm; and wheat, straw at 11 ppm. A pre-existing tolerance for the residues of fluoxastrobin and its Z isomer in or on grain, aspirated grain fractions is increased from 20 ppm to 60 ppm. Pre-existing tolerances are also increased for the residues of fluoxastrobin, its Z isomer, and its phenoxy-hydroxypyrimidine metabolite, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol, in cattle, meat byproducts from 0.10 ppm to 0.20 ppm; in goat, meat byproducts from 0.10 ppm to 0.20 ppm; in horse, meat byproducts from 0.10 ppm to 0.20 ppm; and in sheep, meat byproducts from 0.10 ppm to 0.20 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the

relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.609 is amended by:

i. Removing "Aspirated grain fractions" in paragraph (a)(1) in the table;

ii. Adding alphabetically the following commodities to the table in paragraph (a)(1); and

iii. Revising the entries for Cattle, meat byproducts; Goat, meat byproducts; Horse, meat byproducts; and Sheep, meat byproducts in the table in paragraph (a)(2).

The amendments read as follows:

**§ 180.609 Fluoxastrobin; tolerances for residues.**

(a) *General.* (1) * * *

| Commodity | Parts per million |
|---|---|
| * * * | * * |
| Corn, sweet, forage | 13 |
| Corn, sweet, kernel plus cob with husks removed | 0.01 |
| Corn, sweet, stover | 10 |
| Grain, aspirated grain fractions | 60 |
| * * * | * * |
| Wheat, bran | 0.15 |
| Wheat, forage | 7.0 |
| Wheat, hay | 17 |
| Wheat, straw | 11 |

(2) * * *

| Commodity | Parts per million |
|---|---|
| * * * | * * |
| Cattle, meat byproducts | 0.20 |
| * * * | * * |
| Goat, meat byproducts | 0.20 |
| * * * | * * |
| Horse, meat byproducts | 0.20 |
| * * * | * * |
| Sheep, meat byproducts | 0.20 |

* * * * *

[FR Doc. 2010–24575 Filed 9–29–10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Parts 171, 173, and 178

**[Docket No. PHMSA–06–25736 (HM–231)]**

**RIN 2137–AD89**

## Hazardous Material; Miscellaneous Packaging Amendments

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** On February 2, 2010, the Pipeline and Hazardous Materials Safety Administration published a final rule amending the Hazardous Materials Regulations to: Revise several packaging related definitions; add provisions to allow more flexibility when preparing and transmitting closure instructions, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that allows for a practicable means of stenciling the United Nations (UN) symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or may be considered a variation of a previously tested design. The February 2 final rule also incorporated requirements for the construction, maintenance, and use of Large Packagings. This final rule responds to one petition for reconsideration and four appeals submitted in response to the February 2 final rule and also corrects several errors that occurred in that rulemaking.

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

*Voluntary Compliance Date:* Compliance with the requirements adopted herein is authorized as of September 30, 2010. However, persons voluntarily complying with these regulations should be aware that appeals may be received and as a result of PHMSA's evaluation of these appeals, the amendments adopted in this final rule correction may be revised accordingly.

**FOR FURTHER INFORMATION CONTACT:** Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366–8553, or Ben Moore, Office of Hazardous Materials Technology, (202) 366–4545; Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On February 2, 2010, PHMSA published a final rule under Docket No. PHMSA–06–25736 (HM–231) (75 FR 5376) to: Revise several packaging related definitions; add provisions to allow more flexibility when preparing and transmitting closure instructions, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that allows for a practicable means of stenciling the "UN" symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or may be considered a variation of a previously tested design under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). The February 2 final rule also incorporated requirements for the construction, maintenance, and use of Large Packagings harmonizing these packaging requirements with those issued under the United Nations Recommendations on the Transport of Dangerous Goods. This final rule corrects several errors in the February 2 final rule and also responds to four appeals and one petition for reconsideration. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary.

## II. Petition for Rulemaking and Appeals to the Final Rule

In response to the February 2 final rule, PHMSA received one petition for rulemaking from the International Vessel Operators Dangerous Goods Association (IVODGA), and four appeals to the final rule from the following companies or organizations: American Promotional Events, Inc. (APE); Association of American Railroads (AAR); Dangerous Goods Advisory Council (DGAC); and the Reusable Industrial Packaging Association (RIPA). All object to certain requirements adopted in the February 2 final rule. Specifically, they request that PHMSA: (1) Eliminate the minimum thickness requirements for remanufactured steel and plastic drums; (2) reinstate the previous definition for "bulk packaging" to retain the phrase "no intermediate form of containment;" (3) revise the compliance date for maintaining closure instructions to align with a packaging's retest date; and (4) eliminate the vibration testing requirement for UN standard Large Packagings.

### *A. Bulk Packaging Definition*

The February 2 final rule removed the phrase "no intermediate form of containment" from the introductory language of the bulk packaging definition contained in § 171.8. PHMSA developed this definition as a modification of the definition for bulk packagings proposed in the Notice of Proposed Rulemaking (NPRM; September 1, 2006 (71 FR 52017)) to clarify that Large Packagings that contain inner packagings are considered bulk packagings under the HMR. This change placed a greater emphasis on packaging design and volumetric capacity, and was developed in part based on a petition from the Monsanto Company (P–1173). In the NPRM, the definition for a bulk packaging was proposed to read a "Bulk packaging means: (1) Any specification cargo tank, tank car, or portable tank constructed and marked in accordance with Part 178 of this subchapter; (2) Any DOT Specification 3AX, 3AAX or 3T cylinder constructed, marked and certified in accordance with Subpart C of Part 178 of this subchapter; or (3) Any industrial Packaging, Type A, Type B, Intermediate Bulk Container [IBC], Large Packaging, or non-specification packaging that has a volumetric capacity of greater than 450 L (119 gallons)."

The DGAC, AAR, and IVODGA object to this definition as adopted in the February 2 final rule stating that the adopted language was not proposed in the NPRM; therefore, interested parties had no opportunity to comment on the proposal, which is contrary to the Administrative Procedure Act (APA). They also state under the revised definition that a transport vehicle (*e.g.,* a railroad box car, dry goods truck, or semitrailer) containing non-bulk hazardous materials packages may be considered a bulk packaging.

The September 1, 2006 NPRM definition for "bulk packaging" did not include the phrase "no intermediate form of containment." Therefore, interested parties were given an opportunity to comment in response to the NPRM on the possible effect the removal of this phrase would have on the proposed bulk packaging definition. Further, in response to the petition for reconsideration and four appeals, we are clarifying that a Large Packaging with one or more inner packagings or articles is also a bulk packaging. Thus, in § 171.8 we are reinstating the phrase "no intermediate form of containment" in the bulk packaging definition, and permitting Large Packagings that contain articles or inner packagings to be defined as bulk packagings. We may consider amendments to this definition in a future rulemaking.

### *B. Non-Bulk Packaging Definition*

PHMSA proposed in the NPRM to revise the non-bulk packaging definition to eliminate the maximum capacity, gross mass, and water capacity limits for non-bulk packagings. Specifically, the NPRM proposed to define the term as follows: A "Non-bulk packaging means (1) any packaging constructed, marked, tested and certified as meeting the standards specified in Subparts L and M of Part 178 of this subchapter; (2) except for Specifications 3AX, 3AAX and 3T, any Specification cylinder constructed, marked and certified in accordance with subpart C of part 178 of this subchapter; and (3) any Industrial Packaging, Type A, Type B, Intermediate Bulk Container, Large Packaging, or non-specification packaging that has a volumetric capacity of 450 liters (119 gallons) or less." In response to the NPRM, the DGAC and APE request PHMSA remove the definitions for bulk and non-bulk packaging from the HMR. The DGAC states the delineations were arbitrary and the terms no longer served a useful purpose in regulation. The APE states in its experience these terms were no longer used in international regulations, were detrimental to the United States (U.S.) transportation industry, and offered no safety benefits. Other commenters to the NPRM found the removal of the volumetric requirements from the definitions more confusing for determining the application of markings, labels, and placards, and were concerned the absence of this information may present a hazard communication problem for emergency responders in that it may interfere with them discovering a large amount of hazardous material during an incident. These commenters were also concerned that the removal of the volumetric requirements may possibly cause the distinction between IBCs and drums to disappear. For example, IBCs and drums have distinctly different handling requirements. IBCs, by definition, require mechanical handling for movement, which is not the case for non-bulk packagings such as drums. Changes in the volumetric capacities of these packagings may result in compromises in handling safety. Therefore, PHMSA did not adopt in § 171.8 the non-bulk packaging definition as proposed in the NPRM.

In its appeal to the February 2 final rule, the APE requests PHMSA define a non-bulk packaging for solids based on

a net mass limit of 400 kg and without the 450 L limitation. The APE states this packaging is an undefined category—neither bulk nor non-bulk, but there is no safety basis for excluding its use, and this packaging was already authorized under PHMSA approval number CA 2006030023. The APE also states such packagings are common for transporting consumer fireworks; an example would be a fiberboard box with a low net mass of 75 kg but with a capacity in excess of 450 L. Further, the APE states this size packaging issue does not arise in the UN Recommendations on the Transport of Dangerous Goods (UN Recommendations).

PHMSA agrees with the appellants that (1) the HMR do not define packagings for solids with a net mass of 400 kg or less (non-bulk) but a net capacity that exceeds 450 L, and packagings with a net mass that exceeds 400 kg (bulk) but a net capacity that does not exceed 450 L; (2) that many of the international requirements for bulk and non-bulk packagings do not contain these quantity limits; and (3) packagings that meet the HMR's performance standards should be considered authorized packagings. However, we also recognize that many factors concerning these size limits serve an important function in delineating packaging types and performance testing in the U.S. Design and testing of packages that fall within these sizes may not adequately account for the handling characteristics that such large and heavy packagings may require.Therefore, we are not revising the definition in § 171.8 for a non-bulk packaging at this time, but will consider this issue more fully for a future rulemaking.

*C. Compliance Date for Package Closure Instructions*

The February 2 final rule revised § 178.2(c) to require a packaging manufacturer or other person certifying a packaging's compliance with 49 CFR Part 178, and each subsequent distributor of that packaging, to notify each person the packaging is transferred to of all the requirements regarding the packaging that are not met at the time of transfer. Each person who receives these written instructions must retain a copy for 365 days from the date of issuance. This notification may be in writing, stored electronically, including e-mail transmissions or on a CD or similar device. Federal hazmat law defines a "person" as including "a government, Indian tribe, or authority of a government or tribe that—(i) offers hazardous material for transportation in commerce; (ii) transports hazardous material to further a commercial enterprise; or (iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous materials in commerce * * *." *See* 49 U.S.C. 5102(9); *see* also 49 CFR 171.8.

The DGAC states PHMSA misconstrued DGAC's comments to the NPRM concerning closure instructions. In its appeal, the DGAC states packagings may require retesting or updated test reports to ensure closure instructions are consistent and repeatable with the manner in which these packagings were closed when tested. It also states completing packaging retesting before the October 1, 2010 effective date of the final rule could be costly and time consuming. The DGAC recommends adopting a two-year transition period for retaining closure instructions to align with the current two-year periodic retesting required for combination packagings and a one-year transition period for single packagings.

We agree with the appellant that adopting a closure instruction retention period that aligns with the periodic retesting requirements for the packaging would make it easier for the manufacturer and each subsequent distributor of the packaging to comply with this requirement. We also agree that making this change is appropriate given that this requirement was intended to provide additional flexibility to packaging manufacturers. Therefore, in this final rule, we are revising the amount of time required for retaining packaging closure instructions prescribed in § 178.2(c)(1)(ii) to align with a packaging's periodic retest date. We are also clarifying language in § 173.22(a)(4) to clearly state that additional requirements concerning closure instruction retention, including the time period required, are prescribed in § 178.2(c).

*D. Minimum Thickness Requirement for Remanufactured Steel and Plastic Drums*

PHMSA added the phrase "or remanufactured for reuse" to the third sentences in § 173.28(a) and (f), respectively, which require steel and plastic drums to meet the minimum thickness requirements for reusable packagings. In their appeals, the DGAC and RIPA object to this revision stating that Part 178 specification requirements for steel or plastic manufactured or remanufactured drums do not include minimum thicknesses and reconditioning, which is a form of reuse that has not applied to remanufactured packagings for many years. They also state a remanufactured drum is much like a new drum marked for single use in that it must be tested, regardless of thickness, to demonstrate compliance with the applicable performance requirements for its design, and it cannot be reused or reconditioned. The appellants also state if this provision were to go into effect, remanufactured drums not meeting minimum thickness requirements will have to be taken out of service and scrapped, which would cause the premature disposal of packagings that are still otherwise useful.

We agree with the appellants that this change may be misleading. PHMSA recognizes the current HMR minimum thickness requirements apply to packagings for reuse and reconditioning, and not to remanufactured packagings. We also recognize a remanufactured packaging, regardless of thickness, must be tested to demonstrate compliance with performance requirements. This differs from the requirements for reuse and reconditioning where the packaging is not subject to performance requirements as a new design type before reuse or reconditioning. Therefore, in this final rule, PHMSA is revising § 173.28(a) and (f) to remove the phrase "or remanufactured for reuse" to clarify that this requirement does not apply to remanufactured packagings.

*E. Vibration Testing for Large Packaging*

PHMSA added a vibration performance test in § 178.985 for UN standard Large Packagings to promote the integrity of these packagings in transportation. The DGAC and APE object to this provision in their appeals. Both state that PHMSA erroneously stated Large Packagings would contain hazardous materials without an intermediate packaging, but Large Packagings are designed to contain inner packagings, making them essentially combination packagings that should comply with § 173.24a(a)(5). The appellants state that PHMSA provided no safety justification for the additional test, and that this change decreases harmonization with international standards as the vibration test is not included in international standards for these packagings. The appellants also question why PHMSA would submit a paper to the UN Committee of Experts to permit hazard class Division 1.1D, 1.4G, and 1.4S explosives in Large Packagings but not take this into account when preparing the Docket No. PHMSA–06–25736 (HM–231) final rule.

On its own initiative, PHMSA added the vibration test for Large Packagings, other than for flexible Large Packagings, in the final rule because, as PHMSA stated in the final rule, the similarity of the Large Packaging's design to an IBC subjected it to similar packaging design stresses and opportunities for failure. Further, PHMSA believes, based on historical experience with the vibration test, that the test is an essential component for assessing the integrity of an IBC packaging. Therefore, the test is equally valid for assessing the integrity of a Large Packaging, regardless of whether the Large Packaging is used as a single or combination packaging. In addition, the NPRM's regulatory language did provide for the placement of articles or inner packagings in Large Packagings. However, these provisions were erroneously omitted in the February 2 final rule. Therefore, we are revising the language in § 178.985(a) regarding the vibration test for Large Packagings to state these packagings must be capable of passing the vibration test, and clarifying that Large Packagings that contain inner packagings are bulk packagings.

PHMSA agrees with the appellants that the vibration test is not currently required internationally for Large Packagings. In December 2006, PHMSA submitted a proposal (No. 2006/98) to the 30th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods (Sub-Committee) (the proposal is available at: *http://www.unece.org/trans/doc/2006/ac10c3/ST-SG-AC10-C3-2006-98e.pdf*) to incorporate into the UN Recommendations U.S.-issued competent authority approvals that permit Division 1.4G (UN 0336) and Division 1.4S (UN 0337) consumer fireworks to be transported in fiberboard and wood Large Packagings. This proposal was based on the existing test provisions for these packagings. PHMSA's intent in this proposal was to add a Large Packaging authorization, not to amend the Large Packaging test requirements. At that time, the vibration test was not yet required for IBCs, but we were working with the Sub-Committee during that session to add the vibration test for composite IBCs (*see* Canadian paper (2006/78); the proposal is available at: *http://www.unece.org/trans/doc/2006/ac10c3/ST-SG-AC10-C3-2006-78e.pdf*). PHMSA's intent was to add the vibration test to the composite IBC packaging first, and then consider what other packaging types it should apply to.

PHMSA withdrew the proposal before it was considered by the Sub-Committee and decided not to pursue it further at a future meeting because we believed the information we received initially from industry in support of the proposal was not sufficiently complete and may be inaccurate. After further review, we also decided the proposal as written at that time was not appropriate as a regulation to be made available for general use by incorporating it into the UN Recommendations. Therefore, the Sub-Committee never considered a proposal from the U.S. to add a Large Packaging authorization for identification number UN 0336 and UN 0337 fireworks. The Sub-Committee document noting this withdrawal is available at: *http://www.unece.org/trans/doc/2006/ac10c3/UN-SCETDG-30-INF01e.pdf.*

Finally, on April 1, 2010, the U.S. submitted a working paper (No. ST/SG/AC.10/C.3/2010/32) for the consideration of the UN Committee of Experts entitled "Vibration test for large packagings" that asks the Committee to add the vibration testing for all Large Packaging intended to contain liquids. A copy of this paper is available in the docket for this final rule at *http://www.regulations.gov.*

*F. Minimum Puncture Resistance for UN 50G Fiberboard Large Packagings*

The February 2 final rule added two puncture-resistant construction requirements under § 178.930 for rigid fiberboard UN 50 Large Packagings. The first, in § 178.930 (b)(1)(i), states the walls of the packaging, including the top and bottom, must have a minimum puncture resistance of 15 Joules (11 foot-pounds of energy) measured according to the testing standards prescribed in the International Organization for Standardization (ISO) 3036–1975(E) Board—Determination of Puncture Resistance, which is incorporated by reference in § 171.7 of the HMR. The second, in § 178.930 (b)(1)(ii), includes a requirement that metal staples used to fasten a Large Packaging be formed or protected so that any inner lining cannot be abraded or punctured by them. PHMSA added these requirements to reduce the likelihood that sharp or protruding objects will puncture these packagings.

The APE opposes the ISO standard of puncture resistance for fiberboard Large Packagings, stating the 15 Joules puncture-resistance requirement introduces significant additional costs that foreign competitors, who may import fireworks into the U.S. in packagings of comparable mass and volume, are not required to comply with. The APE also states heavier fiberboard would be needed to satisfy this requirement, and this additional weight may reduce the amount of material that can be placed in a packaging on a truck. The APE also states PHMSA in the past issued an approval, CA number not provided, that required a 5 Joules puncture resistance for fiberboard packagings and requests that this standard be applied to the fiberboard Large Packaging as well. We believe the commenter may be referring to Competent Authority Approval number CA 2006030023. This competent authority permits APE to offer for transportation Division 1.4G (UN 0336) and Division 1.4S (UN 0337) fireworks in UN 50G Large Packagings that conform to the UN Recommendations construction standards for these packagings except that the walls, including the top and bottom of the packaging, must pass a puncture resistance of 5 Joules instead of 15 Joules required for all other packagings of this type. Additional packaging requirements also apply. A copy of the approval is available under the "Approvals Search" link at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a/approvals.* Finally, the APE asserts that PHMSA did not adequately consider its concerns pertaining to this requirement in its comments to the NPRM.

We agree with the appellant that the reduction in puncture resistance from 15 to 5 Joules the appellant is requesting for fiberboard UN 50G Large Packagings is adequate for the hazard class, weight, and type of the hazardous materials permitted under this approval. However, we disagree that this provision should be applied to all Large Packagings in other types of hazardous materials service. For example, the ability of a fiberboard packaging to resist further tearing when punctured may be crucial to its survivability when it contains materials that are heavier than fireworks, which typically are lightweight when compared to their volume, or when it contains materials that can disperse easily, such as those in grain or powder form, or liquids in inner packagings. Therefore, we will continue to authorize fiberboard Large Packagings that pass a 5 Joule puncture-resistance test under the terms of an approval based on our determination of its ability to transport a specific type of hazardous material safely in transportation. To determine whether other types of hazardous materials may be safely transported in a 5 Joule puncture-resistant fiberboard Large Packaging, we may consider this issue and the possibility of allowing the use of this type of packaging under the

terms of a Special Provision prescribed in § 172.102 in a future rulemaking.

*E. Miscellenous Corrections*

1. Editorial Corrections for Large Packagings

In the February 2 final rule, PHMSA added standards for constructing and testing Large Packagings, represented by the code designation "UN 50" (rigid) or "UN 51" (flexible), but did not consistently revise the references in the HMR to reflect this change. In this rulemaking, we are revising the definition in § 171.8, and the references in § 173.197 to correctly identify that the Large Packaging standards and testing provisions in the HMR are now prescribed in 49 CFR Part 178, Subparts P and Q. These corrections will clarify that an approval from the Associate Administrator for Hazardous Materials Safety is no longer needed to construct and test a UN 50 or UN 51 Large Packaging.

2. Section Numbers

PHMSA renumbered several sections pertaining to Large Packagings in the February 2 final rule to consolidate these requirements into sections that occur in the "§ 178.900" series, beginning with § 178.900 and ending with § 178.985. However, we did not discuss this change in the preamble. In addition, several section numbers that appeared in the final rule's regulatory text were not revised to reflect these changes, and some existing sections numbers were referenced incorrectly. These editorial changes are summarized below.

Section 178.503(e)(1)(i) was incorrectly referred to as § 178.3(e)(1)(i) in § 178.503(e)(1)(ii)(D) in the February 2 final rule. This error is corrected in this final rule.

Section 178.902 was renumbered § 178.905; § 178.903 was renumbered § 178.910; § 178.905 was renumbered § 178.920; § 178.906 was renumbered § 178.925; § 178.907 was renumbered § 178.930; § 178.908 was renumbered § 178.935; § 178.909 was renumbered § 178.940, § 178.1001 was renumbered § 178.950 in the February 2 final rule.

In § 178.910, the reference in paragraph (a)(1)(ii) containing the identification codes for a Large Packaging design type was incorrectly described in the NPRM and February 2 final rule as § 178.901. This section was designated as § 178.902 in the NPRM, and renumbered § 178.905 in the February 2 final rule. Therefore, in § 178.910(a)(1)(ii), the reference to § 178.901 is renumbered § 178.905. Also in § 178.910(a)(1)(ii), the reference to the section containing the general requirements for testing Large Packagings was incorrectly described in the NPRM and February 2 final rule as § 178.1001. Therefore, § 178.1001 is renumbered § 178.955 in this final rule.

In § 178.915(e), the "p" in packaging was placed erroneously in lower case. In addition, the bottom- and top-lift testing sections for Large Packagings were renumbered § 178.970 and § 178.975, respectively, in the February 2 final rule but were incorrectly described in § 178.915(e) as § 178.1004 and § 178.1005. These errors are also being corrected in this final rule.

In the February 2 final rule, the sections that prescribe rigid plastic and flexible Large Packaging standards were renumbered § 178.925 and § 178.940, respectively, but were incorrectly described in § 178.955(c)(5)(ii) as § 178.906 and § 178.909. Also, in the February 2 final rule, § 178.1001 was renumbered § 178.955, § 178.1002 was renumbered § 178.960, and § 178.1015 was renumbered § 178.980. However, the references in § 178.965(a) and (b) to § 178.955 and § 178.960 were incorrectly described as §§ 178.1001 and 178.1002, respectively, and the reference in § 178.980(d) to § 178.980(c) was incorrectly described as § 178.1015(c).

These errors are being corrected in this final rule.

Section 178.1019 was renumbered § 178.985 in the February 2 final rule.

3. Punctuation Errors

In § 178.601(g)(8)(xiii)(C), the comma placed erroneously before the parenthetic phrase is removed, and the quotation mark used as a symbolic representation for the word "inches" after the numbers 0.625 was replaced with the word "inches." In § 178.601(g)(8)(xiii)(D), the period placed erroneously after the word "thickness" is replaced with a comma.

## V. Rulemaking Analysis and Notices

*A. Statutory/Legal Authority for this Rulemaking*

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This final rule responds to one petition for reconsideration and four appeals, and corrects several errors in the February 2, 2010 final rule. The petition and appeals are available for review in the public docket for this rulemaking.

*B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is a non-significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the February 2, 2010 final rule.

*C. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the President's memorandum on "Preemption" published in the **Federal Register** on May 22, 2009 (74 FR 24693). This final rule preempts State, local, and Indian tribe requirements, but does not impose any regulation with substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items 1, 2, 3, and 5 above. This rule preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the

same" as the Federal requirements. This final rule is necessary to incorporate changes to the final rule in response to one petition for reconsideration and four appeals, and to make corrections to the February 2, 2010 final rule that without this rulemaking will become effective on October 1, 2010.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This effective date of preemption is 90 days after the publication of this final rule in the **Federal Register**.

*D. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. The corrections and revisions contained in this final rule are minor and will have little or no effect on the regulated industry. While maintaining safety, it relaxes certain requirements. Many of the amendments in this rulemaking are intended to correct or clarify regulatory requirements specific to the February 2, 2010 final rule concerning the construction and use of non-bulk and bulk packagings and do not impose any additional costs on small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. The changes in this final rule will enhance safety, and I certify that this proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

*F. Unfunded Mandates Reform Act of 1995*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

*G. Paperwork Reduction Act*

This final rule imposes no new information collection requirements.

*H. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

*I. Environmental Assessment*

The National Environmental Policy Act (NEPA), §§ 42 U.S.C. 4321–4375, requires federal agencies to analyze regulatory actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b). In the February 2, 2010 final rule, we developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. The requirements in this rulemaking will reduce confusion and enhance voluntary compliance, thereby reducing the likelihood of deaths, injuries, property damage, hazardous materials release, and other adverse consequences of incidents involving the transportation of hazardous materials. We have determined there will be no significant environmental impacts associated with this final rule.

*J. Privacy Act*

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or it is available at: *http://www.dot.gov/privacy.html.*

**List of Subjects**

*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

*49 CFR Part 173*

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

*49 CFR Part 178*

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I, subchapter C as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.8, the following changes are made:

■ a. The definition for "bulk packaging" is amended by revising the introductory text; and

■ b. The definition for a "Large packaging" is amended by revising paragraph (5) to read as follows:

**§ 171.8 Definitions and abbreviations.**

* * * * *

*Bulk packaging* means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment. A Large Packaging in which hazardous materials are loaded with an intermediate form of containment, such as one or more articles or inner packagings, is also a bulk packaging. Additionally, a bulk packaging has: * * *

* * * * *

Large packaging * * *

(5) Conforms to the requirements for the construction, testing and marking of Large Packagings as specified in subparts P and Q of part 178 of this subchapter.

* * * * *

## PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 4. In § 173.22, paragraph (a)(4) is amended by adding three new sentences at the end of the paragraph to read as follows:

### § 173.22 Shipper's responsibility.

(a) * * *

(4) * * * A person must maintain a copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter) unless permanently embossed or printed on the packaging. When applicable, a person must maintain a copy of any supporting documentation for an equivalent level of performance under the selective testing variation in § 178.601(g)(1) of this subchapter. A copy of the notification, unless permanently embossed or printed on the packaging, and supporting documentation, when applicable, must be made available for inspection by a representative of the Department upon request for the time period of the packaging's periodic retest date, *i.e.,* every 12 months for single or composite packagings and every 24 months for combination packagings.

* * * * *

■ 5. In § 173.28, in paragraph (a), the third sentence is revised and, in paragraph (f), the third sentence is revised to read as follows:

### § 173.28 Reuse, reconditioning, and remanufacture of packagings.

(a) * * * Packagings not meeting the minimum thickness requirements prescribed in paragraph (b)(4)(i) of this section may not be reused or reconditioned for reuse.

* * * * *

(f) * * * Drums or jerricans not meeting the minimum thickness requirements prescribed in paragraph (b)(4)(i) of this section may not be reused or reconditioned for reuse.

■ 6. In § 173.197, the first sentence in paragraph (c), introductory paragraph is revised to read as follows:

### § 173.197 Regulated medical waste.

* * * * *

(c) *Large Packagings.* Large Packagings constructed, tested, and marked in accordance with the requirements specified in subparts P and Q of part 178 of this subchapter and conforming to other requirements of this paragraph (c) may be used for the transportation of regulated medical waste, provided the waste is contained in inner packagings conforming to the requirements of paragraph (e) of this section. * * *

* * * * *

## PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 7. The authority citation for part 178 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.45, 1.53.

■ 8. In § 178.2, paragraph (c)(1)(ii) is revised to read as follows:

### § 178.2 Applicability and responsibility.

* * * * *

(c) * * *

(1) * * *

(ii) Retain copies of each written notification for the amount of time that aligns with the packaging's periodic retest date, *i.e.,* every 12 months for single or composite packagings and every 24 months for combination packagings; and

* * * * *

■ 9. In § 178.503, paragraph (e)(1)(ii)(D) is revised to read as follows:

### § 178.503 Marking of packagings.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(D) The letters "u" and "n" appear exactly as depicted in § 178.503(e)(1)(i) with no gaps.

* * * * *

■ 10. In § 178.601, paragraphs (g)(8)(xiii)(C) and (g)(8)(xiii)(D) are revised to read as follows:

### § 178.601 General requirements.

* * * * *

(g) * * *

(8) * * *

(xiii) * * *

(C) Closure ring style including bolt size (*e.g.,* square or round back, 0.625 inches bolt); and

(D) Closure ring thickness,

* * * * *

■ 11. In § 178.910, paragraph (a)(1)(ii) is revised to read as follows:

### § 178.910 Marking of large packagings.

(a) * * *

(1) * * *

(ii) *The code number designating the Large Packaging design type according to § 178.905.* The letter "W" must follow the Large Packaging design type identification code on a Large Packaging when the Large Packaging differs from the requirements in subpart P of this part, or is tested using methods other than those specified in this subpart, and is approved by the Associate Administrator in accordance with the provisions in § 178.955;

* * * * *

■ 12. In § 178.915, paragraph (e) is revised to read as follows:

### § 178.915 General large packaging standards.

* * * * *

(e) Large Packaging design types must be constructed in such a way as to be bottom-lifted or top-lifted as specified in §§ 178.970 and 178.975.

### § 178.930 [Corrected]

■ 13. In § 178.930, in the second sentence of paragraph (a) introductory text, remove the word "large", and add the word "Large" in its place.

■ 14. In § 178.955, paragraph (c)(5)(ii) is revised to read as follows:

### § 178.955 General requirements.

* * * * *

(c) * * *

(5) * * *

(ii) A rigid plastic Large Packaging, which differs with regard to additives used to comply with § 178.925(b) or § 178.940(b);

* * * * *

■ 15. In § 178.965, paragraphs (a), (b), and the last sentence in paragraph (c) are revised to read as follows:

### § 178.965 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all Large Packaging design types and performed periodically as specified in § 178.955(e) of this subpart.

(b) *Special preparation for the drop test.* Large Packagings must be filled in accordance with § 178.960.

(c) * * * Large Packagings conditioned in this way are not required to be conditioned in accordance with § 178.960(d).

* * * * *

■ 16. In § 178.980, paragraph (d)(1) is revised to read as follows:

### § 178.980 Stacking test.

* * * * *

(d) Periodic retest.

(1) The package must be tested in accordance with § 178.980(c) of this subpart; *or*

* * * * *

■ 17. In § 178.985, paragraph (a) is revised to read as follows:

**§ 178.985 Vibration test.**

(a) *General.* All rigid Large Packaging and flexible Large Packaging design types must be capable of withstanding the vibration test.

* * * * *

Issued in Washington, DC, on September 22, 2010, under authority delegated in 49 CFR part 1.

**Cynthia L. Quarterman,**

*Administrator.*

[FR Doc. 2010–24336 Filed 9–29–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 100

## Subsistence Management Regulations for Public Lands in Alaska

*CFR Correction*

In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2009, on page 663, in § 100.24, remove the second paragraph (a)(3).

[FR Doc. 2010–24662 Filed 9–29–10; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

## Fisheries of the Northeastern United States

*CFR Correction*

In Title 50 of the Code of Federal Regulations, Parts 600 to 659, revised as of October 1, 2009, on page 639, in § 648.92, remove the second paragraphs (b)(1)(iv) and (b)(1)(v).

[FR Doc. 2010–24660 Filed 9–29–10; 8:45 am]

**BILLING CODE 1505–01–D**

# Proposed Rules

Federal Register

Vol. 75, No. 189

Thursday, September 30, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30, 36, 39, 40, 51, 70, and 150

**RIN 3150–AI79**

**[NRC–2010–0075]**

### Licenses, Certifications, and Approvals for Material Licensees; Reopening of Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is reopening the public comment period for the proposed rule that was published on July 27, 2010 (75 FR 43865). The proposed rule would amend the regulations by revising the provisions applicable to the licensing and approval processes for byproduct, source and special nuclear material licenses, and irradiators to clarify the definitions of "construction" and "commencement of construction". The comment period for this proposed rule, which closed on September 27, 2010, is reopened and will remain open until November 29, 2010.

**DATES:** The comment period has been reopened and now closes on November 29, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC–2010–0075 in the subject line of your comments. For instructions on submitting comments *see* the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

*Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0075. Address questions about NRC dockets to Carol Gallagher, telephone 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to: Rulemaking.Comments@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (Telephone 301–415–1966).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tracey Stokes, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1064; e-mail: *tracey.stokes@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.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.

You can access publicly available documents related to this document 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 O–1F21, 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, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

*Federal Rulemaking Web site:* Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–NRC–2010–0075.

#### Extension Request

On September 15, 2010, and September 21, 2010, the Nuclear Energy Institute and the National Mining Association, respectively, requested extension of the public comment period until November 29, 2010. In their requests, the stakeholders indicated that given a shorter than normal comment period, the magnitude of the potential impact of the proposed amendment on a variety of licensees and applicants, and the need for stakeholders to carefully review the proposed amendment in order to provide constructive comments, an extension was necessary. No objections to the requested extension have been received.

Dated at Rockville, Maryland, this *24th* day of September 2010.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2010–24581 Filed 9–29–10; 8:45 am]

**BILLING CODE 7590–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 330

**RIN 3064–AD37**

### Deposit Insurance Regulations; Unlimited Coverage for Noninterest-bearing Transaction Accounts

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FDIC is proposing to amend its regulations to implement

section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),[1] providing for unlimited deposit insurance for "noninterest-bearing transaction accounts" for two years starting December 31, 2010. This unlimited coverage for "noninterest-bearing transaction accounts" is similar but not identical to the protection provided for such account owners under the FDIC's Transaction Account Guarantee Program ("TAGP"). The proposed rule serves as a vehicle for the FDIC Board of Directors to announce that it will not extend the TAGP beyond the scheduled expiration date of December 31, 2010. Because of the differences between the TAGP and the new statutory provision, changes to the rules are necessary.

**DATES:** Written comments must be received by the FDIC no later than October 15, 2010.

**ADDRESSES:** You may submit comments on the proposed rule, by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN # [insert] on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Instructions:* All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/final.html,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. DiNuzzo, Supervisory Counsel, Legal Division (202) 898–7349 or *jdinuzzo@fdic.gov;* Walter C. Siedentopf, Honors Attorney, Legal Division (703) 562–2744 or *wasiedentopf@fdic.gov;* or James V. Deveney, Chief, Deposit Insurance Section, Division of Supervision and Consumer Protection (202) 898–6687 or *jdeveney@fdic.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *The TAGP*

In October 2008, the FDIC adopted the Temporary Liquidity Guarantee Program ("TLGP") following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System ("Federal Reserve").[2] Designed to assist in the stabilization of the nation's financial system, the TLGP is composed of two distinct components: the Debt Guarantee Program and the TAGP. While all insured depository institutions ("IDIs") were initially participants in both programs, the FDIC gave all IDIs the option to opt out of each program separately.

Under the TAGP, the FDIC guarantees all funds held at participating IDIs in qualifying noninterest-bearing transaction accounts. This protection is in addition to and separate from the insurance of funds in all other types of deposit accounts. A noninterest-bearing transaction account is defined under the TAGP as a transaction account maintained at an IDI with respect to which interest is neither accrued nor paid and on which the IDI does not reserve the right to require advance notice of an intended withdrawal.[3] The TAGP definition of noninterest-bearing transaction account specifically includes low-interest negotiable order of withdrawal ("NOW") accounts and Interest on Lawyers Trust Accounts ("IOLTAs").[4]

Under the TAGP, each IDI that offers noninterest-bearing transaction accounts is required to post a conspicuous notice in the lobby of its main office and each branch office, and on its Web site, if applicable, that discloses whether the IDI is participating in the TAGP.[5] Disclosures for participating IDIs must contain a statement that indicates that all noninterest-bearing transaction accounts are fully guaranteed by the FDIC.[6] IDIs are also required to disclose actions that cause funds to be transferred from accounts that are guaranteed under the TAGP.[7] IDIs pay a separate assessment, or premium, to the FDIC for participating in the TAGP. This assessment is in addition to the assessment IDIs pay under the FDIC's risk-based assessment system.[8]

The TAGP was originally set to expire on December 31, 2009.[9] The FDIC recognized that the TAGP was contributing significantly to improvements in the financial sector, but it also noted that many parts of the country were still suffering from the effects of economic turmoil. As a result, the FDIC extended the TAGP, first, through June 30, 2010,[10] and then through December 31, 2010.[11] The rule implementing this last extension also provided for the possibility of an additional extension not to exceed December 31, 2011, without further rulemaking, at the discretion of the FDIC Board of Directors upon a finding of continued need for the TAGP.[12] The rule also provided that the Board would announce any decision to implement such a further extension no later than October 29, 2010.[13] The FDIC is using this proposed rule as the vehicle for announcing that it will not continue the TAGP beyond December 31, 2010.

### *The Dodd-Frank Act*

Section 343 of the Dodd-Frank Act amends the Federal Deposit Insurance Act ("FDI Act") to include full deposit insurance coverage (beyond the Standard Maximum Deposit Insurance Amount ("SMDIA")[14]) for the net amount held in a noninterest-bearing transaction account by any depositor at an insured depository institution. As explained more fully below, section 343 of the Dodd-Frank Act is similar to the TAGP, but differs from it in three significant ways. First, unlike under the TAGP, section 343 applies to all IDIs; IDIs are not required to take any action (*i.e.,* opt in or opt out) to obtain coverage provided under section 343. Second, section 343 covers only traditional, noninterest-bearing demand deposit accounts. Unlike the TAGP, section 343 does not include within the definition of noninterest-bearing transaction account either low-interest NOW accounts or IOLTAs. And, third, unlike under the TAGP, there is no separate FDIC assessment (or premium) for the insurance of noninterest-bearing transaction accounts under section 343.

Section 343 of the Dodd-Frank Act is effective from December 31, 2010, through December 31, 2012.[15]

[1] Public Law 111–203 (July 21, 2010).

[2] *See* 12 U.S.C. 1823(c)(4)(G) (amended 2010). The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability, and the FDIC implemented the TLGP in response.

[3] 12 CFR 370.2(h).

[4] 73 FR 72244 (Nov. 26, 2008).

[5] 12 CFR 370.5(h)(5).

[6] *Id.*

[7] *Id.*

[8] 12 CFR 370.7(c).

[9] 73 FR 64179, 64182 (Oct. 29, 2008).

[10] 74 FR 45093 (Sept. 1, 2009).

[11] 75 FR 36506 (June 28, 2010).

[12] *Id.*

[13] *Id.*

[14] The SMDIA is defined as $250,000. 12 CFR 330.1(n).

[15] Because of overlapping termination and effective dates, on December 31, 2010, there will be overlapping coverage of the TAGP and section 343 of the Dodd-Frank Act. On January 1, 2011,

## II. The Proposed Rule

*Amendments to Deposit Insurance Rules*

Section 343 of the Dodd-Frank Act amends the deposit insurance provisions of the FDI Act (12 U.S.C. 1821(a)(1)) to provide separate insurance coverage for noninterest-bearing transaction accounts. As such, the FDIC is proposing to revise its deposit insurance regulations in 12 CFR Part 330 to include this new temporary deposit insurance account category.

*Definition of Noninterest-Bearing Transaction Account*

The proposed rule follows the definition of noninterest-bearing transaction account in section 343 of the Dodd-Frank Act. Section 343 defines a noninterest-bearing transaction account as "a deposit or account maintained at an insured depository institution with respect to which interest is neither accrued nor paid; on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the IDI does not reserve the right to require advance notice of an intended withdrawal." This definition of noninterest-bearing transaction account is similar to the base definition of that term in the TAGP, but it includes no interest-bearing accounts. The section 343 definition of noninterest-bearing transaction account encompasses only traditional, noninterest-bearing demand deposit (or checking) accounts that allow for an unlimited number of deposits and withdrawals at any time, whether held by a business, an individual or other type of depositor.

Unlike the definition of noninterest-bearing transaction account in the TAGP, the section 343 definition of noninterest-bearing transaction account does not include NOW accounts (regardless of the interest rate paid on the account) or IOLTAs. Therefore, under the proposed rule, neither NOW accounts nor IOLTAs are within the definition of noninterest-bearing transaction account. Also, like the TAGP, the proposed rule does not include money market deposit accounts ("MMDAs") within the definition of noninterest-bearing transaction account.

As under the TAGP, under the proposed rule, whether an account is noninterest-bearing is determined by the terms of the account agreement and not by the fact that the rate on an account may be zero percent at a particular point in time. For example, an IDI might offer an account with a rate of zero percent except when the balance exceeds a prescribed threshold. Such an account would not qualify as a noninterest-bearing transaction account even though the balance is less than the prescribed threshold and the interest rate is zero percent. Under the proposed rule, at all times, the account would be treated as an interest-bearing account because the account agreement provides for the payment of interest under certain circumstances. On the other hand, as under the TAGP, the waiving of fees would not be treated as the earning of interest. For example, IDIs sometimes waive fees or provide fee-reducing credits for customers with checking accounts. Under the proposed rule, such account features would not prevent an account from qualifying as a noninterest-bearing transaction account, as long as the account otherwise satisfies the definition of a noninterest-bearing transaction account.

This same principle for determining whether a deposit account qualifies as a noninterest-bearing transaction account will apply when IDIs no longer are prohibited from paying interest on demand deposit accounts. Pursuant to section 627 of the Dodd-Frank Act, as of July 21, 2011 (one year after the enactment date of the Dodd-Frank Act), IDIs no longer will be restricted from paying interest on demand deposit accounts. At that time, demand deposit accounts offered by IDIs that allow for the payment of interest will not satisfy the definition of a noninterest-bearing transaction account. As discussed below, under the proposed rule, IDIs would be required to inform depositors of any changes in the terms of an account that will affect their deposit insurance coverage under this new provision of the deposit insurance rules.

As under the TAGP, the proposed rule's definition of noninterest-bearing transaction account would encompass "official checks" issued by IDIs. Official checks, such as cashier's checks and money orders issued by IDIs, are "deposits" as defined under the FDI Act (12 U.S.C. 1813(l)) and Part 330 of the FDIC's regulations. The payee of the official check (the party to whom the check is payable) is the insured party. Because these checks meet the definition of a noninterest-bearing transaction account, the payee (or the party to whom the payee has endorsed the check) would be insured for the full amount of the check upon the failure of the IDI that issued the official check.

Under the FDIC's rules and procedures for determining account balances at a failed IDI (12 CFR 360.8), funds swept (or transferred) from a deposit account to either another type of deposit account or a non-deposit account are treated as being in the account to which the funds were transferred prior to the time of failure. So, for example, if pursuant to an agreement between an IDI and its customer, funds are swept daily from a noninterest-bearing transaction account to an account or product (such as a repurchase agreement) that is not a noninterest-bearing transaction account, the funds in the resulting account or product would not be eligible for full insurance coverage. This is how sweep account products are treated under the TAGP and under the proposed rule.

As under the TAGP, however, the proposed rule would include an exception from the treatment of swept funds in situations where funds are swept from a noninterest-bearing transaction account to a noninterest-bearing savings account, notably a MMDA. Often referred to as "reserve sweeps," these products entail an arrangement in which a single deposit account is divided into two sub-accounts, a transaction account and an MMDA. The amount and frequency of sweeps are determined by an algorithm designed to minimize required reserves. In some situations customers may be unaware that this sweep mechanism is in place. Under the proposed rule, such accounts would be considered noninterest-bearing transaction accounts.[16] Apart from this exception for "reserve sweeps," MMDAs and noninterest-bearing savings accounts do not qualify as noninterest-bearing transaction accounts.

*Insurance Coverage*

As noted, pursuant to section 343 of the Dodd-Frank Act, all funds held in noninterest-bearing transaction accounts will be fully insured, without limit. As also specifically provided for in section 343 of the Dodd-Frank Act, this unlimited coverage is separate from, and in addition to, the coverage provided to depositors with respect to other accounts held at an insured depository institution. This means that funds held in noninterest-bearing transaction accounts will not be counted for purposes of determining the amount of deposit insurance on deposits held in other accounts, and in other rights and

coverage under the TAGP will have ended, but the deposit insurance coverage under section 343 of the Dodd-Frank Act will remain through December 31, 2012.

[16] *See* 12 CFR 360.8.

capacities, at the same IDI. Thus, for example, if a depositor has a $225,000 certificate of deposit and a no-interest checking account with a balance of $300,000, both held in a single ownership capacity, he or she would be fully insured for $525,000 (plus interest accrued on the CD), assuming the depositor has no other single-ownership funds at the same institution. First, coverage of $225,000 (plus accrued interest) would be provided for the certificate of deposit as a single ownership account (12 CFR 330.6) up to the SMDIA of $250,000. Second, full coverage of the $300,000 checking account would be provided separately, despite the checking account also being held as a single ownership account, because the account qualifies for unlimited separate coverage as a noninterest-bearing transaction account.

*No Opting Out*

Under the TAGP, IDIs could choose not to participate in the program. Because section 343 of the Dodd-Frank Act provides Congressionally mandated deposit insurance coverage, IDIs are not required to take any action (*i.e.,* opt in or opt out) to obtain separate coverage for noninterest-bearing transaction accounts. From December 31, 2010, through December 31, 2012, noninterest-bearing transaction accounts at all IDIs will receive this temporary deposit insurance coverage.

*No Separate Assessment*

The FDIC imposes a separate assessment, or premium, on IDIs that participate in the TAGP.[17] The FDIC does not plan to charge a separate assessment for the insurance of noninterest-bearing transaction accounts pursuant to section 343 of the Dodd-Frank Act. The FDIC will take into account the cost for this additional insurance coverage in determining the amount of the general assessment the FDIC charges IDIs under its risk-based assessment system.[18]

*Disclosure and Notice Requirements*

The FDIC is proposing notice and disclosure requirements to ensure that depositors are aware of and understand what types of accounts will be covered by this temporary deposit insurance coverage for noninterest-bearing transaction accounts. There are three such requirements. As explained in detail below: (1) IDIs must post a prescribed notice in their main office, each branch and, if applicable, on their Web site; (2) IDIs currently participating in the TAGP must notify NOW account depositors (that are currently protected under the TAGP because of interest rate restrictions on those accounts) and IOLTA depositors that, beginning January 1, 2011, those accounts no longer will be eligible for unlimited protection; and (3) IDIs must notify customers individually of any action they take to affect the deposit insurance coverage of funds held in noninterest-bearing transaction accounts.

1. Posted Notice

The proposed rule would require each IDI to post, prominently, a copy of the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act, from December 31, 2010, through December 31, 2012, all funds in "noninterest-bearing transaction accounts" are insured in full by the Federal Deposit Insurance Corporation. This unlimited coverage is in addition to, and separate from, the coverage of at least $250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account (or demand deposit account) on which the insured depository institution pays no interest. It does *not* include any transaction account that may earn interest, such as a negotiable order of withdrawal ("NOW") account, money-market deposit account, or Interest on Lawyers Trust Account ("IOLTA"), even if checks may be drawn on the account.

The temporary full insurance coverage of "noninterest-bearing transaction accounts" expires on December 31, 2012. After December 31, 2012, funds in noninterest-bearing transaction accounts will be insured under the FDIC's general deposit insurance rules, subject to the Standard Maximum Deposit Insurance Amount of $250,000.

For more information about FDIC insurance coverage of transaction accounts, visit *http://www.fdic.gov.*

2. Notice to Depositors Protected Under the TAGP But Not Under the Dodd-Frank Provision

As discussed above, low-interest NOW accounts and all IOLTAs are protected in full under the TAGP. These accounts, however, are not eligible for unlimited deposit insurance coverage under the Dodd-Frank provision. Thus, starting January 1, 2011, all NOW accounts and IOLTAs will be insured under the general deposit insurance rules and no longer will be eligible for unlimited protection. Because of the potential depositor confusion about this change in the FDIC's treatment of NOWs and IOLTAs, the proposed rule would require IDIs currently participating in the TAGP to provide individual notices to depositors with NOW accounts currently protected in full under the TAGP and IOLTAs that those accounts will not be insured under the new temporary insurance category for noninterest-bearing transaction accounts, but instead will be insured under the general insurance rules up to the SMDIA of $250,000. IDIs would be required to provide such notice to applicable depositors by mail no later than December 31, 2010. To comply with this requirement, IDIs may use electronic mail for depositors who ordinarily receive account information in this manner. The notice may be in the form of a copy of the notice required to be posted in IDI main offices, branches and on Web sites.

3. Notice to Sweep Account and Other Depositors Whose Coverage on Noninterest-Bearing Transaction Accounts Is Affected by an IDI Action

Under the TAGP regulations, if an IDI offers an account product in which funds are automatically transferred, or "swept," from a noninterest-bearing transaction account to another account (such as a savings account) or bank product that does not qualify as a noninterest-bearing transaction account, it must inform those customers that, upon such transfer, the funds will no longer be fully protected under the TAGP. The proposed rule contains a similar, though somewhat more expansive, requirement, mandating that IDIs notify customers of any action that affects the deposit insurance coverage of their funds held in noninterest-bearing transaction accounts. This notice requirement is intended primarily to apply when IDIs begin paying interest on demand deposit accounts, as will be permitted beginning July 22, 2011, under section 627 of the Dodd-Frank Act (discussed above). Thus, under the proposed notice requirements, if an IDI modifies the terms of its demand deposit account agreement so that the account may pay interest, the IDI must notify affected customers that the account no longer will be eligible for full deposit insurance coverage as a noninterest-bearing transaction account. Though such notifications would be mandatory, the proposed rule does not impose specific requirements regarding the form of the notice. Rather, the FDIC would expect IDIs to act in a commercially reasonable manner and to comply with applicable state and federal laws and regulations in informing depositors of changes to their account agreements.

[17] 12 CFR 370.7.

[18] 12 CFR part 327.

## III. Request for Comments

The FDIC invites comments on all aspects of the proposed rulemaking. Written comments must be received by the FDIC no later than October 15, 2010.

## IV. Regulatory Analysis and Procedure

### *A. Paperwork Reduction Act*

In accordance with section 3512 of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget ("OMB") control number. This Notice of Proposed Rulemaking ("NPR") contains disclosure requirements, some of which implicate PRA as more fully explained below. The NPR also announces that the TAG program will not continue beyond December 31, 2010, thereby eliminating the need for an associated, currently approved information collection.

The proposed new disclosure requirements are contained in sections 330.16(c)(1), section 330.16(2) and 330.16(c)(3). More specifically, section 330.16(c)(1) would require that each IDI post a "Notice of Changes In Temporary FDIC Insurance Coverage For Transaction Accounts" in the lobby of its main office and domestic branches and, if it offers Internet deposit services, on its Web site; section 330.16(2) would require IDIs currently participating in the TAG program to provide individual notices to depositors alerting them to the fact that low-interest NOWs and IOLTAs will not be eligible for unlimited coverage under the new temporary insurance category for noninterest-bearing transaction accounts, but will instead be insured under the general insurance rules up to the SMDIA of $250,000; and section 330.16(c)(3) would require that IDIs notify customers of any action that affects the deposit insurance coverage of their funds held in noninterest-bearing transaction accounts.

The disclosure requirement in section 330.16(c)(1) would normally be subject to PRA. However, because the FDIC has provided the specific text for the notice and allows for no variance in the language, the disclosure is excluded from coverage under PRA because "the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included" within the definition of "collection of information." 5 CFR 1320.3(c)(2). Therefore, the FDIC is not submitting the section 330.16(c)(1) disclosure to OMB for review.

The disclosure requirement in section 330.16(c)(2) provides that IDIs currently participating in the TAG program provide individual notices to depositors alerting them to the fact that low-interest NOWs and IOLTAs will not be insured under the new temporary insurance category for noninterest-bearing transaction accounts, but will instead be insured under the general insurance rules up to the SMDIA of $250,000. The estimated burden for this new disclosure requirement will be added to the burden for an existing information collection, OMB No. 3064–0168, currently entitled SWEEP Accounts: Disclosure of Deposit Status. In conjunction with the revision of OMB No. 3064–0168, the FDIC will also seek to modify the title of the collection as more fully explained below.

The disclosure requirement in section 330.16(c)(3) would expand upon a similar, pre-existing requirement for sweep accounts offered by IDIs participating in the TAG program. The existing disclosure requirement is approved under OMB No. 3064–0168. The expanded disclosure requirement would be mandatory for all IDIs, although institutions would retain flexibility regarding the form of the notice. Therefore, in conjunction with publication of this NPR, the FDIC is submitting to OMB a request to revise OMB No. 3064–0168 to reflect the estimated burden associated with the expanded disclosure requirement and to modify the title of the collection to "Disclosure of Deposit Status" to more accurately reflect the broader application of the requirement.

Finally, the FDIC is using this NPR as a vehicle to announce that the TAG program will not be extended beyond December 31, 2010. Therefore, the FDIC will, simultaneous with publication of the NPR, request that OMB discontinue its existing "Transaction Account Guarantee Program Extension" information collection, OMB No. 3064–0170, as of that date.

The estimated burden for the proposed new disclosure under sections 330.16(c)(2) 330.16(3) is as follows:

*Title:* "Disclosure of Deposit Status."

*Affected Public:* Insured depository institutions.

*OMB Number:* 3064–0168.

*Estimated Number of Respondents:*

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—7,830.

Disclosure to NOW account and IOLTA depositors of change in insurance category—6,249.

*Frequency of Response:*

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—on occasion (average of once per year per bank).

Disclosure to NOW account and IOLTA depositors of change in insurance category—once.

*Average Time per Response:*

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—8 hours.

Disclosure to NOW account and IOLTA depositors of change in insurance category—8 hours.

*Estimated Annual Burden:*

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—62,640 hours.

Disclosure to NOW account and IOLTA depositors of change in insurance category—49,992 hours.

*Total Annual Burden*—112,632 hours.

*Comments are invited on:*

(a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodologies 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments may be submitted to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for

the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. All comments should refer to the "Deposit Insurance Regulations—Unlimited Coverage for Noninterest-Bearing Transaction Accounts."

*B. Regulatory Flexibility Act*

In accordance with section 3(a) of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603(a), the FDIC must publish an initial regulatory flexibility analysis with this proposed rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA analysis or certification, financial institutions with total assets of $175 million or less are considered to be "small entities." The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2010 there were 4,294 IDIs that were considered small entities. A total of 1,121 of these institutions do not participate in the TAGP and would receive additional insurance coverage under the proposed rule. Currently 3,173 small IDIs participate in the TAGP. Within this group of small institutions, 618, or 19.5 percent, did not have TAGP eligible deposits as of the June 2010 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, "June 2010 Call Reports"); thus, they were not required to pay the fee currently assessed for participation in the TAGP. As to the remaining 2,555 small entities that had TAG eligible deposits as of the June 2010 Call Reports, they would no longer be assessed a fee after the termination of the TAGP, and they would not be charged a separate assessment for the new deposit insurance coverage.

The FDIC has determined that were the proposed rule to be adopted, the economic impact on small entities would not be significant for the following reasons. Because there is no separate FDIC assessment for the insurance of noninterest-bearing transaction accounts under section 343 of the Dodd-Frank Act, small entities currently assessed fees for participation in the TAGP will realize an average annual cost savings of $2,373 per institution. All other small entities, whether they are currently in the TAGP or not, will gain additional insurance coverage with no direct cost. The FDIC asserts that the economic benefit of additional insurance coverage and coverage extension until 2013 would outweigh any future costs associated with the temporary insurance of noninterest-bearing transaction accounts.

With respect to amending the disclosures related to section 343, the FDIC asserts that the economic impact on all small entities participating in the program (regardless of whether they currently pay a fee) would be de minimis in nature and would be outweighed by the economic benefit of additional insurance coverage.

Accordingly, if adopted in final form, the proposed rule would not have a significant economic impact on a substantial number of small entities.

*C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

*D. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the FDIC to use "plain language" in all proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposed text easier to understand.

**List of Subjects in 12 CFR Part 330**

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 330 of title 12 of the Code of Federal Regulations as follows:

## PART 330—DEPOSIT INSURANCE COVERAGE

1. The authority citation for part 330 continues to read as follows:

**Authority:** 12 U.S.C. 1813(1), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

2. Amend section 330.1 by adding new paragraph (r) to read as follows:

**§ 330.1 Definitions.**

* * * * *

(r) *Noninterest-bearing transaction account* means a deposit or account maintained at an insured depository institution—

(1) With respect to which interest is neither accrued nor paid;

(2) On which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(3) On which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal.

* * * * *

3. Add § 330.16 to read as follows:

**§ 330.16 Noninterest-bearing transaction accounts.**

(a) *Separate insurance coverage.* From December 31, 2010, through December 31, 2012, a depositor's funds in a "noninterest-bearing transaction account" (as defined in § 330.1(r)) are fully insured, irrespective of the SMDIA. Such insurance coverage shall be separate from the coverage provided for other accounts maintained at the same insured depository institution.

(b) *Certain swept funds.* Notwithstanding its normal rules and procedures regarding sweep accounts under 12 CFR 360.8, the FDIC will treat funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account as being in a noninterest-bearing transaction account.

(c) *Disclosure and notice requirements.* (1) Each depository institution that offers noninterest-bearing transaction accounts must post prominently the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act, from December 31, 2010, through December 31, 2012, all funds in "noninterest-bearing transaction accounts" are insured in full by the Federal Deposit Insurance Corporation. This unlimited coverage is in addition to, and separate from, the coverage of at least $250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account (or demand deposit account) on which the insured depository institution pays no interest. It does *not* include any transaction account that may earn interest,

such as a negotiable order of withdrawal ("NOW") account, money-market deposit account, or Interest on Lawyers Trust Account ("IOLTA"), even if checks may be drawn on the account.

The temporary full insurance coverage of "noninterest-bearing transaction accounts" expires on December 31, 2012. After December 31, 2012, funds in noninterest-bearing transaction accounts will be insured under the FDIC's general deposit insurance rules, subject to the Standard Maximum Deposit Insurance Amount of $250,000.

For more information about FDIC insurance coverage of transaction accounts, visit *http://www.fdic.gov.*

(2) Institutions participating in the FDIC's Transaction Account Guarantee Program on December 31, 2010, must provide a notice by mail to depositors with negotiable order of withdrawal accounts that are protected in full as of that date under the Transaction Account Guarantee Program and to depositors with Interest on Lawyer Trust Accounts that, as of January 1, 2011, such accounts no longer will be eligible for unlimited protection, but instead will be insured under the general insurance rules up to the SMDIA of $250,000. This notice must be provided to such depositors no later than December 31, 2010.

(3) If an institution uses sweep arrangements, modifies the terms of an account, or takes other actions that result in funds no longer being eligible for full coverage under this section, the institution must notify affected customers and clearly advise them, in writing, that such actions will affect their deposit insurance coverage.

By order of the Board of Directors.

Dated at Washington DC, this 27th day of September 2010. Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2010–24594 Filed 9–29–10; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Part 914

## FEDERAL HOUSING FINANCE AGENCY

## 12 CFR Part 1260

**RIN 2590–AA35**

## Information Sharing Among Federal Home Loan Banks

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** Section 1207 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) to require the Federal Housing Finance Agency (FHFA) to make available to each Federal Home Loan Bank (Bank) information relating to the financial condition of all other Banks. Section 1207 also requires FHFA to promulgate regulations to facilitate the sharing of such information among the Banks. This proposed rule would implement those HERA provisions, and also would transfer to new part 1260, without substantive change, existing regulations of the former Federal Housing Finance Board (Finance Board) relating to the filing of regulatory reports by the Banks.

**DATES:** Written comments must be received on or before November 29, 2010.

**ADDRESSES:** You may submit your comments, identified by regulatory information number (RIN) 2590–AA35, by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to *RegComments@fhfa.gov*. Please include "RIN 2590–AA35" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include "RIN 2590–AA35" in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA35, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA35, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Eric M. Raudenbush, Assistant General Counsel, Office of General Counsel, *eric.raudenbush@fhfa.gov*, (202) 414–6421 (this is not a toll-free number); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552; Daniel E. Coates, Associate Director, Division of FHLBank Regulation, *daniel.coates@fhfa.gov*, (202) 408–2959 (this is not a toll-free number), Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing the final rule. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on FHFA's Internet Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

### II. Background

*A. The Federal Home Loan Bank System (Bank System)*

The Bank System consists of 12 Banks and the Office of Finance (OF). The Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act). *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may purchase its capital stock, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions. *See* 12 U.S.C. 1427. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424; 12 CFR part 1263.

*B. New Statutory Provision Requiring the Sharing of Bank Information*

Section 1207 of HERA added a new section 20A to the Bank Act, 12 U.S.C. 1440a, that requires FHFA to make available to each Bank such reports,

records, or other information as may be available, relating to the condition of any other Bank in order to enable each Bank to evaluate the financial condition of the other Banks and the Bank System as a whole. The underlying objective for that requirement is that such information will better enable each Bank to assess the likelihood that it may be required to make payments on behalf of another Bank under the joint and several liability on the Banks' Consolidated Obligations (COs), as well as to comply with its disclosure obligations under the Securities Exchange Act of 1934 (1934 Act) (both of which are discussed in detail below). *See* 12 U.S.C. 1440a(a). Section 20A further requires FHFA to promulgate regulations to facilitate the sharing of such financial information among the Banks. *See* 12 U.S.C. 1440a(b)(1). Section 20A permits a Bank to request that FHFA determine that particular information that may otherwise be made available is proprietary and that the public interest requires that such information not be shared. *See* 12 U.S.C. 1440a(b)(2). Finally, section 20A provides that it does not affect the obligations of the Banks under the 1934 Act and related regulations of the Securities and Exchange Commission (SEC), and that the sharing of Bank information thereunder shall not cause FHFA to waive any privilege applicable to the shared information. *See* 12 U.S.C. 1440a(c), (d).

*C. Banks' Joint and Several Liability and Disclosure Requirements on COs*

The Banks fund their operations principally through the issuance of the COs, which are debt instruments issued on behalf of the Banks by the OF, a joint office of the Banks, pursuant to section 11 of the Bank Act, 12 U.S.C. 1431, and part 966 of the regulations of the Finance Board, 12 CFR part 966.[1] Under these regulations, the COs may be issued only through OF as agent for the Banks and the Banks are jointly and severally liable for the timely payment of principal and interest on all COs when due. *See* 12 CFR 966.2(b), 966.9(a). Accordingly, even when COs are issued with one Bank being the primary obligor, the ultimate liability for the timely payment of principal and interest thereon remains with all of the Banks collectively. By virtue of their status as government-sponsored enterprises (GSEs) and the soundness of the Banks' secured lending (advances) business over many years, the Banks typically can borrow funds in the capital markets at favorable rates. The Banks pass along a portion of their GSE funding advantage to their member institutions—and ultimately to consumers—by providing advances and other financial services at rates that may not otherwise be available to their members.

Although the COs themselves are not registered securities under the federal securities laws, the Finance Board adopted regulations in 2004 requiring each Bank to register a class of its common stock (which is issued only to its member institutions) with the SEC under section 12(g) of the 1934 Act, 15 U.S.C. 78*l*(g). *See* 69 FR 38811 (June 29, 2004), *codified at* 12 CFR part 998. Each Bank subsequently registered a class of its common stock with the SEC in compliance with that regulation. Separately, HERA included a provision requiring the Banks to register their common stock under section 12(g) of the 1934 Act, and to maintain that registration. *See* 15 U.S.C. 78oo(b). Accordingly, each Bank remains subject to the periodic disclosure requirements established under the 1934 Act, as interpreted and administered by the SEC.

*D. Considerations of Differences Between the Banks and the Enterprises*

Section 1201 of HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 to add a new section 1313(f), which requires the Director of FHFA, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to: the Banks' cooperative ownership structure; the mission of providing liquidity to members; the affordable housing and community development mission; their capital structure; and their joint and several liability on consolidated obligations. *See* HERA, section 1201, Public Law 110–289, 122 Stat. 2782–83 (*amending* 12 U.S.C. 4513). The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors. FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal.

**III. The Proposed Rule**

The proposed rule would add a new part 1260 to the regulations of FHFA to govern the handling of Bank records, reports, and other information. It would transfer material relating to Bank regulatory reports from part 914 of the regulations of the Finance Board to new part 1260 and would remove part 914. It would also create new provisions within part 1260 to govern the sharing of information among Banks, as required by section 20A of the Bank Act. The substance of each provision of the proposed rule is described in the following paragraphs.

*Section 1260.1—Definitions*

Proposed § 1260.1 would include a series of definitions, most of which would relate to the provisions to be relocated from part 914 of the regulations of the Finance Board. The definitions of the acronyms "AHP," "AMA," "CICA," and "CIP" (which are used in § 1260.2, discussed below) would be substantively identical to the definitions of those terms set forth in 12 CFR part 900, which applies to 12 CFR chapter IX, including current part 914. In addition, the proposed rule would transfer to § 1260.1, without substantive change, the definition of the term "Regulatory Report" that is currently set forth in 12 CFR 914.1. Finally, § 1260.1 would also contain definitions for the short forms "Bank," "Bank Act," and "FHFA."

*Section 1260.2—Filing Regulatory Reports*

The proposed rule would transfer to § 1260.2 from § 914.2 of the Finance Board's regulations a provision requiring each Bank to file regulatory reports with FHFA, as requested by the agency. As defined in § 1260.1, these regulatory reports would include any report of data needed to evaluate the safety and soundness of the Bank's operations or its compliance with statutory requirements, or with regulations, orders or other requirements imposed by FHFA. Proposed § 1260.2 is identical to current § 914.2, except that § 1260.2 would expressly refer to FHFA as regulator of the Banks instead of the former Finance Board.

*Section 1260.3—Sharing of Information Among the Banks*

Paragraph (a) of proposed § 1260.3 sets forth the operative provisions of the regulation that implement section 20A of the Bank Act, which identify the information to be shared and describe the manner in which FHFA will share that information. The information to be

[1] HERA amended certain aspects of section 11 of the Bank Act, relating to the issuance of consolidated obligations and the role of the OF in that process. FHFA intends to make conforming revisions to the regulations now located at part 966, and to relocate those provisions to an appropriate place in FHFA's regulations.

shared will include the final report of examination for each Bank, along with any other supervisory reports that FHFA presents to the board of directors of any Bank. Documents that are related to the reports of examination but are not part of the report, such as work programs, conclusions memoranda, and findings memoranda, would not be included among the materials to be distributed to the Banks. FHFA is proposing to distribute the reports of examination to each of the other Banks and OF as a matter of routine, rather than in response to individual requests, and to do so soon after the report has been finalized and presented to the board of directors of the subject Bank. Because OF is a joint office of the Banks and because it is charged with preparing the combined financial reports for the Bank System, FHFA is proposing to distribute to OF copies of the reports for all of the Banks. Although OF is examined by FHFA in the same manner as the Banks, FHFA is not proposing to distribute to the Banks the report of examination for OF because all twelve Bank presidents sit on OF's board of directors and, therefore, would already have access to the report.[2] Paragraph (a) also notes that the distribution of information under this provision is subject to the requirements set forth in paragraphs (b) through (d) of the proposal, which reflect the statutory provisions relating to the withholding of certain proprietary information.

Section 20A of the Bank Act reflects a determination by Congress that providing greater access to financial information relating to all of the other Banks will help each Bank assess its potential exposure to joint and several liability on the COs, as well as the accuracy of its disclosure documents under the 1934 Act. At present, each Bank already has access to a significant amount of information about the financial condition of the other Banks. That information includes the quarterly and annual reports that each Bank files with the SEC under the 1934 Act, which reports must disclose all material business and financial information about the particular Bank. It also includes the call reports that each Bank files with FHFA, as well as the quarterly certifications that each Bank must file with FHFA attesting to its ability to make full and timely payments on its current obligations during the next quarter. *See* 12 CFR 966.9(b)(1), (2). The Banks also have access to FHFA's Annual Report to Congress (required under 12 U.S.C. 4521(a)), which summarizes the conclusions set forth in each Bank's report of examination.

FHFA believes that by providing each Bank with access to the actual reports of examination and other supervisory reports presented to the boards of directors of the other Banks, the proposed rule would enable each Bank to better evaluate the other financial information already available and thus make a more informed assessment about the financial condition of each of the other Banks. The reports of examination and other supervisory reports would include more detailed information than is currently available to the Banks. Among other things, the report of examination typically sets forth the examiners' assessment of the strength of the Bank's corporate governance, its management of market risk, credit risk and operational risk, and its overall financial condition and performance. Based on these assessments, the report also may enumerate matters that require corrective action by, or under the supervision of, the Bank's board of directors and the dates by which such corrective action is to be completed. The Banks are well-suited to evaluate the information contained in a report of examination as a result of their own experience with the examination process.

Although FHFA believes that its distribution of the reports of examination and other supervisory reports will provide the Banks with the type of information contemplated by the statute, FHFA requests comments on whether other types of documents also should be made available under this regulation. FHFA also requests comments on whether the rule should allow FHFA to expand the categories of information to be distributed to the Banks without undertaking a subsequent rulemaking, *i.e.,* whether the Director or his designee may expand the categories of information to be disseminated through a less formal means, such as by order or staff action.

FHFA believes that the approach embodied in the proposed rule, *i.e.,* where FHFA provides supervisory information directly to each of the Banks rather than requiring the Banks to share supervisory information among themselves, is consistent with the requirements of section 20A and will achieve its objectives. Section 20A(a) generally directs FHFA to make available to all of the Banks information relating to the financial condition of all of the other Banks. Section 20A(b) separately directs FHFA to adopt regulations to facilitate the sharing of the information made available under section 20A(a) directly among the Banks. That latter provision appears to reflect a presumption that FHFA would implement the HERA amendments by requiring each Bank to provide copies of its report of examination and other supervisory reports directly to all of the other Banks. Because FHFA is proposing to distribute the reports of examination and other supervisory reports directly to all of the Banks, FHFA believes that the rule need not include a provision dealing with Bank-to-Bank sharing of the reports of examination and other supervisory reports that FHFA presents to the board of directors. Moreover, as noted previously, the Banks currently share various types of other information among themselves on a voluntary basis, which suggests that there is no compelling need to mandate Bank-to-Bank sharing of particular categories of other information. FHFA requests comments on whether the rule should retain this approach.

By statute, FHFA is required to conduct an on-site examination of each Bank at least annually to determine the condition of the entity for the purpose of ensuring its safety and soundness. *See* 12 U.S.C. 1440, 4517(a)–(b). Upon completion of each annual or special examination, FHFA examiners prepare a written report of examination for the Director of FHFA (as required by section 20 of the Bank Act, 12 U.S.C. 1440), which is subsequently presented to the board of directors of the particular Bank. The report of examination is prepared for the Director of FHFA and, by regulation, remains the property of FHFA even when in the possession of a Bank, OF, a Bank member, or another government agency. *See* 12 U.S.C. 1440; 12 CFR 911.3(c)(3). Accordingly, these reports, as well as any other supervisory correspondence, are subject to the restrictions on the disclosure of unpublished information set out in part 911 of the regulations of the former Finance Board (which remain in effect until superseded by action of FHFA).

Currently, the Banks are prohibited by regulation from sharing their reports of examination among themselves, or with any other outside party, except pursuant to the written consent of FHFA. *See* 12 CFR 911.3(c)(1). In 2006, the Finance Board issued an Advisory Bulletin that permitted the Banks to disclose the factual content of a report of examination in the preparation of its SEC disclosure documents, but continued to prohibit the Banks from releasing the report of examination

[2] FHFA also reviews the annual combined Bank System financial statements prepared by OF on behalf of the Banks. The agency then issues a letter to the OF board of directors that provides recommendations for enhanced disclosures. This also would not be distributed to the Banks under the proposed rule, for the same reason.

itself, or any portion of the report. *See* Federal Housing Finance Board Advisory Bulletin 2006–AB–03 (July 18, 2006) (available online at *http://www.fhfa.gov/webfiles/13094/2006-AB-03.pdf*). The Advisory Bulletin specifically prohibited the sharing of reports of examination among the Banks even for the purpose of assessing the likelihood of having to make a payment on COs for which another Bank is the primary obligor. If FHFA adopts a final rule that requires it to provide examination reports to all of the Banks, FHFA also will consider whether any revisions to the Advisory Bulletin are necessary, such as to ensure that the Bulletin remains consistent with purposes of HERA while also ensuring that the Banks do not share the reports of examination that they receive from FHFA with any other parties.

In the rule, FHFA is proposing to distribute only the final reports of examination, along with any other supervisory reports that FHFA has presented to a Bank's board of directors, and to do so as a matter of course after each report has been finalized and presented to the Bank's board, rather than making the reports available only upon the request of individual Banks. FHFA views the proposed distribution of the reports to all of the Banks as a matter of course as preferable to providing the reports only in response to a specific request from one or more of the Banks. First, the proposed approach would ensure that all Banks receive and use the same information in assessing their potential joint and several liability and in preparing their disclosure documents. Further, this approach would result in a more efficient and regular process for FHFA to administer and would establish a clear and standard timeframe for each Bank to review its own report of examination for any proprietary information that it believes should be withheld under the statutory standards of section 20A of the Bank Act. FHFA requests comments on whether the proposed distribution as a matter of course is the most appropriate means of providing information to the Banks.

Paragraph (b) of proposed § 1260.3 would implement the statutory requirement that each Bank be afforded the opportunity to request that the Director of FHFA not disclose particular information because the information is proprietary and the public interest requires that the information not be shared. Paragraph (b)(1) generally restates the statutory standard, which is a two-part test and requires that both parts must be satisfied in order for the Director or his designee to determine that the information should not be disclosed. Paragraph (b)(1) also would give each Bank a brief period of time within which to ask that FHFA not disclose certain information within the report of examination to the other Banks. In order to make such a request, a Bank must file a written request with FHFA that particular information contained in its report of examination or other supervisory report be redacted from the copy of the report to be distributed to the other Banks. Each entity would be required to file its request no later than the close of business on the tenth business day following the date on which FHFA presented the final report of examination or the supervisory report to the entity's board of directors.

FHFA believes that ten (10) business days is sufficient time for a Bank to review its report of examination or any other supervisory reports for proprietary information that it believes meets the standards for being withheld. First, through the receipt of draft reports and other supervisory correspondence, the Bank most likely will already be familiar with most of the contents of the reports well before they are presented to the Bank's board of directors. Second, a final report of examination typically is not a lengthy document, and therefore should not require a lengthy period of time to review for proprietary information. The same should be true for other types of supervisory reports. Finally, in order for this process to achieve the statutory objectives, these reports of examination must be reasonably current, so that the recipients can evaluate them together with other current information relating to the financial condition of the Bank. FHFA requests comments on whether the final rule should allow each entity a different length of time within which to review its report of examination for proprietary information that it believes should not be disclosed.

Paragraph (b)(2) of proposed § 1260.3 would require the Director of FHFA, or such other FHFA officer as the Director may designate, to determine promptly whether to grant all or part of a request to withhold proprietary information that a Bank has made in accordance with the requirements of paragraph (b)(1). Any determination made by the Director or his designee under this paragraph would be final.

Proposed § 1260.3(c) describes the process by which FHFA would distribute reports to the other Banks. The rule would require FHFA to distribute a report of examination or other supervisory report after the ten (10) business-day period noted above has expired without a request to withhold proprietary information, or after the Director or his designee has made a determination in response to such a request. If the Director or his designee determines that the report includes proprietary information that should not be disclosed, FHFA will distribute an appropriately redacted version of the report. The proposed rule would allow reports of examination and other supervisory reports to be distributed in either tangible or electronic form, as deemed appropriate on either an ongoing, or case-by-case, basis by FHFA.

Section 20A(d) of the Bank Act states that the Director of FHFA shall not be deemed to have waived any privilege applicable to any information concerning a Bank by sharing information as required under section 20A(a) of the statute. As mentioned above, reports of examination and other supervisory correspondence are considered to be privileged unpublished information that are subject to the restrictions on disclosure set forth in part 911 of the regulations of the Finance Board, which remains in effect. *See* 12 CFR 911.1, 911.3(c)(3). Proposed § 1260.3(d) would make clear that reports of examination or any other privileged information that may be made available under § 1260.3 would remain subject to the restrictions set forth in part 911 of this title, or any future regulatory provisions dealing with the same subject matter that may be promulgated by FHFA. Proposed § 1260.3(d) would operate in parallel with 12 CFR 911.3(a), which provides that possession or control of unpublished information by any entity, including the Banks and OF, does not constitute a waiver by FHFA of any privilege, or of its right to control, supervise, or impose limitations on the subsequent use and disclosure of the information.

Because FHFA conducts examinations at various times over the course of a year, examination reports for different Banks are generated at different times during the year. Thus, if the rule were to apply only to reports of examination and supervisory reports that were prepared after the rule takes effect, it could take nearly one year for FHFA to distribute the reports for all twelve of the Banks. FHFA believes that a better approach would be to include in the rule a transition provision that allows FHFA to distribute the then-current reports of examination to all of the Banks and OF soon after the rule takes effect. Accordingly, proposed § 1260.3(e) includes a transition provision that would require FHFA to

distribute to each Bank and OF a copy of the most recent report of examination for each Bank as of the effective date of the final rule. Each Bank would be given ten (10) business days from the effective date of the final rule to submit to FHFA a written request to withhold proprietary information contained in the report of examination, in the manner described in paragraph (b)(1). Following the expiration of this review period, the reports of examination would be distributed as provided in paragraphs (b)(2) and (c) of proposed § 1260.3.

FHFA requests comments regarding whether the transition provision should require the distribution of any reports of examination other than the most current report as of the effective date of the final rule, and, if so, to what extent, and whether any other types of documents should be provided as part of the initial distribution.

## IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

## V. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, FHFA certifies that this proposed rule, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

## List of Subjects

*12 CFR Part 914*

Federal home loan banks, Reporting and recordkeeping requirements.

*12 CFR Part 1260*

Confidential business information, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble and under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency proposes to amend subchapter C of chapter IX and subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

## CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

## SUBCHAPTER C—GOVERNANCE AND MANAGEMENT OF THE FEDERAL HOME LOAN BANKS

## PART 914—[REMOVED]

1. Remove part 914.

## CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

## SUBCHAPTER D—FEDERAL HOME LOAN BANKS

2. Add part 1260 to subchapter D to read as follows:

## PART 1260—FILING OF REGULATORY REPORTS AND SHARING OF INFORMATION

Sec.
1260.1 Definitions.
1260.2 Filing Regulatory Reports.
1260.3 Sharing of information among Banks.

**Authority:** 12 U.S.C. 1440, 1440a, 4511, 4514, and 4517.

### § 1260.1 Definitions.

As used in this part:

*AHP* means the Affordable Housing Program, the CICA program that each Bank is required to establish pursuant to section 10(j) of the Bank Act (12 U.S.C. 1430(j)) and part 1291 of this chapter.

*AMA* means those assets that may be acquired by a Bank under part 955 of this title.

*Bank,* written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

*CICA* means any advance made through a program offered by a Bank under section 10 of the Bank Act (12 U.S.C. 1430), part 952 of this title, and part 1291 of this chapter to provide funding for targeted community lending and affordable housing.

*CIP* means the Community Investment Program, an advance program under CICA required to be offered pursuant to section 10(i) of the Bank Act (12 U.S.C. 1430(i)).

*FHFA* means the Federal Housing Finance Agency.

*Regulatory Report* means—(1) Any report to FHFA of raw or summary data needed to evaluate the safe and sound condition and operations of a Bank or to determine compliance with any:

(i) Provision in the Bank Act or other law, order, rule, or regulation;

(ii) Condition imposed in writing by FHFA in connection with the granting of any application or other request by a Bank; or

(iii) Written agreement entered into between FHFA and a Bank; and

(2) Includes, without limitation:

(i) Call reports and reports of instrument-level risk modeling data;

(ii) Reports related to a Bank's housing mission achievement, such as reports related to AMA, AHP, CIP, and other CICA programs; and

(iii) Reports submitted in response to requests to one or more Banks for information on a nonrecurring basis.

### § 1260.2 Filing Regulatory Reports.

Each Bank shall file Regulatory Reports with FHFA in accordance with the forms, instructions, and schedules issued by FHFA from time to time. If no regularly scheduled reporting dates are established, Regulatory Reports shall be filed as requested by FHFA.

### § 1260.3 Sharing of information among Banks.

(a) *In general.* In order to enable each Bank to evaluate the financial condition of any one or more of the other Banks and the Bank System, FHFA periodically shall distribute to each Bank and to the Office of Finance the final reports of examination (or such portions thereof that FHFA deems appropriate) of all other Banks, as well as any other supervisory reports that FHFA presents to the board of directors of a Bank, subject to the requirements set forth in paragraphs (b) through (d) of this section.

(b) *Requests to withhold proprietary information.*—(1) After FHFA has presented a Bank's report of examination or other supervisory report to its board of directors, the Bank shall have ten (10) business days within which to request in writing that particular information contained therein be withheld from disclosure because it is proprietary and the public interest requires that it not be shared.

(2) After receiving a timely written request made under paragraph (b)(1) of this section, the Director or his designee shall promptly determine whether to redact any information from the report of examination or other supervisory report prior to distributing it to the other Banks and the Office of Finance. Such a determination shall be final.

(c) *Distribution of Information.* After the expiration of the review period established under paragraph (b)(1) of this section without a request from the affected Bank, or after the Director or his designee has made a determination under paragraph (b)(2) of this section, FHFA shall distribute a copy of the report of examination or other supervisory report to each Bank and the Office of Finance in either tangible or

electronic form, as FHFA shall deem appropriate.

(d) *No waiver of privilege.* The release of information under this section does not constitute a waiver by FHFA of any privilege, or its right to control, supervise, or impose limitations on, the subsequent use and disclosure of any information concerning a Bank. To the extent that any reports of examination or other materials provided to a Bank or the Office of Finance pursuant to this section otherwise qualify as Unpublished Information under § 911.1 of this title or any successor provision, those materials shall continue to qualify as such and shall continue to be subject to the restrictions on disclosure set forth in part 911 of this title, or any successor provisions.

(e) *Transition provision.* Following the effective date of this section, FHFA will distribute promptly to each Bank and the Office of Finance a copy of the most recent report of examination of all other Banks. Each Bank shall have ten (10) business days following the effective date of this section within which to submit a written request to withhold information as described in paragraph (b)(1) of this section. Upon the expiration of the time period described in the preceding sentence, the distribution of the initial reports of examination shall proceed in accordance with paragraphs (b)(2) and (c) of this section.

Dated: September 24, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2010–24578 Filed 9–29–10; 8:45 am]

**BILLING CODE 8070–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

### Proposed Modification of the Seattle, WA, Class B Airspace Area; Public Meetings

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** This notice announces three fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to revise the Class B airspace area at Seattle, WA. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

**DATES:** The informal airspace meetings will be held on Thursday, December 9, 2010, from 6:30 p.m.–9 p.m.; Tuesday, December 14, 2010, from 6:30 p.m.–9 p.m.; and Thursday, December 16, 2010, from 6:30 p.m.–9 p.m. Comments must be received on or before January 31, 2011.

**ADDRESSES:** (1) The meeting on Thursday, December 9, 2010, will be held at Snohomish County Auditorium, 2320 California Street, Everett, WA 98201. (2) The meeting on Tuesday, December 14, 2010, will be held at the Highline Performing Arts Center, 401 South 152nd Street, Burien, WA 98148. (3) The meeting on Thursday, December 16, 2010, will be held at The Theater at Auburn Mountainview, 28900 124 Avenue South East, Auburn, WA, 98092.

*Comments:* Send comments on the proposal, in triplicate, to: Clark Desing, Manager, Operations Support Group, AJV–W2, Western Service Center, Air Traffic Organization, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton WA 98057.

**FOR FURTHER INFORMATION CONTACT:** To obtain details including a graphic depiction regarding this proposal, please contact Everett Paul Delay, FAA Support Manager Seattle TRACON, Sea-Tac International Airport, 825 South 160th Street, Burien, WA 98148, (206) 214–4620.

**SUPPLEMENTARY INFORMATION:**

#### Meeting Procedures

(a) Doors open 30 minutes prior to the beginning of each meeting. The meetings will be informal in nature and will be conducted by one or more representatives of the FAA. A representative from the FAA will present a briefing on the planned modification to the Class B airspace at Seattle, WA. Each participant will be given an opportunity to deliver comments or make a presentation, although a time limit may be imposed. Only comments concerning the plan to modify the Class B airspace area at Seattle WA, will be accepted.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of comments made at the meeting will be filed in the docket.

#### Agenda for the Meetings

—Sign-in.
—Presentation of meeting procedures.
—FAA explanation of the planned Class B airspace area modifications.
—Solicitation of public comments.
—Closing comments.

Issued in Washington, DC, on September 21, 2010.

**Paul Gallant,**

*Acting Manager, Airspace and Rules Group.*

[FR Doc. 2010–24543 Filed 9–29–10; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 321

**[RIN 3084-AB18]**

### Notice of Proposed Rulemaking: Mortgage Acts and Practices – Advertising Rule

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** Pursuant to the 2009 Omnibus Appropriations Act (Omnibus Appropriations Act), as clarified by the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act), the Commission issues a Notice of Proposed Rulemaking (NPRM) relating to unfair or deceptive acts and practices that may occur with regard to mortgage advertising, the Mortgage Acts and Practices (MAP) – Advertising Rule (proposed rule). The proposed rule published for comment, among other things, would prohibit any misrepresentation in any commercial communication regarding any term of any mortgage credit product; and impose recordkeeping requirements.

**DATES:** Comments must be received by November 15, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments

electronically or in paper form by following the instructions in the Requests for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted at (*https://ftcpublic.commentworks.com/ftc/mapadrulenprm*) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex W), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in Part IV of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Laura Johnson or Carole Reynolds, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-3224.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Statutory Authority*

On March 11, 2009, President Obama signed the Omnibus Appropriations Act.[1] Section 626 of this Act directed the Commission to commence, within 90 days of enactment, a rulemaking proceeding with respect to mortgage loans.[2] Section 626 also directed the FTC to use the notice and comment rulemaking procedures specified by Section 553 of the Administrative Procedure Act,[3] in this proceeding, rather than the rulemaking procedures set forth in Section 18 of the Federal Trade Commission Act (FTC Act).[4]

On May 22, 2009, President Obama signed the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act).[5] Section 511 of the Credit CARD Act clarified the conduct and types of entities for which the Commission may promulgate rules to implement the Omnibus Appropriations Act.[6]

#### 1. Covered Acts and Practices

Section 511 of the CARD Act specified that the FTC rulemaking "shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services."[7] The Omnibus Appropriations Act, as clarified by the Credit CARD Act, does not otherwise specify what the Commission should include in, or exclude from, a rule, but rather directs the FTC to issue mortgage rules that "relate to" unfairness or deception.[8]

Section 5 of the FTC Act broadly proscribes unfair or deceptive acts or practices in or affecting commerce. An act or practice is deceptive if there is a representation, omission of information, or practice that is likely to mislead consumers who are acting reasonably under the circumstances, and the representation, omission, or practice is one that is material, *i.e.*, likely to affect consumers' decisions to purchase or use the product or service at issue.[9] Section 5(n) of the FTC Act sets forth a three-part test to determine whether an act or practice is unfair. First, the practice must be one that causes or is likely to cause substantial injury to consumers. Second, the injury must not be outweighed by countervailing benefits to consumers or to competition. Third, the injury must be one that consumers could not reasonably have avoided.[10]

The express statutory language of the Credit CARD Act allows the FTC to promulgate rules that "relate to" unfairness or deception. The Commission interprets this language to allow it to issue rules that prohibit or restrict unfair or deceptive conduct or that are reasonably related to the goal of preventing unfair or deceptive practices. The FTC, however, also notes that all of the conduct prohibited by the proposed rule is itself deceptive.

#### 2. Covered Entities

Section 511 of the Credit CARD Act also clarified that the Commission's rulemaking authority is limited to entities over which the FTC has jurisdiction under the FTC Act.[11] Under the FTC Act, the Commission has jurisdiction over any person, partnership, or corporation that engages in unfair or deceptive acts or practices in or affecting commerce, except, among others:[12] banks,[13] savings and loan institutions, federal credit unions,[14] non-profits,[15] and common carriers. The proposed rule does not cover the practices of entities that are excluded from the FTC's jurisdiction.

#### 3. Enforcement

The Omnibus Appropriations Act, as clarified by the Credit CARD Act, also permits both the Commission and the states to enforce the rules the FTC issues.[16] The Commission can use its powers under the FTC Act to conduct investigations and bring law enforcement actions against those who violate FTC rules. In such actions, the Commission may seek injunctive relief, as well as civil penalties if the defendant committed the violations

[1] 2009 Omnibus Appropriations Act, Pub. L. 111-8, 123 Stat. 524 (2009).

[2] Section 626(a), Pub. L. 111-8, 123 Stat. 524, 678 (2009) (codified at 15 U.S.C. 1638 note).

[3] 5 U.S.C. 553.

[4] 15 U.S.C. 57a.

[5] Pub. L. 111-24, 123 Stat. 1734 (2009) (codified in scattered sections of 15 U.S.C.).

[6] Pub. L. 111-24, 123 Stat. 1734, 1763-64 (2009) (codified at 15 U.S.C. 1638 note).

[7] Section 511(a)(1)(B), Pub. L. 111-24, 123 Stat. 1734, 1763 (2009) (codified at 15 U.S.C. 1638 note). The Commission is conducting a separate rulemaking with respect to mortgage assistance relief services. *See infra* note 19.

[8] Section 511(a)(1)(B), Pub. L. 111-24, 123 Stat. 1734, 1763 (2009) (codified at 15 U.S.C. 1638 note).

[9] Federal Trade Commission Policy Statement on Deception, *appended to In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-84 (1984) (Deception Policy Statement).

[10] 15 U.S.C. 45(n). Section 5(n) of the FTC Act also provides that "[i]n determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination."

[11] Credit CARD Act § 511(a)(1)(C).

[12] *See* 15 U.S.C. 44, 45(a)(2).

[13] The FTC Act defines "banks" by reference to a listing of certain distinct types of depository institutions. *See* 15 U.S.C. 44, 57a(f)(2). That list includes: national banks, federal branches of foreign banks, member banks of the Federal Reserve System, branches and agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, banks insured by the Federal Deposit Insurance Corporation (FDIC), and insured state branches of foreign banks. The Commission has jurisdiction over entities that are affiliated with banks, such as parent or subsidiary companies, that are not themselves banks. This jurisdiction is held concurrently with the federal bank regulatory agencies (the Board of Governors of the Federal Reserve System (Federal Reserve Board or Board), the Office of the Comptroller of the Currency (OCC), the FDIC, and the Office of Thrift Supervision (OTS)) and the National Credit Union Administration (NCUA) as to their respective institutions. *See* Section 133(a) of the Gramm-Leach-Bliley Act, Pub. L. 106-102, 113 Stat. 1383 (1999) (codified at 15 U.S.C. 41 note (a)); *Minnesota v. Fleet Mortg. Corp.*, 181 F. Supp. 2d 995 (D. Minn. 2001). The FTC also has jurisdiction over non-bank entities that provide services to or on behalf of a bank, such as credit card marketing. *See, e.g., FTC v. CompuCredit Corp.*, No. 08-1976, at 6-15 (N.D. Ga. Oct. 8, 2008) (magistrate judge's non-final report and recommendation) (finding that the FTC has jurisdiction under FTC Act against entity that contracted to provide services to a bank); *FTC v. Am. Std. Credit Sys.*, 874 F. Supp. 1080, 1086 (C.D. Cal. 1994) (dismissing argument that entity that contracted to perform credit card marketing and other services for a bank is not subject to FTC Act).

[14] The exclusion is limited to federal credit unions; thus, the FTC has jurisdiction over state-chartered credit unions, among others. *See infra* notes 116-118 and accompanying text.

[15] Section 4 of the FTC Act, 15 U.S.C. 44, specifies that the Commission's jurisdiction over "corporations" is limited to entities that are organized to carry on business for their own profit or that of their members. Thus, the non-profit exemption does not apply to ostensible non-profits that operate for the profit of their "members," a term that courts have interpreted to include affiliates and corporate officials. *See, e.g., FTC v. AmeriDebt, Inc.*, 343 F. Supp. 2d 451 (D. Md. 2004); *Am. Med. Ass'n v. FTC*, 638 F.2d 443 (2d Cir. 1980), *aff'd by an equally divided court*, 455 U.S. 676 (1982).

[16] Omnibus Appropriations Act § 626; Credit CARD Act § 511(a)(1)(C) and (a)(2).

with actual knowledge or knowledge fairly implied on the basis of objective circumstances that its practices were unfair or deceptive and violated the rule.[17] In addition, states can enforce the rules by bringing civil actions in federal district court or another court of competent jurisdiction to obtain civil penalties and other relief. Before bringing such an action, however, a state must give 60 days advance notice to the "primary federal regulator" of the proposed defendant (unless such notice is not feasible), and the regulator has the right to intervene in the action.

*B. Advance Notice of Proposed Rulemaking*

On June 1, 2009, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPR) soliciting comments on the contours of a possible rule that would prohibit or restrict unfair and deceptive acts and practices that may occur throughout the life-cycle of a mortgage loan,[18] *i.e.*, in the advertising and marketing of the loan, at the time of loan origination, in the home appraisal process, and during the servicing of the loan.[19] The ANPR described these services generically as "Mortgage Acts and Practices," and the rulemaking proceeding was entitled the Mortgages Acts and Practices (MAP) Rulemaking. In response to the ANPR, the Commission received a total of 55 comments, of which 46 were germane.[20] About half of the comments were from individuals, with the rest from industry trade associations or groups, consumer advocacy groups, credit unions, a government-sponsored enterprise (GSE), a state attorney general, a group of state credit union regulators, and a labor union. Most of the comments express support for FTC regulatory action regarding various aspects of the mortgage loan life-cycle.[21] Several comments, however, urge the FTC to focus its resources on enforcement or wait to gauge the effectiveness of other mortgage-related rules promulgated recently by other federal agencies before proceeding with its own regulations.[22]

The Commission received several comments that focus specifically on mortgage advertising; these are addressed below.[23] Six of these discuss various advertising issues,[24] while three additional comments refer to other federal advertising regulations.[25] Several commenters expressed various degrees of support for FTC rules on mortgage advertising generally or specific aspects of mortgage advertising or marketing.[26] Others urged the Commission to incorporate through this rulemaking aspects of Regulation Z under the Truth in Lending Act (TILA)[27] to enable the Commission to obtain civil penalties for violations of those provisions.[28] Commenters representing banks and credit unions, and a group of state credit union regulators, raised questions about the application of the prospective rules to banking subsidiaries or affiliates,[29] or to state-chartered credit unions.[30]

As discussed more fully below, advertising is the initial step and often a crucial part of the mortgage process. Consumers may not make well-informed decisions if the information they receive through advertising is deceptive. The Commission therefore has determined to issue this NPRM focused exclusively on mortgage advertising practices. The Commission may issue additional proposed rules regarding other aspects of the mortgage process in the future.

## II. Mortgage Advertising Practices

*A. Overview*

As discussed in the ANPR, the mortgage life-cycle begins when a consumer initially shops for a mortgage, whether to purchase a home or real property,[31] refinance an existing mortgage, or obtain a home equity loan or line of credit (known as a HELOC) based on the consumer's equity in the home.[32] In this process, the consumer may encounter diverse types of mortgage products. The loan may either be a *forward mortgage*, the most prevalent type of loan, where the homeowner borrows funds and remits payments for principal, interest, and in some cases other charges; or a *reverse mortgage*, a home-secured loan typically offered to senior citizens which the borrower is not required to repay as long as he or she remains in the home and which only becomes due when the homeowner moves out of or sells the home, dies, or fails to satisfy certain loan conditions.[33] Forward mortgages may be *traditional,* such as 30-year

[17] *See* 15 U.S.C. 45(m)(1)(A). The Commission must refer any action for civil penalties to the Department of Justice, which may file the case or return it to the Commission for filing. *See* 15 U.S.C. 56.

[18] The Omnibus Appropriations Act and the Credit CARD Act use the term "loan" in referring to mortgage credit generally and do not limit that term in any way. Accordingly, this NPRM and the proposed rule use the term "loan" to refer to any form of mortgage credit.

[19] Mortgage Acts and Practices, ANPR, 74 FR 26118 (June 1, 2009). On the same date, the Commission issued another ANPR, the Mortgage Assistance Relief Services Rulemaking, addressing the acts and practices of for-profit companies that offer to work with lenders or servicers on behalf of consumers seeking to modify the terms of their loans or to avoid foreclosure on their loans. Mortgage Assistance Relief Services (MARS), ANPR, 74 FR 26130 (June 1, 2009). The Commission has issued an NPRM on the MARS Rule. 75 FR 10707 (Mar. 9, 2010).

[20] The other nine comments are duplicates, replacements, blank, or "test" submissions. Public comments associated with the MAP ANPR are available at (*http://www.ftc.gov/os/comments/map/index.shtm*). In addition, a list of commenters cited in this NPRM, along with their short citation names or acronyms used throughout the NPRM, is attached to this document. *See* Table A - List of Commenters and Short-names/Acronyms, *infra*.

[21] *See, e.g.*, MICA at 9; NAR at 2; AG Mass. at 1; NCLC at 1; NCRC at 1; CRL at 1.

[22] *See, e.g.*, MBA at 1; ABA at 6.

[23] *See infra* Parts III and IV.

[24] *See* CMC/AFSA at 7; HPC at 3; ABA at 5; MBA at 5; MICA at 3; CUNA at 2.

[25] *See* BECU at 3; NASCUS at 2; GCUA at 2.

[26] *See, e.g.*, HPC at 3; MICA at 3; CMC/AFSA at 7; ABA at 6.

[27] 12 CFR 226. The Federal Reserve Board issued Regulation Z, which implements TILA, 15 U.S.C. 1601-1666j. The Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. 1639, is part of TILA.

[28] *See, e.g.,* ABA at 6 (certain aspects of advertising rules for nonbank entities); CRL at 19.

The Commission has authority to obtain civil penalties for violations of rules that the Board promulgates under Section 129(l)(2) of TILA (part of HOEPA), 15 U.S.C. 1639(l)(2). *See* Omnibus Appropriations Act § 626(c). As discussed further below, *see infra* note 56, the Board issued mortgage-related rules in July 2008, some of which were promulgated under Section 129(l)(2) of TILA. *See generally* 73 FR 44522 (July 30, 2008).

In contrast, the Commission does not have specific authority to obtain civil penalties for violations of rules that the Board promulgates under Section 105 of TILA. 15 U.S.C. 1604. *See generally* Omnibus Appropriations Act § 626(c). Some provisions of the Board's July 2008 mortgage rules were promulgated under Section 105. *See* 73 FR 44522-23. Incorporating the Board's Section 105 rules into the proposed MAP – Advertising Rule would give the Commission authority to seek civil penalties for violations of the Section 105 rules. The advantages and disadvantages of incorporating the Section 105 rules, which include technical and complex advertising requirements, are discussed below. *See infra* Parts III.C.2 and IV.C.2.

[29] *See, e.g.*, CMC/AFSA at 3; ABA at 4-5. For a discussion of the FTC's jurisdiction, see *supra* Part I.A.2.

[30] *See generally* CUNA; NASCUS; BECU; Zager; GCUA. Among other things, various comments note that the Commission lacks jurisdiction to issue rules for federally-chartered credit unions. Some comments assert that credit union advertising is already regulated.

[31] Traditional mortgages are considered "closed-end credit," generally consisting of installment financing where the amount borrowed and repayment schedule are set at the transaction's outset. TILA and Regulation Z set various advertising and other requirements for closed-end credit. *See, e.g.*, 12 CFR 226.17-.24.

[32] HELOCs typically are "open-end credit," which TILA defines as credit extended to a consumer under a plan in which: (1) the consumer reasonably contemplates repeated transactions; (2) the creditor may impose a finance charge from time to time on the outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the plan's term is generally made available to the extent that any unpaid balance is repaid. *See* 15 U.S.C. 1602(i); 12 CFR 226.2(a)(10) and (20).

[33] *See generally* 12 CFR 226.33 (reverse mortgages under Regulation Z), and U.S. Department of Housing and Urban Development (HUD), Glossary, definition of "reverse mortgage," *available at* (*http://www.hud.gov/offices/hsg/sfh/buying/glossary.cfm*).

fixed-rate or adjustable rate amortizing mortgages (ARMs),[34] or *nontraditional*,[35] the latter having proliferated in the mortgage marketplace in recent years.

Consumers receive information about mortgages through many different channels of communication. Some consumers seek out mortgage information on their own, for example, on the Internet or by contacting a real estate broker, mortgage lender, mortgage broker, or others. Marketers and advertisers widely disseminate mortgage advertisements to consumers through print media (such as newspapers and magazines), television, radio, the Internet, billboards, and other methods. Marketers and advertisers also send targeted information to particular consumers through direct mail or electronic communications such as e-mail or text messages.

Many types of entities market and advertise mortgage products. Mortgage lenders, mortgage brokers, mortgage servicers, and real estate brokers advertise and market mortgage products. In addition, advertising agencies, home builders, lead generators,[36] rate aggregators,[37] and others also may market and advertise mortgage products to consumers. Mortgage lenders and servicers in particular may market products to their current customers, in addition to prospective customers.

*B. Deception in Mortgage Advertising*

Advertising and marketing can provide consumers with valuable information about mortgage options, costs, and features. This information is critical to the decisions consumers make throughout the mortgage origination process and is especially important because mortgage products typically are complex.[38] Information is useful for decision making, however, only if it is truthful and non-misleading.[39] Preventing and deterring deception in advertisements for mortgages, therefore, is a primary objective of FTC law enforcement and of the proposed rule.

In 1984, the FTC issued its Deception Policy Statement, setting forth the elements of deception. An act or practice is deceptive if: (1) there is a representation, omission of information, or practice that is likely to mislead consumers acting reasonably under the circumstances; and (2) that representation, omission, or practice is material to consumers.[40]

A representation may be express or implied. "Express claims directly represent the fact at issue, while implied claims do so in an oblique or indirect way."[41] Whether an implied claim is made depends on the overall net impression that consumers take away from an advertisement or other representation based on all its elements (language, pictures, graphics, etc.).[42] The FTC evaluates whether consumers' impression or interpretation of a representation or omission is reasonable. Reasonableness is evaluated based on the sophistication and understanding of consumers in the group to which the representation is targeted, which may be a general audience or a specific group, such as children or the elderly.[43] A claim may be susceptible to more than one reasonable interpretation, and if one such interpretation is misleading, then the advertisement is deceptive, even if other, non-deceptive interpretations are possible.[44]

A disclaimer or qualifying statement may correct a misleading impression, but only if it is sufficiently clear and prominent to convey the qualifying information effectively, *i.e.*, it is both noticed and understood by consumers. "[I]n many circumstances, reasonable consumers do not read the entirety of an ad or are directed away from the importance of the qualifying phrase by

[34] In an amortizing loan, the borrower pays principal and the full amount of interest that is due each month throughout the life of the loan.

[35] Nontraditional mortgages include loan products that may offer consumers financial options but also pose substantial risk. These include, for example, interest-only (I/O) loans and payment option ARMs (option ARMs). I/O loans involve an initial loan period in which the borrower pays only the interest accruing on the loan balance; after the initial period, the borrower either makes increased payments of principal and interest and/or remits a large payment, sometimes referred to as a "balloon payment." Option ARMs offer borrowers several choices each month during the loan's introductory period, including a minimum payment that is smaller than the interest accruing on the principal. After the introductory period, the loan is recast, and the borrower's payments increase to amortize and repay principal and the adjustable interest rate over the remaining loan term. *See generally* FTC, Comment To Jennifer L. Johnson, Secretary, Board of Governors of the Federal Reserve System (Sept. 14, 2006), at 5-13 (providing comments on the home equity lending market and summarizing the Commission's May 2006 alternative mortgage workshop, Protecting Consumers in the New Mortgage Marketplace), *available at* (*http://www.ftc.gov/opa/2006/09/fyi0661.shtm*) (FTC Comment on Home Equity Lending and Alternative Mortgage Workshop).

[36] Lead generators are business entities that provide, in exchange for consideration, consumer information to a seller or telemarketer for use in the marketing of goods or services. *See, e.g., Quik Payday, Inc. v. Stork*, 549 F.3d 1302, 1304 (10th Cir. 2008); *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx), 2006 U.S. Dist. LEXIS 98263, at *11 (C.D. Cal. Dec. 20, 2006); *United States v. Ameriquest Mortg. Co.*, No. 8:07-cv-01304 CJC-MLG (C.D. Cal. 2007) (stipulated judgment and order).

[37] Rate aggregators regularly collect and publish rates and other information from numerous mortgage lenders, mortgage brokers, or other sources. Consumers typically can compare mortgage credit product terms for free by searching or viewing this information sorted by rate, loan amount, mortgage credit product, or other criteria. Rate aggregators may supply the lenders' or brokers' contact information, so the consumer can reach them directly, or they may act as a lead generator and provide the consumer's information to lenders or brokers.

[38] This is particularly true for nontraditional mortgages, the terms of which are often unfamiliar to consumers. *See generally* FTC Comment on Home Equity Lending and Alternative Mortgage Workshop, *supra* note 35.

[39] Conversely, deceptive claims in marketing information undermine the ability of consumers to make well-informed decisions. *See generally Prepared Statement of the Federal Trade Commission: Hearing Before the Senate Committee on Commerce, Science, and Transportation, Subcommittee on Consumer Protection, Product Safety, and Insurance*, July 14, 2009, *available at* (*http://www.ftc.gov/os/2009/07/P094492antifraudlawtest.pdf*); *Prepared Statement of the Federal Trade Commission on "Foreclosure Rescue and Loan Modification Scams": Hearing Before the House Committee on Financial Services, Subcommittee on Housing and Community Opportunity*, May 6, 2009, *available at* (*http://www.ftc.gov/os/2009/05/P064814foreclosuretescue.pdf*); *see also Interagency Guidance on Nontraditional Mortgage Products Risks* (*Interagency Nontraditional Mortgage Guidance*), 71 FR 58609 (Oct. 4, 2006) (federal bank regulatory agencies' guidance to address risks associated with growing use of mortgage products that allow borrowers to defer payment of principal and sometimes interest); *Interagency Statement on Subprime Mortgage Lending* (*Interagency Subprime Mortgage Statement*), 72 FR 37569 (July 10, 2007) (federal bank regulatory agencies' guidance to address risks with subprime mortgage products and lending practices, including adjustable rate mortgages with low initial payments that expire after a short period and could result in payment shock); Federal Financial Institutions Examination Council (FFIEC); *Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks* (*FFIEC Reverse Mortgage Guidance*), 75 FR 50801 (Aug. 17, 2010) (guidance issued by federal and state bank regulatory agencies on need for adequate information and other consumer protections regarding reverse mortgage products); and Press Release, FTC, *FTC Warns Mortgage Advertisers and Media That Ads May Be Deceptive*, Sept. 11, 2007, *available at* (*http://www.ftc.gov/opa/2007/09/mortsurf.shtm*).

[40] *See* Deception Policy Statement, *supra* note 9, at 175-183; *see also FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006), *aff'd*, 512 F.3d 858 (7th Cir. 2008); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1009 (N.D. Ind. 2000); *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 258 (E.D.N.Y. 1998).

[41] *FTC v. QT, Inc.*, 448 F. Supp. 2d at 957.

[42] *See FTC v. Cyberspace.com*, 453 F.3d 1196, 1200 (9th Cir. 2006) ("A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures."); *FTC v. Gill*, 265 F.3d at 956 (affirming deception finding based on "overall 'net impression'" of statements); *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989) (advertisement was deceptive despite written qualification); *Thompson Med. Co. v. FTC*, 791 F.2d 189, 197 (D.C. Cir. 1986) (literally true statements may nonetheless be deceptive); *FTC v. QT, Inc.*, 448 F. Supp. 2d at 958.

[43] *See* Deception Policy Statement, *supra* note 9, at 177-79.

[44] *See id.* at 178.

the acts or statements of the seller;"[45] thus, a fine print disclosure at the bottom of a print advertisement or a brief video superscript in a television advertisement is unlikely to qualify a claim effectively.[46] Similarly, because consumers "may glance only at the headline" of an advertisement, "accurate information in the text may not remedy a false headline."[47]

A representation, omission, or practice is material if it is likely to affect a consumer's choice of or conduct regarding a product.[48] If consumers are likely to have chosen differently but for the claim, the claim is likely to have caused consumer injury.[49] Express claims are presumed material.[50] Similarly, information regarding the cost of a product or service is presumed material.[51] Intentional implied claims,[52] and claims about the purpose and efficacy of a product or service,[53] are also presumed material.

### *C. Other Mortgage Advertising Requirements*[54]

In addition to the FTC Act, mortgage advertisers and marketers are subject to TILA (including HOEPA) and Regulation Z, among other legal requirements.[55] In July 2008, the Federal Reserve Board issued many new mortgage advertising rules under Regulation Z; these rules took effect on October 1, 2009.[56]

For example, for closed-end credit, TILA and Regulation Z contain four basic requirements for mortgage advertisements.[57] First, an advertisement must reflect terms actually available to the consumer.[58] Second, required disclosures must be made clearly and conspicuously in the advertisement.[59] Third, any advertisement that includes any credit rate must state the annual percentage rate, or "APR."[60] The APR must be stated at least as conspicuously as a stated interest rate.[61] Fourth, if any major triggering loan term (*e.g.*, a monthly payment amount) is advertised, other major terms, including the APR, must also be advertised.[62]

For closed-end credit secured by a dwelling, Regulation Z also prohibits the following advertising claims based on the Board's conclusion that they are misleading or deceptive: (1) advertising as "fixed" a rate or payment that will change after a period of time, unless the advertisement meets certain criteria, such as having an equally prominent and closely proximate disclosure that the rate or payment is "fixed" for only a limited period of time; (2) comparing actual or hypothetical rates or payments to the rates or payments on an advertised loan, unless the advertisement discloses the rates or payments that will apply over the full term of the advertised loan; (3) misrepresenting an advertised loan as part of a "government loan program" or otherwise endorsed or sponsored by a government entity; (4) using the name of the consumer's current lender, unless the advertisement has an equally prominent disclosure of the person actually disseminating the advertisement and includes a clear and conspicuous statement that the advertiser is not associated with the consumer's current lender; (5) making any misleading claim that an advertised loan will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor; (6) using the term "counselor" in an advertisement to refer to a for-profit mortgage broker or mortgage lender; and (7) advertising mortgages in a language other than English while providing critical advertising disclosures only in English.[63]

TILA and Regulation Z require certain other advertising disclosures for HELOCs, a type of open-end credit.[64] HELOC advertisements may not refer to a home equity plan as "free money" or contain a similarly misleading term.[65] For example, such an advertisement could not state "no closing costs" or "we waive closing costs" if consumers may be required to pay any closing costs.[66]

The states also have enacted various laws or regulations that address aspects of deceptive mortgage advertising practices,[67] including laws implementing the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), which requires a nationwide licensing and/or registration system for mortgage loan originators.[68]

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[45] *Id.* at 181.

[46] *See, e.g., id.* at 180; *see also In re Stouffer Food Corp.*, 118 F.T.C. 746 (1994); *In re Kraft, Inc.*, 114 F.T.C. 40, 124 (1991), *aff'd*, 970 F.2d 311 (7thCir. 1992).

[47] Deception Policy Statement, *supra* note 9, at 180.

[48] *See Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992); *In re Cliffdale Assocs., Inc.*,103 F.T.C. 110, 165 (1984); *see also FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999).

[49] *See* Deception Policy Statement, *supra* note 9, at 183.

[50] *See FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir. 1994).

[51] *See In re Peacock Buick*, 86 F.T.C. 1532, 1562 (1975), *aff'd*, 553 F.2d 97 (4th Cir. 1977); Deception Policy Statement, *supra* note 9, at 182-83.

[52] *See In re Thompson Med. Co., Inc.*, 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986).

[53] *Novartis Corp. v. FTC*, 223 F.3d 783, 786-87 (D.C. Cir. 2000).

[54] This discussion is not intended as a comprehensive list of all potentially applicable mortgage advertising and marketing laws.

[55] These other requirements include mortgage advertising mandates under the Helping Families Save Their Homes Act of 2009, Pub. L. 111-22, § 203, 123 Stat. 1632 (2009) (codified at 12 U.S.C. 5201 note), which HUD enforces, and advertising regulations and guidance for Federal Housing Administration programs, which HUD has issued. For example, FHA-approved lenders or mortgagees must use their HUD-registered business names in advertisements and promotional materials for FHA programs and maintain copies of their materials for two years. *See* 75 FR 20718 (Apr. 20, 2010), to be codified at 24 CFR 202. Lenders and others are permitted to distribute the FHA and fair housing logos in marketing materials to prospective FHA borrowers. HUD-approved mortgagees are required to establish procedures for compliance with FHA program requirements, including to avoid engaging in false or misrepresentative advertising. *See* HUD Mortgagee Letters 2009-02 and 2009-12, *available at* (*http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/2009ml.cfm*); *see also infra* note 116 (discussing NCUA and OTS advertising regulations).

[56] *See* 73 FR at 44599-602, codified generally at 12 CFR 226.16, 226.24; *see also supra* note 28. On August 16, 2010, the Board proposed additional protections and disclosure requirements for mortgage advertisements. *See* Press Release, Board, *Federal Reserve Board Proposes Enhanced Consumer Protections and Disclosures for Home Mortgage Transactions*, (*http://www.federalreserve.gov/newsevents/press/bcreg/20100816e.htm*) (Aug. 16, 2010).

[57] *See* 15 U.S.C. 1661-62, 1664-65a; 12 CFR 226.24. For TILA and Regulation Z open-end credit advertising requirements, see 15 U.S.C. 1661-63, 1665-65b; 12 CFR 226.16.

[58] *See* 15 U.S.C. 1662; 12 CFR 226.24(a).

[59] *See* 15 U.S.C. 1664; 12 CFR 226.24(b).

[60] *See* 15 U.S.C. 1664; 12 CFR 226.24(c). For closed-end credit advertisements, the Board also expressly prohibits advertising any rate that is lower than the rate at which interest is accruing, such as an effective rate, payment rate, or qualifying rate. *See* 74 FR 44581-82, 44608, codified at Federal Reserve Board Official Staff Commentary (Regulation Z Commentary), 12 CFR 226.24(c)-2, Supp. I. The Board promulgated this rule using its authority under TILA Section 105. *Id.* In some circumstances, for closed-end credit secured by a dwelling, advertisements must provide other disclosures relating to rates. *See, e.g.*, 12 CFR 226.24(f).

[61] *See* 15 U.S.C. 1664; 12 CFR 226.24(c).

[62] *See* 15 U.S.C. 1664; 12 CFR 226.24(d). In some circumstances, for closed-end credit secured by a dwelling, advertisements must provide other disclosures relating to payments. *See, e.g.*, 12 CFR 226.24(f).

[63] *See* 12 CFR 226.24(i); *see also* 73 FR at 44586-590, 44602, 44610. As noted above, the Board promulgated these rules using its authority under TILA Section 129(l)(2), which is part of HOEPA. *See supra* note 28.

[64] *See, e.g.,* 12 CFR 226.16(d). The Board promulgated these rules using its authority under TILA Section 105(a). *See supra* note 28.

[65] *See* 16 CFR 226.16(d)(5).

[66] *See* Regulation Z Commentary, 12 CFR 226.16(d)-4, Supp. I; 75 FR 7658, 7898 (Feb. 22, 2010); *see also* 12 CFR 226.16(f).

[67] State advertising requirements differ from one another in the practices, types of credit, and entities covered. *See, e.g.,* Me. Rev. Stat. Ann. tit. 9-A, 9-301 (2009); Md. Code Regs. 09.03.06.05 (2009); Nev. Rev. Stat. Ann. 645B.196 (2009); N.Y. Bank. Law 595-a (Consol. 2010).

[68] Title V of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289 (2008) (codified at 12

None of these federal or state measures duplicates the specificity and breadth of practices, and diversity of entities[69] covered in the proposed rule.

*D. Consumer Protection Problems in Mortgage Advertising*

The FTC has substantial law enforcement experience with mortgage advertising practices. Since 1995, the Commission has brought 18 law enforcement actions, including three in 2009, against individuals or companies that allegedly engaged in unfair or deceptive practices and/or violations of TILA in connection with mortgage advertising.[70] These actions have targeted large and small mortgage lenders, mortgage brokers, and others, located throughout the country.[71] The cases have involved advertisements and marketing materials in various media, including print advertisements,[72] unsolicited emails,[73] direct mail marketing,[74] Internet advertisements and websites,[75] telemarketing,[76] and in-person sales presentations.[77] The alleged violations have included deceptive claims – often made to subprime borrowers – about key terms and other aspects of the loans, such as:

- misrepresentations of the loan amount or the amount of cash disbursed;[78]
- claims for loans with specified terms, when no loans with those terms were available from the advertiser;[79]
- claims of low "teaser" rates and payment amounts, without disclosing that the rates and payments would increase substantially after a limited period of time;[80]
- misrepresentations that rates were fixed for the full term of the loan;[81]
- misrepresentations about, or failure to adequately disclose, the existence of a prepayment penalty[82] or large balloon payment due at the end of the loan;[83]
- claims about the monthly payment amounts that the borrower would owe, without disclosing the existence, cost, and terms of credit insurance products "packed" into the loan;[84]
- claims that the loans were amortizing, when, in fact, they involved interest-only transactions;[85]
- claims of mortgage payment amounts that failed to include loan fees and closing costs of the kind typically included in loan amounts; [86]
- false or misleading savings claims in high loan-to-value loans;[87]
- false or misleading claims regarding the terms or nature of interest rate lock-ins;[88]
- false claims that an entity was a national mortgage lender;[89]
- failure to disclose adequately that the advertiser, not the consumer's current lender, was offering the mortgage;[90] and
- false or misleading claims that consumers were "pre-approved" for mortgage loans.[91]

In addition, the Commission has brought actions against mortgage companies that allegedly deceptively offered loans to consumers whose primary language was a language other than English. One action challenged as deceptive a mortgage company's alleged practice of stating loan terms orally to Spanish-speaking consumers in Spanish, only to provide loan documents with different and less favorable terms in English.[92] In a second case, the company allegedly offered certain mortgage terms in both Chinese and English advertisements, but failed to disclose a large balloon payment.[93]

Numerous states have brought enforcement actions under state laws alleging deceptive mortgage advertising and marketing, challenging misrepresentations about: (1) the lack of closing costs;[94] (2) low fixed or teaser rates or payments;[95] (3) the advertiser's

U.S.C. 5101). Since the SAFE Act's enactment on July 30, 2008, the states have been moving to enact or amend laws to license mortgage loan originators. *See generally* (*http://www.csbs.org*); *see also* HUD SAFE Mortgage Licensing Act, *available at* (*http://hud.gov/offices/hsg/rmra/safe/sfea.cfm*). Various new state SAFE laws address advertising in different ways. *See, e.g.*, H.B. 1085, 67th Gen. Assem., Reg. Sess. (Colo. 2009); S.B. 948, 2009 Gen. Assem., Reg. Sess. (Conn. 2009); S.B. 1218, 25th Leg., 1st Spec. Sess. (Haw. 2009); H.B. 4011, 96th Gen. Assem., Reg. Sess. (Ill. 2009); A.B. 3816, 213th Leg., 2nd Ann. Sess. (N.J. 2009). The federal banking agencies and Farm Credit Administration also are implementing a registration system and other requirements for mortgage loan originators. *See* 74 FR 27386 (June 9, 2009).

[69] *See infra* Part III.B.4.

[70] *See* Table B - List of FTC Mortgage Advertising Enforcement Actions, *infra*.

[71] *See, e.g.*, *FTC v. Mortgages Para Hispanos.com Corp.*, No. 4:06-cv-19 (E.D. Tex. 2006); *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004); *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 GLT (ANx) (C.D. Cal. 2004); *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002); *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001); *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000).

[72] *See, e.g.*, *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (N.D. Ill. 2008); *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004).

[73] *See, e.g.*, *FTC v. 30 Minute Mortg., Inc.*, No. 03-60021 (S.D. Fla. 2003); *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 GLT (ANx) (C.D. Cal. 2004).

[74] *See, e.g.*, *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009); *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009); *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 GLT (ANx) (C.D. Cal. 2004); *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000); *United States v. Unicor Funding, Inc.*, No. SACV99-1228 (C.D. Cal. 1999); *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001); *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (N.D. Ill. 2008); *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000).

[75] *See, e.g.*, *In re Shiva Venture Group, Inc.*, F.T.C. Dkt. No. C-4250 (2009); *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004).

[76] *See, e.g.*, *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000).

[77] *See, e.g.*, *id.*; *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001).

[78] *See, e.g.*, *id.*; *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002); *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000).

[79] *See, e.g.*, *FTC v. 30 Minute Mortg., Inc.*, No. 03-60021 (S.D. Fla. 2003).

[80] *See, e.g.*, *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009); *In re Shiva Venture Group, Inc.*, F.T.C. Dkt. No. C-4250 (2009); *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009). The FTC also sent over 200 warning letters in 2007 to mortgage lenders, mortgage brokers, and media outlets regarding mortgage advertising claims, including teaser rates, that could be deceptive or violate TILA. *See* Press Release, FTC, *FTC Warns Mortgage Advertisers and Media That Ads May Be Deceptive* (Sept. 11, 2007), *available at* (*http://www.ftc.gov/opa/2007/09/mortsurf.shtm*).

[81] *See, e.g.*, *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009).

[82] *See, e.g.*, *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 (GLT (ANx) C.D. Cal. 2004); *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002).

[83] *See, e.g.*, *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002).

[84] *See, e.g.*, *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001). The complaint in that case alleged, among other things, that the defendants included credit insurance products in the loan package without the borrower's knowledge.

[85] *See, e.g.*, *FTC v. Capital City Mortg. Corp.*, No. 1:98CV237 (D.D.C. 1998).

[86] *See, e.g.*, *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001). In addition, in making these statements, the lender allegedly did not reveal that the loans were interest-only and that borrowers would owe the entire principal amount in a large balloon payment at the end of the loan term.

[87] *See, e.g.*, *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000).

[88] *See, e.g.*, *In re Lomas Mortg. U.S.A., Inc.*, 116 F.T.C. 1062 (1993).

[89] *See, e.g.*, *FTC v. 30 Minute Mortg. Inc.*, No. 03-60021 (S.D. Fla. 2003).

[90] *See, e.g.*, *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009).

[91] *See, e.g.*, *United States v. Unicor Funding, Inc.*, No. SACV99-1228 (C.D. Cal. 1999).

[92] *See FTC v. Mortgages Para Hispanos.com Corp.*, No. 4:06-cv19 (E.D. Tex. 2006).

[93] *See In re Felson Builders, Inc.*, 119 F.T.C. 652 (1995).

[94] *See, e.g.*, *In re Lenox Fin. Mortg., LLC*, No. 2007-017383 (Ariz. Sup. Ct. 2007) (assurance of discontinuance), *available at* (*http://www.azag.gov/press_releases/sept/2007*)/ *LenoxFinancialAssurance&Approval.pdf*.

[95] *See, e.g.*, *State v. Lifetime Fin., Inc.*, No. LC080829 (Cal. Super. Ct. 2008), *available at* (*http://www.ag.ca.gov/cms_attachments/press/pdfs/n1533_complaint_for_civil_penalties.pdf*); *State v. Green River Mortg.*, No. 2009CV89 (Colo. Dist. Ct. 2009), press release *available at* (*http://www.coloradoattorneygeneral.gov/press/news/*

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affiliation with the consumer's current lender;[96] (4) the availability of government grants for home repairs;[97] (5) the savings available by refinancing;[98]

(6) reverse mortgage terms and government affiliation;[99] (7) the availability of rates compared to competitors;[100] and (8) the advertiser's self-description as a "bank."[101]

## III. Discussion of the Proposed Rule

The Commission's law enforcement experience, state law enforcement activities and legislation, and the comments received in response to the ANPR demonstrate that deceptive claims in mortgage advertising and marketing pose a risk of significant harm to consumers. In addition to continuing to engage in aggressive law enforcement against those who make such claims, the FTC believes that a rule prohibiting misrepresentations in mortgage advertising would enable the agency to protect prospective borrowers more effectively by establishing clear standards for advertisers, increasing the efficiency of law enforcement efforts, and serving as a deterrent to unlawful behavior. In particular, as discussed above, the proposed rule would allow the Commission to seek civil penalties for violations, thereby enhancing the effect of the Commission's law enforcement actions. Civil penalties may be an especially useful deterrent in cases in which consumer redress or disgorgement is not available or not feasible.

### *A. Section 321.1: Scope*

As detailed in Part I.A, the scope of this rulemaking is set forth in the Omnibus Appropriations Act, as clarified by the Credit CARD Act. These statutes direct the Commission to commence a rulemaking proceeding to issue rules "related to unfair or deceptive acts or practices." The Commission's rulemaking authority also is limited by the Credit CARD Act to persons over whom the FTC has enforcement power under the FTC Act.

### *B. Section 321.2: Definitions*

#### 1. Sections 321.2(e): "mortgage credit product;" 321.2(d): "dwelling;" and 321.2(b): "consumer"

The proposed rule would prohibit any person from making any material misrepresentation in any commercial communication regarding any term of any mortgage credit product. Proposed § 321.2(f) defines "mortgage credit product." To fall within that definition, the product must meet three criteria. First, it must be a form of "credit." The term "credit" is defined as "the right to defer payment of debt or to incur debt and defer its payment."[102] Second, the credit must be secured either by real property or a dwelling. The term "dwelling" is defined as "a residential structure that contains one to four units, whether or not that structure is attached to real property" and includes "an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence."[103] Third, the credit must be offered to a consumer primarily for personal, family, or household purposes. "Consumer" is defined as a "natural person to whom a mortgage credit product is offered or extended."[104] Personal, family or household purposes would include, for example, home purchase or improvement loans, debt consolidation or home equity transactions, credit for medical or dental expenses, and educational loans. Credit offered or extended primarily for a business purpose would not be covered, even if it is secured by a lien on a dwelling. The determination of whether the credit is "primarily" for personal, family, or household use, rather than "primarily" for business use, requires an assessment of all of the facts of a particular transaction.

Assuming they meet the above criteria, the proposed definition covers both closed-end credit (*e.g.*, installment financing) [105] and open-end credit (*e.g.*, HELOCs);[106] traditional, fully amortizing loans and nontraditional or

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*2009/05/12/ attorney_general_announces_settlement_barring _mortgage_broker_operating_inside*); *State v. One Source Mortg., Inc.*, No. 07CH34450 (Ill. Cir. Ct. 2007), press release *available at* (*http://www.ag.state.il.us/pressroom/2007_11/20071126.html*); *In re Paramount Equity Mortg., Inc.*, No. C-07-405-08-SC01 (Wash. Dep't of Fin. Inst. 2008), *available at* (*http://www.dfi.wa.gov/CS%20Orders/C-07-405-08-SC01.pdf*).

[96] *See, e.g.*, *State v. Sroka*, No. 2007-16-61 (Idaho Dep't of Fin. 2007), *available at* (*http://finance.idaho.gov/ConsumerFinance/Actions/Administrative/2007-16-61_Sroka_Terrazas_Order_Cease_and_Desist.pdf*); *State v. Sage*, No. 2007-8-45 (Idaho Dep't of Finance 2007), press release *available at* (*http://finance.idaho.gov/PR/2007/PressRel_Sage_CDOrder.pdf*);*State v. Goldstar Home Mortg.*, No. 09AB-CV02310 (Mo. Cir. Ct. 2009) press release *available at* (*http://ago.mo.gov/newsreleases/2009/AG_Koster_files_lawsuits_after_mortgage_fraud/*).

[97] *See, e.g.*, *State v. Ellis*, No. 07CH34451 (Ill. Cir. Ct. 2007), press release *available at* (*http://www.ag.state.il.us/pressroom/2007_11/20071126.html*).

[98] *See, e.g.*, *State v. Advantage Mortg. Serv., Inc.*, No. C107 (Neb. Dist. Ct. 2007), *available at* (*http://www.ndbf.ne.gov/forms/Advantage_Mortgage_Complaint.pdf*).

[99] *See, e.g.*, *State v. Upstate Capital, Inc.*, No. 08-036 (N.Y. Office of Att'y Gen. 2008), press release *available at* (*http://www.ag.ny.gov/media_center/2008/apr/apr24a_08.html*). Other cases have charged other entities with deceptive advertising, including using the words "United States of America" or an image of the Statute of Liberty, when the advertiser had no affiliation with the government (*see State v. Island Equity Mortg., Inc.*, (N.Y. Banking Dep't 2007), *available at* (*http://www.banking.state.ny.us/ea070412.htm*), and falsely representing that the advertisers were affiliated with a government program (*see In re Assurity Fin. Servs., LLC*, No. C-07-320-08-SC01 (Wash. Dep't of Fin. Inst. 2008), *available at* (*http://www.dfi.wa.gov/CS%20Orders/C-07-320-08-SC01.pdf*); *see also State v. Am. Advisors Group, Inc.*, No. 2010CH00158 (Ill Cir. Ct. filed Feb. 8, 2010), *available at* (*http://www.scribd.com/doc/33748621/People-Illinois-v-American-Advisors-Group-Complaint*); *State v. Hartland Mortg. Ctrs., Inc.*, No. 10CH05339 (Ill. Cir. Ct. filed Feb. 8, 2010), press release *available at* (*http://www.ag.state.il.us/pressroom/2010_02/20100208.html*). HUD also recently took action against two lenders for deceptive advertising of HUD-insured reverse mortgages. *See* Press Release, HUD, *FHA Withdraws Three Lenders, Suspends a Fourth* (Feb. 25, 2010), *available at* (*http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2010/HUDNo.10-019*).

[100] *See, e.g.*, *In re Paramount Equity Mortg., Inc.*, No. C-07-405-08-SC01 (Wash. Dep't of Fin. Inst. 2008), *available at* (*http://www.dfi.wa.gov/CS%20Orders/C-07-405-08-SC01.pdf*).

[101] *See, e.g.*, *id.*

[102] Proposed § 321.2(c). This definition is largely based on that in Regulation Z. *See* 12 CFR 226.2(a)(14). One difference is that the proposed rule covers all shared equity and shared appreciation mortgages offered to consumers, whereas certain types of such mortgages may not be considered "credit" under Regulation Z. *See* Regulation Z Commentary, 12 CFR 226.2(a)(14)-1 and 226.17(c)(1)-11, Supp. I. In shared equity and shared appreciation mortgages, the consumer receives cash, a lower interest rate, or other favorable terms in exchange for agreeing to share with the lender or other company all or part of the consumer's total equity or the appreciation in the consumer's equity when the loan comes due, or at some other point during the loan.

[103] Proposed § 321.2(e). Both primary and secondary (or vacation) homes are covered if they are used as collateral for the loan. The term "dwelling" in the proposed rule is based on that used in TILA and Regulation Z. *See* 15 U.S.C. 1602(v) and 12 CFR 226.2(a)(19).

Note that some aspects of the Regulation Z advertising rules apply only to credit secured by a dwelling and not by real property. *See* 12 CFR 226.16(d); 12 CFR 226.24(f) and (i).

[104] Proposed § 321.2(b). Thus, credit offered or extended to an organization or governmental entity is not covered.

[105] Construction financing and other forms of credit in which multiple advances may be common are also covered. In these transactions, some or all of the advances may be estimates (as to their dollar amount or the date on which they will occur).

[106] The proposed rule's prohibitions apply uniformly to closed-end and open-end credit. In contrast, the Regulation Z advertising provisions (including restrictions on deceptive claims) are different for closed-end and open-end credit. *See, e.g.*,12 CFR 226.24(i) and 12 CFR 226.16(d)(5) and (f).

alternative financing;[107] and forward and reverse mortgages.[108]

2. Section 321.2(g): "term"

The proposed rule would apply to any "term" of any mortgage credit product. Under the proposal, "term" is defined broadly to mean "any of the fees, costs, obligations, or characteristics of, or associated with, the product." It also includes any of the conditions on, or related to, the availability of the product. "Term" is intended to cover all aspects of a mortgage credit product without exception.

3. Section 321.2(a): "commercial communication"

As discussed above, the proposed rule applies to claims made in any "commercial communication," which is defined as follows:

> any written or verbal statement, illustration, or depiction, whether in English or any other language, that is designed to effect or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial ("infomercial"), the Internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the phrase "commercial communication." [109]

This definition encompasses commercial communications[110] in any medium and in any language(s).[111]

4. Section 321.2(f): "person"

The proposed rule applies to any "person," defined as "any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity."[112] Thus, any individual or entity that makes representations in a commercial communication about a mortgage credit product is a "person" for purposes of the proposed rule. The types of entities the proposed rule covers include mortgage lenders, mortgage brokers, mortgage servicers, real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others under the Commission's jurisdiction.[113] As mandated by the Omnibus Appropriations Act, individuals and entities that are excluded from the FTC's jurisdiction are not covered by the proposed rule.

Consistent with the FTC's jurisdiction, the proposed rule covers all credit unions except federally-chartered credit unions.[114] Several representatives of credit unions (and a group of state credit union regulators) filed comments on the ANPR.[115] Some commenters urged the Commission to exclude state-chartered credit unions so as not to put them at a competitive disadvantage relative to federally-chartered credit unions. Commenters also noted that the advertising practices of state-chartered credit unions that are federally insured are subject to existing NCUA advertising regulations.[116]

The proposed rule does not grant any exemptions beyond those already provided by the FTC Act. To the extent that other federal agencies regulate the advertising of certain financial institutions,[117] the proposed rule, which simply prohibits misrepresentations, would not conflict with those regulations.[118] Nor does the Commission believe that prohibiting certain financial institutions from making deceptive claims would establish a competitive disadvantage. Entities not covered by the proposed rule remain subject to general federal and state truth-in-advertising laws. The Commission seeks comment on whether the rule should grant any exemptions beyond those in the FTC Act.

*C. Section 321.3: Prohibited Representations*

1. Discussion

Proposed § 321.3 prohibits *any* material misrepresentation, whether made expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product. FTC and state cases provide numerous examples of misrepresentations made in mortgage advertising. Proposed §§ 321.3(a)-(s) set forth a non-exclusive list of misrepresentations that would violate the proposed rule. This list addresses the most common misrepresentations that have appeared in state and federal enforcement actions over the past several years and is intended to provide illustrative guidance about the kinds of claims that are prohibited. For discussion purposes, the list of representations covered by the proposed rule is informally grouped into three categories below.

As noted above, a claim is deceptive under Section 5 of the FTC Act if there

[107] Covered alternative loans include, for example, hybrid ARMs, teaser rate or teaser payment loans with low rates or payments that expire after a short period, interest-only and balloon mortgages, negative amortization mortgages, shared equity and shared appreciation mortgages, buydowns, and payment option ARMs. For a discussion of the various types of mortgage loans and their features, see generally *Interagency Subprime Mortgage Statement* and *Interagency Nontraditional Mortgage Guidance*, supra note 39; Conference of State Bank Supervisors (CSBS), Guidance on Nontraditional Mortgage Product Risks for State-Licensed Entities (Nov. 14, 2006), *available at* (*http://www.banking.mt.gov/content/pdf/CSBS-AARMR_FINAL_GUIDANCE.pdf*) (issuing parallel guidance to federal bank regulatory agencies for residential mortgage brokers and mortgage bankers); CSBS et al., Statement on Subprime Mortgage Lending(July 16, 2007), *available at* (*http://www.csbs.org/regulatory/policy/policy-guidelines/Documents/Final_CSBS-AARMR-NACCA_StatementonSubprimeLending.pdf*) (issuing similar guidance to federal bank regulatory agencies for residential mortgage brokers and mortgage bankers).

[108] *See supra* note 33 and accompanying text.

[109] *See* proposed § 321.2(a).

[110] Based on this definition, the proposed rule has broader applicability than the Board's advertising rules in Regulation Z, which exempt personal contacts, communications about existing accounts, and certain educational materials. *See* Regulation Z Commentary, 12 CFR 226.2(a)(2), Supp. I.

[111] The proposed rule broadly prohibits misleading claims in any language. In comparison, for closed-end credit, Regulation Z specifically bans providing information about some trigger terms or required disclosures only in a foreign language in the advertisement but, at the same time, providing information about other trigger terms or required disclosures only in English in that advertisement. *See* 12 CFR 226.24(i)(7). As discussed below, *see infra* Part IV.B.2(3), the Commission seeks comment on whether the proposed rule should address the use of multiple languages in marketing mortgages to consumers whose primary language is not English.

[112] *Id.* This definition is based on that used in Regulation Z. *See* 12 CFR 226.2(a)(22).

[113] *See supra* notes 36-37. One commenter raised the need for coverage of mortgage rate aggregators, among others, in the prospective advertising rules. *See* HPC at 3.

[114] The Commission's jurisdiction includes nonfederally-insured, state-chartered credit unions, nonfederally-insured credit unions in Puerto Rico and other U.S. territories, and any credit unions with no deposit insurance.

[115] *See supra* note 30.

[116] Federally-insured credit unions are prohibited generally by NCUA's regulations from using advertising or promotional material that contains inaccurate, misleading, or deceptive claims concerning their products, services, or financial condition. *See* 12 CFR 740.2.

In addition, some commenters asserted that subsidiaries of banks or thrifts should not be covered by the prospective rules or are subject to rules administered by the federal banking agencies. *See* ABA at 3-6; CMC/AFSA at 3-5; *see also, e.g.*, 12 CFR 563.27 (OTS regulations prohibiting thrifts from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered).

[117] While there are similarities between the proposed rule and existing federal and state requirements, none of the existing requirements duplicate all of the operative provisions of the proposed rule.

[118] In other words, nothing in the other agencies' regulations would require entities to make claims that the proposed rule prohibits.

is a "representation, omission, or practice that . . . is likely to mislead consumers acting reasonably under the circumstances, and . . . the representation, omission, or practice is material."[119] Information is "material" if it is "likely to affect [a consumer's] choice of, or conduct regarding, a product."[120] The types of information in the representations specified in § 321.3 of the proposed rule involve matters central to consumers' decisions about mortgage credit products. Thus, the types of misrepresentations the proposed rule prohibits are "material."

a. Fees or Costs

In general, proposed §§ 321.3(a)-(f) address representations related to fees or costs associated with a mortgage credit product. **Proposed § 321.3(a)** covers misrepresentations about interest charged for the product, including but not limited to misrepresentations about (1) whether the loan includes a negative amortization feature;[121] (2) the amount of interest owed each month that is included in the consumer's payments, loan amount, or total amount due; and (3) the interest owed each month that is not included in the payments but is instead added to the total amount due.

**Proposed § 321.3(b)** bars misrepresentations about the APR, simple annual rate, periodic rate, or any other rate, including but not limited to a payment rate.[122] The Commission has challenged deceptive rate claims in many cases, some of which included allegations that originators understated the true rate by more than 100 percent.[123] This provision also is intended to cover false or misleading savings rate claims in financing promotions. The Commission has challenged, for example, deceptive claims that consumers will save money (such as at a particular rate of savings) by accepting the credit offer.[124]

**Proposed § 321.3(c)** bars misrepresentations about the existence, nature, or amount of fees or costs associated with any mortgage credit product. It also prohibits false or misleading claims that no fees are charged, for example, if the fees and costs, although not paid separately, are included in the loan amount or total amount due from the consumer. This provision covers fees and costs imposed at any point during the life of the loan.[125]

**Proposed § 321.3(d)** covers misrepresentations about terms associated with additional products or features that may be sold in conjunction with a mortgage credit product.[126] Thus, this provision covers claims made in cross-selling other products or features in mortgage credit product offers, including but not limited to credit insurance, credit disability insurance, car clubs, or other "add-ons" to the loan.[127]

**Proposed § 321.3(e)** covers misrepresentations relating to the taxes on or insurance for the dwelling associated with a mortgage credit product, for example, claims about whether tax or insurance charges are included in the overall monthly payment or are made separately. Prior Commission cases have challenged claims that the advertised monthly payment included tax and insurance charges, when in fact it did not.[128]

**Proposed § 321.3(f)** bars misrepresentations about the existence or amount of any penalty for making prepayments on the mortgage. The Commission has brought several cases against entities that allegedly deceived consumers about prepayment penalties.[129]

b. Obligations or Characteristics

Proposed §§ 321.3(g)-(p) generally address representations related to obligations or characteristics associated with a mortgage credit product. **Proposed § 321.3(g)** prohibits misrepresentations pertaining to the variability of interest, payments, or other terms of mortgage credit products, including but not limited to, for example, misrepresentations using the word "fixed" when terms are variable or limited in duration.[130] **Proposed § 321.3(h)** bars false or misleading comparisons between rates or payments,[131] including but not limited to comparisons involving savings. It also bars false or misleading comparisons between rates or payments available for different parts of the loan term.[132]

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[119] *Cliffdale*, 103 F.T.C. at 165.

[120] *Id.*; *see also Novartis*, 223 F.3d.at 786; *supra* notes 48-53 and accompanying text.

[121] *See, e.g.*, *In re Shiva Venture Group, Inc.*, F.T.C. Dkt. No. C-4250 (2009); *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009); *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009); *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortg. Co.*, No. 02-C-5029 (N.D. Ill. 2002); *FTC v. Capital City Mortg. Corp.*, No. 1:98CV237 (D.D.C. 1998).

[122] A payment rate is the rate used to calculate the consumer's monthly payment amount and is not necessarily the same as the interest rate. If the payment rate is less than the interest rate, the consumer's monthly payment amount does not include the full interest owed each month; the difference between the amount the consumer pays and the amount the consumer owes is added to the total amount due from the consumer.

The proposed rule prohibits misrepresentations about payment rates and any other rate, for both closed-end and open-end credit. In comparison, Regulation Z bans advertising of payment rates for closed-end credit. *See* Regulation Z Commentary, 12 CFR 226.24(c)-2, Supp. I. Regulation Z also bans advertising of effective rates and qualifying rates (which are similar terms for payment rates) for closed-end credit. *Id*; *see also* 73 FR 44581-82. The Board enacted this prohibition under Section 105 of TILA. *See supra* note 28.

[123] *See, e.g.*, *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (N.D. Ill. 2008) (severely understated APR).

Deceptive payment rate claims were at the heart of three enforcement actions announced in February 2009. *See In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009); *In re Shiva Venture Group, Inc.*, F.T.C. Dkt. No. C-4250 (2009); *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009).

[124] The Commission has challenged deceptive comparisons in financing that include, among other things, savings rates in non-mortgage contexts. *See In re Automatic Data Processing*, 115 F.T.C. 841 (1992) (alleged deceptive comparisons in automobile financing). Section 321.3(b) would prohibit these types of promotions when used in the mortgage context.

[125] *See, e.g.*, *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004); *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 GLT (ANx) (C.D. Cal. 2004) (allegedly promoting "NO COSTS . . . NO KIDDING" and "no-fee" loans, when in fact, the loans included such charges); *see also FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001); *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000).

[126] *See, e.g.*, *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001).

[127] The Commission has alleged deceptive practices involving add-ons to non-mortgage personal loans as well. *See FTC v. Stewart Fin. Co. Holdings*, Civ. No. 1:03-CV-2648-JTC (N.D. Ga. 2003).

[128] *See, e.g.*, *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002); *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002); *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001).

[129] *See, e.g.*, *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002); *FTC v. OSI Fin. Servs.*, Inc., No. 02-C-5078 (N.D. Ill. 2002); *FTC v. Chase Fin. Funding Inc.*, No. SACV 04-549 GLT (ANx) (C.D. Cal. 2004); *see also* FTC Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning, Comments before Board of Governors of Federal Reserve System, Dkt. No. R-1305, Apr. 8, 2008, n.11, *available at* (*http://www.ftc.gov/os/2008/04/V080008frb.pdf*).

[130] The Commission has charged mortgage brokers and other entities with falsely promising consumers low fixed payments and rates on their mortgage loans, including promising "30 year fixed. 1.95%," "3.5% fixed payment loan," and other rates that were not, in fact, fixed. *See, e.g.*, *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009); *FTC v. Chase Fin. Funding, Inc.*, No. SACV 04-549 GLT (ANx) (C.D. Cal. 2004); *see also FTC v. 30 Minute Mortg., Inc.*, No. 03-60021 (S.D. Fla. 2003); *Andrews v. Chevy Chase Bank*, 240 F.R.D. 612 (E.D. Wis. 2007) (describing payment option ARM sold as "fixed rate" when interest was only fixed for one month, although payments were fixed for a year).

Proposed § 321.3(g) has broader applicability than a similar provision in Regulation Z, which applies only to closed-end dwelling-secured credit and requires specific advertising disclosures. *See* 12 CFR 226.24(i)(1).

[131] Proposed § 321.3(h) has broader applicability than a similar provision in Regulation Z, which applies only to closed-end dwelling-secured credit and requires specific advertising disclosures. *See* 12 CFR 226.24(i)(2).

[132] *See, e.g.*, *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000).

**Proposed § 321.3(i)** prohibits misrepresentations about the type of mortgage credit product that is offered, *e.g.,* false claims that a mortgage is fully amortizing.[133] **Proposed § 321.3(j)** bars misrepresentations about the amount of the obligation or the existence, nature, or amount of cash or credit the consumer could receive.[134] This would include, for example, false claims that the consumer will receive a certain amount of cash by obtaining a home equity loan, or will receive a certain amount of credit through a purchase money loan. **Proposed § 321.3(k)** prohibits misrepresentations about the existence, number, amount, or timing of any minimum or required payments.[135]

**Proposed § 321.3(l)** prohibits misrepresentations about the potential for default on the mortgage credit product, including but not limited to misrepresentations about the circumstances under which the consumer could default for nonpayment of taxes or insurance, failure to maintain the property, or not complying with other obligations.[136] **Proposed § 321.3(m)** bars misrepresentations about the effectiveness of the mortgage credit product in helping consumers resolve problems in paying debts.[137] This section covers false or misleading claims that the lender's or servicer's product (through a waiver, forgiveness, or otherwise) will reduce, eliminate, or restructure a debt or any other obligation of any person.[138] **Proposed § 321.3(n)** prohibits misrepresentations about the association between a mortgage credit product or a provider of such product and any other person or program, including but not limited to any affiliation with an organizational or governmental program, benefit, or entity.[139] **Proposed § 321.3(o)** covers misrepresentations about the source of the mortgage credit product and the commercial communications for it, including but not limited to claims that the communication is made by or on behalf of the consumer's current mortgage lender or servicer.[140] **Proposed § 321.3(p)** prohibits misrepresentations about the consumer's right to reside in the dwelling that is the subject of the mortgage credit product, including but not limited to false or misleading claims about how long or under what conditions a consumer can stay in the dwelling.[141]

c. Conditions on or Related to Availability

Proposed §§ 321.3(q)-(s) address representations that pertain to the availability of the mortgage credit product and related advice. **Proposed §§ 321.3(q) and 321.3(r)** bar misrepresentations about the consumer's ability to obtain, or likelihood of obtaining, any mortgage credit product or term thereof, or any refinancing or modification of a mortgage credit product or term thereof. This includes false or misleading claims about whether the consumer or the consumer's property has been preapproved or guaranteed for any such product or term.[142] **Proposed § 321.3(s)** bars misrepresentations about the availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product term, including but not limited to the qualifications of those offering the services or advice.[143]

2. Advertising Disclosures

The proposed rule does not include any affirmative advertising disclosure requirements. The Commission tentatively concludes that it is unnecessary to mandate advertising disclosures in the proposed rule and that not doing so will eliminate the possibility of inconsistencies with other federally- or state-mandated disclosure requirements for mortgage advertising.

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[133] For example, the FTC charged a company with misrepresenting that a loan was fully amortizing when, in fact, it consisted of interest-only payments with a large balloon payment. *FTC v. Capital City Mortg. Corp.*, No. 1:98CV237 (D.D.C. 1998).

[134] *See FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001) (alleging deceptive representations about loan amounts in home equity mortgages); *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000) (same as above); *see also United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002) (alleging deceptive representations about cash dispersal amounts in home equity loans or refinances); *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002) (same as above).

[135] This provision covers, for example: (1) misrepresentations about whether certain payments are part of the loan (*see, e.g., FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002)); (2) false claims that an aspect of the loan would cover the payments due (*see FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004)); and (3) claims that "no payments" are required on a reverse mortgage that falsely imply that consumers never have to repay the loan or make related tax and insurance payments. *See FFIEC Reverse Mortgage Guidance*, *supra* note 39, at 50809 (although reverse mortgages generally do not require the consumer to remit payments for principal, interest, and related loan costs during the time the consumer remains in the home, repayment of these amounts can become due if the consumer moves out of the home; also, reverse mortgages generally do not include escrow accounts for taxes and property insurance, and if the consumer does not remit payments separately for these amounts, the consumer could lose the home).

[136] For example, it would violate this section for a reverse mortgage lender to represent that "no matter what, you can stay in your home for life," when the lender can force the sale of the property if the consumer does not adequately maintain the property.

[137] Proposed § 321.3(m) has broader applicability than a similar provision in Regulation Z, which applies only to closed-end dwelling-secured credit. *See* 12 CFR 226.24(i)(5).

[138] Thus, this provision covers false or misleading claims of debt elimination, debt forgiveness, or savings associated with mortgage credit products. *See, e.g., In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000); *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (D.C. Ill. 2008).

[139] The FTC has challenged many of these types of claims in its loan modification cases, including in cases where the defendants allegedly claimed, in part through the use of names, seals, or symbols, that the mortgage credit product was a government benefit or that the lender was affiliated with the government. *See, e.g., FTC v. Ryan*, No. 1:09-cv-00535-HHK (D.D.C. 2009).

Proposed § 321.3(n) has broader applicability than a similar provision in Regulation Z, which applies only to closed-end dwelling-secured credit and is limited to claims about the loan program advertised. *See* 12 CFR 226.24(i)(3). In comparison, the Commission's proposed rule applies to both closed-end and open-end credit secured either by real property or a dwelling, covers claims about the loan program as well as the provider of the advertisement, and expressly references use of symbolic representations.

[140] *See, e.g., In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009). This section also covers false or misleading "trigger lead" solicitations, in which entities: (1) obtain information about the consumer from sources such as prescreened lists sold by consumer reporting agencies; (2) based on that information, contact the consumer to promote a mortgage credit product or term; and (3) misrepresent their identity as the consumer's current lender or servicer. *See* CMC/AFSA at 2, 7.

Proposed § 321.3(o) has broader applicability than a similar provision in Regulation Z, which applies only to closed-end dwelling-secured credit and is limited to representations about lenders. *See* 12 CFR 226.24(i)(4). In comparison, the Commission's proposed rule applies to both closed-end and open-end credit secured either by real property or a dwelling and bars misrepresentations about both servicers and lenders.

[141] Issues concerning the consumer's right to reside in the dwelling have frequently arisen in the sale of reverse mortgages. *See generally*, U.S. Gov't Accountability Office (GAO), GAO-09-606, *Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls over Counseling for Borrowers* (2009) (*GAO Reverse Mortgage Report*).

[142] *See, e.g., United States v. Unicor Funding, Inc.*, No. 99-1228 (C.D. Cal. 1999); *In re Lomas Mortg. U.S.A., Inc.*, 116 F.T.C. 1062 (1993) ; *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (D.C. Ill. 2008); *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001).

[143] Such misrepresentations have been identified as problematic in the offering of reverse mortgages, *see, e.g., FFIEC Reverse Mortgage Guidance*, *supra* note 39,and *GAO Reverse Mortgage Report*, *supra* note 141, and of loan modifications, *see generally* MARS NPRM, *supra* note 19.

Proposed § 321.3(s) has broader applicability than a similar provision in Regulation Z, which applies only to closed-end dwelling-secured credit and addresses advertisements that use the term "counselor" to refer to a for-profit mortgage broker or creditor, its employees, or others working for the broker or creditor in offering, originating, or selling mortgages. *See* 12 CFR 226.24(i)(6). In comparison, the Commission's proposed rule applies to both closed-end and open-end credit secured either by real property or a dwelling and bans misrepresentations regardless of the type of for-profit entity involved.

Under Section 5 of the FTC Act, it is a deceptive practice to omit qualifying information when making a literally truthful claim, if the omission of that information is likely to mislead reasonable consumers in a material way.[144] For example, a closed-end mortgage advertisement likely would be deceptive if it represented that a loan has a very low interest rate, but failed to disclose that the rate would substantially increase after a few months. Such claims often are referred to as "half truths." Mortgage advertisements that include half truths in most cases also would be considered to have made implied misrepresentations that would fit into the specific categories of misrepresentations in the proposed rule. Continuing with the above example, a claim that a loan has a very low interest rate, in the absence of any qualifying information, is likely to imply to reasonable consumers that the rate lasts at least for longer than a few months. Thus, the proposed rule's prohibition on misrepresentations likely will cover the sorts of half truths that arise when mortgage advertisers fail to make material disclosures.[145]

In addition, there are already substantial federal and state regulations applicable to mortgage advertisements. Mandating advertising disclosures in this rule would create potential conflicts and inconsistencies with the disclosure provisions of these other requirements to which covered entities are also subject, particularly TILA and Regulation Z. For example, under TILA and Regulation Z, the APR must be calculated following certain procedures, and it must be disclosed in mortgage advertisements in some circumstances.[146] If the Commission were to determine that, under the proposed rule, the APR to be disclosed in advertisements must be calculated using different costs and procedures than those established by TILA and Regulation Z, that determination would result in inconsistent federal requirements and inconsistent disclosures, leading to consumer confusion and increased burden on business.

Although the proposed rule does not include affirmative advertising disclosure requirements, the Commission specifically requests comment on whether there are any advertising disclosures that the Commission should consider mandating.

*D. Section 321.4: Waiver Not Permitted*

Proposed § 321.4 provides that "[a]ny attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this rule constitutes a violation of this rule." The Commission intends the proposed rule to protect consumers from being deceived in making decisions about the most important financial product most of them will obtain in their lifetimes. The Commission is unaware of any circumstances under which advertisers of mortgage loans should be able to circumvent the proposed rule – *i.e.,* to make misrepresentations – by placing purported waivers in their contracts or other agreements with consumers.[147]

*E. Section 321.5: Recordkeeping Requirements*

Proposed § 321.5 sets forth specific categories of records that persons covered by the proposed rule would be required to retain.[148] A failure to keep such records would be an independent violation of the rule.[149]

Specifically, for a period of 24 months from the last date of dissemination of the applicable commercial communication, covered persons would have to retain the following information:

(1) Copies of all materially different commercial communications disseminated, including but not limited to sales scripts, training materials, related marketing materials, websites, and weblogs;
(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which each commercial communication was disseminated, including but not limited to the names and terms of each such mortgage credit product available to consumers; and
(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which each commercial communication was disseminated, including but not limited to the names and terms of each such additional product or service available to consumers.

The Commission believes that a record retention requirement is necessary to ensure that covered persons are complying with the requirements of the proposed rule.[150] Specifically, the requirement that covered persons retain copies of their commercial communications would enable the FTC to review those communications for any misrepresentations that violate the rule and to bring law enforcement actions as appropriate. Moreover, covered persons may offer consumers many different mortgage credit products, and may also offer or provide additional products or services with the mortgage credit products. Therefore, it is important for covered persons to maintain copies of documents describing all of those products and services, so that the Commission and state enforcement agencies can review those items in assessing whether the claims being made for them violate the rule.

The Commission recognizes that recordkeeping provisions impose compliance costs; however, many covered persons already retain in the ordinary course of their business the types of documents that the proposed rule would require be retained. To further reduce any burden, the proposed rule would permit entities to keep the records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business.

The proposed rule also seeks to limit the retention requirements to avoid imposing any unnecessary burden. For example, covered entities must retain only "materially different" commercial

[144] *See* Deception Policy Statement, *supra* note 9, at 176-77.

[145] A failure to disclose also can be an unfair practice if it causes or is likely to cause substantial consumer injury that is not outweighed by countervailing benefits and is not reasonably avoidable. *See, e.g.*, *In re Int'l Harvester Co.*, 104 F.T.C. 949, 1062 (1984). Omissions may be unfair in the mortgage advertising context if the information that is not disclosed concerns aspects of the transaction that are so central to making an informed decision that its omission is likely to be injurious. *See id.* Much of this information is already required to be disclosed by TILA and Regulation Z.

[146] *See, e.g.*,12 CFR 226.4; 226.14; 226.16(b) and (d)(1), (2) and (6); 226.22; and 226.24(d) and (f)(2).

[147] Other consumer protection laws also include prohibitions on requiring consumers to waive their statutory rights. *See, e.g.*, 15 U.S.C. 1693*l* (Electronic Fund Transfer Act).

[148] This provision is similar in many respects to the recordkeeping requirements set forth in the FTC's Telemarketing Sales Rule (TSR), including the mandate to retain scripts, advertisements, and promotional materials. *See* 16 CFR 310.5. The Telemarketing Sales Act expressly authorized the Commission to impose recordkeeping requirements. 15 U.S.C. 6102(a)(3). Although the Omnibus Appropriations Act, as clarified by the Credit CARD Act, does not contain a specific provision on recordkeeping, the proposed recordkeeping requirements are reasonably related to the statutory goal of preventing deception.

[149] Proposed § 321.5(b); *see also* 16 CFR 310.5(b) (TSR).

[150] As noted in Part I.A.3, *supra,* the Omnibus Appropriations Act, as clarified by the Credit CARD Act, permits both the Commission and states to enforce the rules issued in connection with this rulemaking. *See* Credit CARD Act § 511(a)(1)(C) and (a)(2).

communications. The proposed rule imposes a 24-month record retention period, which the Commission believes would strike an appropriate balance between ensuring efficient and effective compliance efforts, while avoiding the imposition of unnecessary costs.

*F. Section 321.6: Actions by States*

The Omnibus Appropriations Act, as clarified by the Credit CARD Act, permits states to enforce the rules issued in connection with this rulemaking.[151] States may enforce the rules, subject to the notice requirements of the Omnibus Appropriations Act, by bringing civil actions in federal district court or another court of competent jurisdiction. Section 321.6 of the proposed rule provides that states have the authority to file actions against those who violate the rule.

*G. Section 321.7: Severability*

Proposed § 321.6 states that the provisions of this rule are separate and severable from one another. This provision, which is modeled after a similar provision in the TSR,[152] also states that if a court stays or invalidates any provisions in the proposed rule, the Commission intends the remaining provisions to continue in effect.

**IV. Requests for Comment**

The Commission seeks comment on the proposed rule. Without limiting the scope of issues on which it seeks comments, the FTC is particularly interested in receiving comments on the questions that follow. In responding to these questions, please include detailed factual supporting information if possible.

*A. General Questions for Comment*

(1) How would the proposed rule affect commercial communications about mortgage credit products? Useful comments would include information about the types of commercial communications provided by particular persons, how these persons provide commercial communications, and the impact of the proposed rule on them.

(2) What types of mortgage credit products currently are being offered to consumers or may be offered in the future? In what ways do the fees, costs, obligations, characteristics of, conditions on, or availability associated with the different types of mortgage credit products vary?

(3) What would be the effects of the proposed rule (including any benefits and costs) on consumers? Would the costs and benefits to consumers differ depending on the coverage of the proposed rule? How?

(4) In addition to the evidence cited in this NPRM, what evidence is there that consumers are likely to be misled by claims made relating to mortgage credit products? Are consumers likely to be misled by particular covered persons? Which ones? Are consumers likely to be misled by specific types of claims? Which ones?

(5) What would be the effects of the proposed rule (including any benefits and costs) on covered persons?

(6) What changes, if any, should be made to the proposed rule to increase benefits to consumers and competition?

(7) What changes, if any, should be made to the proposed rule to decrease costs to industry or consumers?

(8) How would the proposed rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

*B. Specific Questions for Comment on Proposed Provisions*

1. Section 321.2; Definitions

(1) Does the definition of "mortgage credit product" in proposed § 321.2(e) adequately describe the products the proposed rule should cover? If not, how should it be modified? In particular, should the definition be modified to include credit in addition to that which "is offered or extended to a consumer primarily for personal, family, or household purposes"? If so, what additional credit should be covered? What would be the costs and benefits of the modified definition?

(2) Does the definition of "term" in proposed § 321.2(g) adequately describe the various aspects of mortgage credit products that the proposed rule should cover? If not, how should it be modified? What would be the costs and benefits of the modified definition?

(3) Does the definition of "commercial communication" in § 321.2(a) adequately describe the conduct the proposed rule should cover? If not, how should it be modified? What would be the costs and benefits of the modified definition?

Does the definition adequately address communications made in languages other than English that the proposed rule should cover? If not, how should it be modified? What would be the costs and benefits of the modified definition?

(4) Does the definition of "person" in § 321.2(f) adequately describe those whom the proposed rule should cover? If not, how should it be modified? For example, should any other entities be covered? What would be the costs and benefits of the modified definition?

(i) Should state-chartered credit unions be excluded from coverage? Why or why not? Should such an exclusion apply to all forms of state-chartered credit unions, or only to some of these entities? Why or why not?

(ii) Should subsidiaries or affiliates of banks and thrifts be excluded from coverage? Why or why not?

2. Section 321.3: Prohibited Representations

(1) Proposed § 321.3 bans persons from making misrepresentations in commercial communications regarding any term of any mortgage credit product and provides numerous non-exclusive examples pertaining to fees, costs, obligations, or characteristics of, or associated with, the product. It also includes misrepresentations of any of the conditions on or related to the availability of the product. How widespread is each prohibited misrepresentation? Should any of the misrepresentations be deleted? Why? Should any other misrepresentations be added? Is so, what other misrepresentations should be added? Why?

(2) The proposed rule does not specifically address practices related to persons giving substantial assistance or support to those who make misrepresentations covered by the proposed rule and who know or consciously avoid knowing that those they assist are engaging in such conduct. Some individuals and companies engaged in unlawful practices may rely on the support and assistance of other persons. In some nonmortgage transaction cases, for example, the Commission has charged lead generators – who obtained information from consumers for use by third parties – with providing knowing, substantial assistance in violation of the TSR.[153]

Should the rule include a specific prohibition on the provision of substantial assistance or support to others who violate the rule? If so, what specific conduct should be covered by the rule? What evidence exists that mortgage entities receive substantial assistance or support from other persons to deceptively advertise mortgage credit product terms? What evidence exists about the types of persons who provide such substantial assistance or support to

[151] Credit CARD Act § 511(a)(2).

[152] *See* 16 CFR 310.9.

[153] The Commission has previously included "assisting and facilitating" counts in at least two dozen cases filed under the TSR. *See, e.g.*, *FTC v. Assail, Inc.*, No. W03CA007 (W.D. Tex. 2004); *United States v. DirecTV, Inc.*, No. SACV05 1211 DOC (C.D. Cal. 2005).

others? For example, is there evidence that lead generators or third-party vendors provide substantial assistance to mortgage entities, by identifying potential customers or performing back-room operations, in support of those who engage in practices that would violate the proposed rule? What evidence exists that persons may know or consciously avoid knowing that the mortgage entities they assist are making misrepresentations covered by the rule? What evidence exists that consumers are likely to be injured from any such substantial assistance and support? What would be the costs and benefits of such a prohibition?

(3) Increasingly, many consumers in our society use languages other than English as their primary language.[154] As a result, consumers may be exposed to more advertisements and offers that "mix languages" in connection with mortgage products.[155] For example, in a recent FTC case, the Commission alleged that a mortgage broker engaged in deception when it offered payments and other mortgage terms in promotions to Spanish-speaking borrowers in Spanish, but the terms in the documents at closing, which were provided only in English, were less favorable.[156] One comment submitted in response to the MAP ANPR raises concerns about practices involving non-English speakers. It notes that, in some instances, sales and loan representatives of some home builders or their affiliated lenders have conducted transactions primarily in Spanish, but mortgage documents were provided only in English, making it difficult for buyers to understand or reject mortgage terms.[157]

The proposed rule broadly prohibits material misrepresentations in commercial communications regardless of the language in which the claim is made. Are more protections warranted to prevent the use of multiple languages – or "mixing" languages – in a way that makes it difficult for consumers to understand mortgage terms? What evidence exists of the use of mixed languages in commercial communications for mortgage credit product terms in a deceptive or unfair manner? Is there evidence of mortgage brokers or other entities, in marketing to non-English speaking consumers, using a language other than English to convey a claim, while contradicting that claim in English – *e.g.*, using the consumer's primary language to convey a very low interest rate, while using English to communicate that the rate will increase after only a few months? Have such practices occurred in both open-end and closed-end mortgage credit advertisements? What evidence is there of mortgages being marketed in languages other than English with contradictory information or additional material terms provided only in English in a manner that is deceptive or unfair? Should the rule address the mixing of languages in commercial communications through disclosure requirements? If so, how should it do so? Should, for example, it prohibit the use of a foreign language to convey some material terms in a commercial communication when other material terms are disclosed only in English? What would be the costs and benefits of doing so?

3. Section 321.5: Recordkeeping

(1) Proposed § 321.5(a) requires a 24-month document retention period. Should the proposed rule include a record retention requirement? Is the specified period of time adequate for effective and efficient law enforcement? Does it impose unnecessary costs on persons making commercial communications covered by the proposed rule? Should the Commission consider an alternative retention period – for example, a time period commensurate with the five-year statute of limitations for an FTC action for civil penalties? If so, explain what would be the appropriate time period, and why.

(2) Proposed § 321.5(a) sets forth specific categories of records that persons covered by the proposed rule are required to retain. Do these categories adequately describe the records needed to ensure that covered persons are complying with the requirements of the proposed rule? If not, how should the categories by modified?

(3) Proposed § 321.5(b) permits persons covered by the proposed rule to retain documents in any form and in the same manner, format, or place as they keep such records in the ordinary course of business. Is this flexibility appropriate? Should the Commission specify how documents should be retained? If so, explain what would be the appropriate standard for retaining documents.

*C. Other Issues*

1. Effective Dates

The proposed rule generally prohibits misrepresentations in commercial communications about the terms of mortgage credit products, consistent with the prohibition on deceptive claims that would violate Section 5 of the FTC Act. The persons subject to the proposed rule are within the Commission's jurisdiction under the FTC Act, and thus are already prohibited from such conduct. Nonetheless, to afford affected persons time to adjust to the proposed rule's new recordkeeping requirements, the Commission proposes an effective date of 30 days following publication of the final rule in the **Federal Register**. Is this time period appropriate? If yes, why? If not, what period would be more appropriate, and why? What would be the costs and benefits of any such modified time period?

2. Advertising Disclosures

The proposed rule does not require affirmative advertising disclosures. Are affirmative advertising disclosures needed to prevent deception related to commercial communications for mortgage credit products? If so, what advertising disclosures are needed, and why is the failure to provide them unfair or deceptive? Should these advertising disclosures be triggered by terms that may be included in the commercial communication, or should they be nontriggered disclosures that are required in all commercial communications for mortgage credit products, regardless of the content of the communication? Should any advertising disclosures vary based on the types of media in which the commercial communication is made, for example, direct mail, newspaper, radio, television, or electronic? If so, how?

Should the rule incorporate any mortgage advertising requirements that the Board promulgated under Section 105 of TILA?[158] If so, which should be incorporated? Should the rule incorporate the requirements that apply to advertisements for open-end credit, closed-end credit, or both?[159] Should the rule incorporate any other requirements from Regulation Z, such as those pertaining to "definitions" or calculations of terms (that may appear in the advertising requirements, among

[154] According to the 2000 Census, at least 18% of the population (47 million people) speak a language other than English at home. *See* U.S. Census Bureau, *Language Use and English-Speaking Ability: 2000*, at 2 (Oct. 2003), *available at* (*http://www.census.gov/prod/2003pubs/c2kbr-29.pdf*).

[155] *See supra* note 111.

[156] *See FTC v. Mortgages Para Hispanos.com Corp.*, No. 4:06-cv-19 (E.D. Tex. 2006). GAO is currently studying the relationship between English fluency and financial literacy and whether individuals whose native language is a language other than English are impeded in their financial affairs. *See* Credit CARD Act § 513.

[157] *See* Laborers Int'l Union at 4-5.

[158] *See supra* Parts III.C.2 and IV.C.2 and note 28.

[159] *See, e.g.*, 12 CFR 226.16 and 226.24(c), (d), (e), (f), and (g), respectively.

others), such as the "finance charge" and "APR"?[160]

Is a mortgage advertiser's failure to comply with any of Regulation Z's requirements an unfair or deceptive act or practice under the FTC Act? Would requiring mortgage advertisers to comply with any of Regulation Z's requirements be reasonably related to the prevention of unfair or deceptive acts or practices? What are the advantages and disadvantages of incorporating disclosure requirements into the rule?

For any advertising disclosures that should be required, how should they be reconciled with the disclosures required in mortgage advertisements under TILA and Regulation Z? In addition, if the rule were to include advertising disclosure requirements, should all the disclosure standards be the same as or different from those in Regulation Z (e.*g.*, "clear and conspicuous")?[161] Should the analysis differ based on the type of medium, for example, print, radio, television, or electronic?

In addition, for any Regulation Z disclosures that should be incorporated into the rule, how should the rule address changes over time that occur in disclosures required by Regulation Z or the Regulation Z Commentary? Would additional requirements be needed to address this issue? What forms of testing or other empirical evidence, if any, would be appropriate to measure the effectiveness of any required advertising disclosures in the rule? What would be the costs and benefits of such testing?

*D. Instructions for Submitting Comments*

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Mortgage Acts and Practices – Advertising Rulemaking, Rule No. R011013" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential . . . ," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[162]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted at (*https://ftcpublic.commentworks.com/ftc/mapadrulenprm*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at (*https://ftcpublic.commentworks.com/ftc/mapadrulenprm*). If this Notice appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments forwarded to it by regulations.gov. You may also visit the FTC website at (*http://www.ftc.gov*) to read the Notice and the news release describing it.

A comment filed in paper form should include the reference "Mortgage Acts and Practices – Advertising Rulemaking, Rule No. R011013" both in the text of the comment and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex W), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington, DC area and at the Commission is subject to delay due to heightened security precautions.

All comments on any proposed recordkeeping requirements should additionally be sent to the Office of Management and Budget (OMB). Comments may be submitted by U.S. Postal Mail to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Comments, however, should be submitted via facsimile to (202) 395-5167 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.htm*). As a matter of discretion, the Commission makes every effort to remove home contact information of individuals before their comments are place on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

## V. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.[163]

## VI. Paperwork Reduction Act

The Commission is submitting this proposed rule and a Supporting Statement to the OMB for review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-21. The recordkeeping requirements[164] of the proposed rule constitute a "collection of information" for purposes of the PRA.[165] The proposed rule does not impose a

[160] *See, e.g.*, 12 CFR 226.2 (definitions); 12 CFR 226.4 (finance charge calculation); 12 CFR 226.14 (open-end APR calculation); and 12 CFR 226.22 (closed-end APR calculation).

[161] *See, e.g.*, 12 CFR 226.24(b). The Commission is aware that different formulations of the "clear and conspicuous" standard are used in Regulation Z, including, in some instances, requirements for "equally prominent," "closely proximate," or "proximate" advertising disclosures. *See* 12 CFR 226.24(b), Supp. I, and 73 FR 44522.

[162] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* 16 CFR 4.9(c).

[163] *See* 16 CFR 1.26(b)(5).

[164] Proposed § 321.5 sets forth the recordkeeping requirements.

[165] *See* 44 U.S.C. 3502(3)(a).

disclosure requirement. The associated PRA burden analysis follows:

*A. Recordkeeping Requirements*

As discussed in the preamble, the proposed rule requires covered persons to retain copies of materially different commercial communications disseminated and documents describing or evidencing all mortgage credit products available to consumers during the relevant time period and all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products.[166] A failure to keep such records would be an independent violation of the rule.

Commission staff believes these recordkeeping requirements pertain to records that are usual and customary and kept in the ordinary course of business for many covered persons, such as mortgage brokers, lenders, and servicers.[167] As to these persons, the retention of these documents does not constitute a "collection of information," as defined by OMB's regulations that implement the PRA.[168] Other covered persons, however, such as real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others, may not currently maintain these records in the ordinary course of business. Thus, the recordkeeping requirements for those persons would constitute a "collection of information."

*B. Estimated Hours Burden and Associated Labor Costs*

Commission staff estimates that the proposed rule's recordkeeping requirements will affect approximately 1.3 million persons[169] who would not otherwise retain such records in the ordinary course of business. As noted, this estimate includes real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others that may provide commercial communications regarding mortgage credit product terms.[170]

Although the Commission cannot estimate with precision the time required to gather and file the required records, it is reasonable to assume that covered persons will each spend approximately 3 hours per year to do these tasks, for a total of 3.9 million hours (1.3 million persons x 3 hours). Staff further assumes that office support file clerks will handle the proposed rule's record retention requirements at an hourly rate of $13.63.[171] Based upon the above estimates and assumptions, the total annual labor cost to retain and file documents is $53,157,000 (3.9 million hours x $13.63 per hour).

Absent information to the contrary, staff anticipates that existing storage media and equipment that covered persons use in the ordinary course of business will satisfactorily accommodate incremental recordkeeping under the proposed rule. Accordingly, staff does not anticipate that the proposed rule will require any new capital or other non-labor expenditures.

*C. Questions for Comment*

The Commission invites comments that will enable it to: (1) evaluate whether the proposed record retention requirements are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

## VII. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980[172] requires the Commission to provide an Initial Regulatory Flexibility Analysis with a proposed rule, and a Final Regulatory Flexibility Analysis with a final rule, unless the Commission certifies that it does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities.[173]

The Commission anticipates that the proposed Mortgage Acts and Practices – Advertising Rule will have no significant economic impact on a substantial number of small entities. As noted above, the proposed rule will prevent deceptive mortgage advertising practices by prohibiting misrepresentations and imposing a related recordkeeping requirement. The proposed rule's reach is limited to entities that are within the FTC's jurisdiction under the FTC Act. Under the FTC Act, the Commission has jurisdiction over any person,

[166] *See* Proposed § 321.5(a)(1)-(3).

[167] Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. *See, e.g.*, Fla. Stat. 494.00165 (2009); Ind. Code. Ann. 23-2-5-18 (2009); Minn. Stat. 58.14 (2009); Wash. Rev. Code 19.146.060 (2010). Many mortgage brokers, lenders, and servicers are also subject to state recordkeeping requirements for mortgage transactions and related documents, and these may include descriptions of mortgage credit products. *See, e.g.*, Mich. Comp. Laws Serv. 445.1671 (2009); N.Y. Banking Law 597 (Consol. 2010); Tenn. Code Ann. 45-13-206 (2009).

[168] *See* 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

[169] No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: (1) 1.1 million real estate brokers and agents – from the National Association of Realtors, *see* (*http://www.realtor.org*) (last visited June 28, 2010); (2) 175,000 home builders – from the National Association of Home Builders, *see* (*http://www.NAHB.org*) (last visited June 28, 2010); (3) 350 finance companies – from the American Financial Services Association, *see* (*http://www.afsaonline.org*) (last visited June 28, 2010); (4) 22,170 advertising agencies – from the North American Industry Classification System Association's database of U.S. businesses, *see* (*http://www.naics.com/naics54.htm*) (last visited June 28, 2010); (5) 1,000 lead generators and rate aggregators – based on staff's administrative experience. These inputs add to 1,298,520; for rounding, and to account further for potentially unspecified other covered persons, however, staff has increased the resulting total to 1.3 million.

[170] The Commission does not know what percentage of these persons are, in fact, engaged in covered conduct under the proposed rule, *i.e.*,providing commercial communications about mortgage credit product terms. For purposes of these estimates, the Commission has assumed all of them are covered by the recordkeeping provisions and are not retaining these records in the ordinary course of business.

[171] This estimate is based on mean hourly wages for office file clerks provided by the Bureau of Labor Statistics. *See* U.S. Bur. of Labor Statistics, *National Compensation Survey: Occupational Earnings in the United States, 2009*, Bulletin 2738, June 2010, at 3-23, tbl. 3, *available at* (*http://www.bls.gov/ncs/ncswage2009.htm*).

[172] 5 U.S.C. 601-612.

[173] 5 U.S.C. 603-605. Covered entities under the proposed rule will be classified as small entities if they satisfy the Small Business Administrator's relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System (NAICS), *available at* (*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*). Because a wide range of individuals and companies may make representations in commercial communications regarding any term of a mortgage product, no one classification is applicable to this rulemaking.

The range in size standard for most of the potentially relevant professional and support services is $7 million or less in annual receipts. This standard applies to, for example, real estate credit, mortgage and nonmortgage loan brokers, other nondepository credit intermediation, other activities related to credit intermediation (such as servicing), secondary market financing (such as Fannie Mae and Freddie Mac), marketing consulting services, advertising agencies, public relations agencies, display advertising, direct mail advertising, advertising material distribution services, other services related to advertising, and all other professional, scientific and technical services.

The range in size standard varies greatly for the following other types of entities that are potentially covered by the proposed rule: offices of real estate agents and brokers ($2 million or less); housing construction/builders ($33.5 million or less); and credit unions ($175 million or less).

partnership, or corporation that engages in unfair or deceptive acts or practices in or affecting commerce, excepting, among others, banks, savings and loan institutions, federal credit unions, non-profits, and common carriers. Thus, the proposed rule would broadly apply to any covered entity that makes representations in a commercial communication about any term of a mortgage credit product. Although the Commission does not know the precise number of entities that may be subject to the proposed rule, it estimates that the proposed rule will cover approximately 1.35 million entities.[174] This number includes mortgage lenders, mortgage brokers, mortgage servicers, real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others under the Commission's jurisdiction. It is not known, however, how many of those entities are small entities, and the Commission welcomes comment on those issues. The Commission nonetheless believes that the proposed rule will not have a significant economic impact on any of the small entities subject to it.

The proposed rule generally prohibits misrepresentations, consistent with the prohibition on deceptive claims that would violate Section 5 of the FTC Act. The proposed rule elaborates on this prohibition by including specific examples of types of misrepresentations covered by the proposed rule, but it does not require affirmative disclosures. The entities subject to the proposed rule are within the Commission's jurisdiction under the FTC Act, and thus are already prohibited from such conduct. The proposed rule imposes a recordkeeping requirement, but it is limited to a specific subset of relevant documents that Commission staff believes many entities covered by the proposed rule already retain in the ordinary course of business. For those entities that may not already do so, staff estimates minimal burden and expense for each entity to comply with the proposed rule's requirements.[175] For these reasons, the Commission believes that the proposed rule is not likely to have a significant economic impact[176] on a substantial number of small entities. Accordingly, this document serves as notice to the Small Business Administration of the Commission's certification that it does not anticipate the proposed rule will have a significant economic impact on a substantial number of small entities. Nonetheless, the FTC has prepared the following analysis.

*A. Description of the Reasons That Action by the Agency is Being Considered*

The Commission proposes, and seeks comment on, a proposed rule to implement Section 626 of the Omnibus Appropriations Act, as amended by the Credit CARD Act, which directs the Commission to initiate a rulemaking related to unfair or deceptive acts or practices with respect to mortgage loans. Section 511 of the Credit CARD Act clarified that the rule will cover only those entities over which the FTC has jurisdiction under the FTC Act. Through this document, the Commission proposes, and seeks comment on, prohibited misrepresentations and recordkeeping provisions aimed at mortgage credit product commercial communications in order to prevent deceptive practices that harm consumers, consistent with the goals of the Act.

*B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule*

The proposed rule is intended to implement Section 626 of the Omnibus Appropriations Act, as amended by the Credit CARD Act, which directs the Commission to initiate a rulemaking related to unfair or deceptive acts or practices with respect to mortgage loans. Through the rulemaking, the Commission seeks to prevent deceptive acts and practices in the mortgage advertising industry, which has been the subject of numerous law enforcement actions under Section 5 of the FTC Act and TILA.

*C. Small Entities to Which the Proposed Rule Will Apply*

The proposed rule will apply to any person who makes any representation in any commercial communication regarding any term of any mortgage credit product. Based upon its knowledge of the industry, the Commission believes that a variety of individuals and companies under its jurisdiction will be covered by the proposed rule, including but not limited to mortgage lenders, mortgage brokers, mortgage servicers, real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others.

In response to a request for comments in the ANPR, the Commission received no empirical data regarding the numbers or revenues of any of these types of entities. On the basis of other available data, however, Commission staff estimates that there are approximately 1.35 million entities subject to the proposed rule.[177] However, staff does not have sufficient data to readily estimate the number of such covered persons, if any, that are small entities. Accordingly, the Commission specifically requests additional comment on: (1) the number of individuals and companies that make commercial communications regarding mortgage credit products; and (2) the number of such entities, if any, that are small entities.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed rule sets forth specific categories of records that covered persons would be required to retain. The Commission believes that these recordkeeping requirements are necessary to ensure that covered entities are complying with the requirements of the proposed rule. They would enable the Commission to review copies of commercial communications for any misrepresentations that violate the rule and to bring law enforcement actions as appropriate. The Commission recognizes that recordkeeping provisions impose compliance costs; however, many covered entities already retain in the ordinary course of business the types of documents that the proposed rule would require be retained. For those entities that may not already do so, staff estimates minimal burden and expense for each entity to comply with the requirements.[178] To

[174] No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: (1) 51,000 mortgage lenders and mortgage brokers – from various online state regulatory agency resources and the Nationwide Mortgage Licensing System and Registry Consumer Access, *see* (*http://www.nmlsconsumeraccess.org*) (last visited between May 17 - June 28, 2010); (2) 60 mortgage servicers – from several sources including lists of servicers participating in various federal programs, *available at* (*http://makinghomeaffordable.gov/contact_servicer.html*) and (*http://hopenow.com/members.php*) (both last visited June 28, 2010) (excluding lenders who are also servicers under these programs); and (3) 1.3 million others – *see supra* note 169 (explaining estimate).

[175] Staff estimates that the annual labor cost for each covered person to file or retain documents under the recordkeeping provisions is $39.72 (3 hours x $13.24 per hour). *See supra* Part VI.B.

[176] *Cf.* U.S. Small Bus. Admin. Office of Advocacy, *A Guide for Government Agencies – How to Comply with the Regulatory Flexibility* 19 (2003), *available at* (*http://www.sba.gov/advo/laws/rfaguide.pdf*) (citing 126 Cong. Rec. S10,938 (Aug. 6, 1980) (identifying 175 annual staff hours for recordkeeping as a "significant impact")).

[177] *See supra* note 169.

[178] *See supra* Part VI.B (discussing professional skills and equipment that staff estimates are needed for compliance).

further reduce any burden, the proposed rule would permit covered entities to keep the records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business. The proposed rule also attempts to avoid imposing any unnecessary burden by limiting the recordkeeping requirements only to, for example, "materially different" commercial communications. It also limits the timeframe for recordkeeping to 24 months.

*E. Duplicative, Overlapping, or Conflicting Federal Rules*

As noted above, TILA (including HOEPA) and Regulation Z regulate mortgage advertisements. The states have also enacted various laws or regulations that address aspects of deceptive mortgage advertising practices. None of the federal or state measures duplicates the specificity and breadth of practices, or diversity of entities covered in the proposed rule. In addition, the Commission does not believe that its proposed rule conflicts with any of these other requirements, but it invites comment on this issue.[179]

As noted above, the Commission is not proposing any affirmative disclosure requirements, but it is has requested comment on whether any such disclosures are needed to prevent deception related to commercial communications for mortgage credit products.[180] However, such disclosures could raise substantial conflicts with other mortgage advertising requirements, including those in TILA and Regulation Z. The Commission is interested in receiving comments in this area.[181]

*F. Significant Alternatives to the Proposed Rule Amendments*

As previously noted, the proposed rule is intended to prevent deceptive acts and practices in mortgage advertising. The proposed rule is intended to achieve that goal without creating unnecessary compliance costs. Thus, the Commission does not propose to impose any affirmative disclosure requirements for advertisements at this time. Further, as discussed above, Commission staff believes that many covered entities already retain in the ordinary course of business the types of documents that the proposed rule would require be retained. In addition, proposed § 321.5(b) states that entities may keep such records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business.

The proposed rule also limits the types of information that must be retained to avoid imposing any unnecessary burden. For example, covered persons must retain only "materially different" versions of commercial communications and related materials. Finally, the proposed rule calls for a 24-month record retention period, which the Commission believes would strike an appropriate balance between ensuring efficient and effective compliance efforts, while avoiding the imposition of unnecessary costs.

Furthermore, the recordkeeping requirements are format-neutral; they would not preclude the use of electronic methods that might reduce compliance burdens. In addition, the Commission is not aware of any feasible or appropriate exemptions for small entities because the proposed rule attempts to minimize compliance burdens for all entities.

Nonetheless, the Commission seeks additional comment regarding: (1) the existence of small entities for which the proposed rule would have a significant economic impact, and (2) suggested alternatives, including potential exemptions for small entities, that would reduce the economic impact of the proposed rule on such small entities. If the comments filed in response to this document identify any small entities that would be significantly affected by the proposed rule, as well as alternatives that would reduce compliance costs on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into any final rule.

TABLE A - LIST OF COMMENTERS AND SHORT-NAMES/ACRONYMS

| Short-name/Acronym | Commenter |
|---|---|
| Adcock | Adcock |
| ABA | American Bankers Association |
| ASA | American Society of Appraisers |
| Anderson | Anderson, Lisa |
| AG Mass. | Attorney General, Commonwealth of Massachusetts |
| Beasley | Beasley |
| BECU | Boeing Employees' Credit Union |
| Bracco | Bracco, Larry |
| CRL | Center for Responsible Lending |
| Ciavarella | Ciavarella (3 comments) |
| CMC/AFSA | Consumer Mortgage Coalition and American Financial Services Association |
| CUNA | Credit Union National Association |
| Crosby | Crosby, Tracy |
| EJF | Empire Justice Center |
| Freddie Mac | Federal Home Loan Mortgage Corporation |
| Feinman | Feinman, Anita |
| Flaker | Flaker |
| Franciulli | Franciulli, Patricia |
| GCUA | Georgia Credit Union Affiliates |
| Goodman | Goodman, Al |
| Harris | Harris, Kathleen |
| HPC | Housing Policy Council |
| Howard | Howard, Marilyn (2 comments) |
| Kochanski | Kochanski, David |
| Laborers Int'l Union | Laborers International Union of North America |
| MBA | Mortgage Bankers Association |
| MICA | Mortgage Insurance Companies of America |

[179] *See supra* notes 117-118 and accompanying text.

[180] *See supra* Parts III.C.2 and IV.C.2.

[181] *See id.*

TABLE A - LIST OF COMMENTERS AND SHORT-NAMES/ACRONYMS—Continued

| Short-name/Acronym | Commenter |
|---|---|
| NAR | National Association of REALTORS |
| NASCUS | National Association of State Credit Union Supervisors |
| NCRC | National Community Reinvestment Coalition |
| NCLC | National Consumer Law Center |
| Norman | Norman |
| Obduskey | Obduskey, Dennis (2 comments) |
| P. | P. (Anonymous) |
| Reid | Reid, Harry (United States Senate) |
| Rice | Rice, Richard |
| Scheu | Scheu, Toni |
| Smith | Smith, J. |
| Tucker | Tucker, James |
| Yachovich | Yackovich, Beverly G. & Edward |
| Yoshida | Yoshida, Gena |
| Zager | Zager, Jeremy (Sterling Van Dyke Credit Union) |

TABLE B - LIST OF FTC MORTGAGE ADVERTISING ENFORCEMENT ACTIONS

- *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 (N.D. Ga. 2001)
- *FTC v. Capital City Mortg. Corp.*, No. 1:98CV237 (D.D.C. 1998)
- *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 GLT (ANx) (C.D. Cal. 2004)
- *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000)
- *FTC v. Mortgages Para Hispanos.com Corp.*, No. 4:06-cv-19 (E.D. Tex. 2006)
- *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004)
- *FTC v. Ryan*, No. 1:09-cv-00535-HHK (D.D.C. 2009)
- *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002)
- *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (N.D. Ill. 2008)
- *FTC v. 30 Minute Mortg., Inc.*, No. 03-60021 (S.D. Fla. 2003)
- *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009)
- *In re Felson Builders, Inc.*, 119 F.T.C. 642 (1995)
- *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000)
- *In re Lomas Mortg. U.S.A., Inc.*, 116 F.T.C. 1062 (1993)
- *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009)
- *In re Shiva Venture Group, Inc.*, F.T.C. Dkt. No. C-4250 (2009)
- *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002)
- *United States v. Unicor Funding, Inc.*, No. 9901228 (C.D. Cal. 1999)

## VIII. Proposed Rule

### List of Subjects in 16 CFR part 321

Advertising, Communications, Consumer protection, Credit, Mortgages, Trade practices

■ For the reasons set forth in the preamble, the Federal Trade Commission is proposing to amend title 16, Code of Federal Regulations, by adding a new part 321, to read as follows:

## PART 321 – MORTGAGE ACTS AND PRACTICES – ADVERTISING RULE

Section Contents

321.1 Scope of regulations in this part.
321.2 Definitions.
321.3 Prohibited representations.
321.4 Waiver not permitted.
321.5 Recordkeeping requirements.
321.6 Actions by states.
321.7 Severability.

**Authority:** Sec. 626, Pub. L. 111-8, 123 Stat. 524 (15 U.S.C. 1638 note), as amended by sec. 511, Pub. L. 111-24, 123 Stat. 1734 (15 U.S.C. 1638 note).

### § 321.1 Scope of regulations in this part.

This part implements the Omnibus Appropriations Act of 2009, sec. 626, Pub. L. 111-8, 123 Stat. 524 (2009) (15 U.S.C. 1638 note), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, sec. 511, Pub. L. 111-24, 123 Stat. 1734 (2009) (15 U.S.C. 1638 note). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

### § 321.2 Definitions.

(a) "Commercial communication" means any written or verbal statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial ("infomercial"), the Internet, cellular network, or any other medium. "Commercial communication" includes but is not limited to promotional materials and items as well as Web pages.

(b) "Consumer" means a natural person to whom a mortgage credit product is offered or extended.

(c) "Credit" means the right to defer payment of debt or to incur debt and defer its payment.

(d) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The word includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(e) "Mortgage credit product" means any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer

primarily for personal, family, or household purposes.

(f) "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(g) "Term" means any of the fees, costs, obligations, or characteristics of or associated with the product. It also includes any of the conditions on or related to the availability of the product.

**§ 321.3 Prohibited representations.**

It is a violation of this rule for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning: (1) the amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due, or (2) whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including but not limited to credit insurance or credit disability insurance;

(e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about: (1) whether separate payment of taxes or insurance is required, or (2) the extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer;

(f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;

(g) The variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word "fixed;"

(h) Any comparison between:

(1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product, and

(2) Any actual or hypothetical rate or payment;

(i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;

(j) The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;

(k) The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;

(l) The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;

(m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;

(n) The association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that:

(1) The provider is, or is affiliated with, any governmental entity or other organization, or

(2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program;

(o) The source of any commercial communication, including but not limited to misrepresentations that a commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer;

(p) The right of the consumer to reside in the dwelling that is the subject of the mortgage credit product, or the duration of such right, including but not limited to misrepresentations concerning how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling;

(q) The consumer's ability or likelihood to obtain any mortgage credit product or terms, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or terms;

(r) The consumer's ability or likelihood to obtain a refinancing or modification of any mortgage credit product or terms, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such refinancing or modification; and

(s) The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product term, including but not limited to the qualifications of those offering the services or advice.

**§ 321.4 Waiver not permitted.**

Any attempt by any person to obtain a waiver from any consumer of any protection provided by, or any right of the consumer under, this rule constitutes a violation of this rule.

**§ 321.5 Recordkeeping requirements.**

(a) Any person subject to this rule shall keep, for a period of twenty-four months from the last date of dissemination of the applicable commercial communication, the following evidence of compliance with this rule:

(1) Copies of all materially different commercial communications disseminated, including but not limited to sales scripts, training materials, related marketing materials, websites, and weblogs;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which each commercial communication was disseminated, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in

which each commercial communication was disseminated, including but not limited to the names and terms of each such additional product or service available to consumers.

(b) Any person subject to this rule may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this rule.

**§ 321.6 Actions by states.**

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to Section 626(b) of the Omnibus Appropriations Act of 2009, sec. 626, Pub. L. 111-8, 123 Stat. 524 (2009) (15 U.S.C. 1638 note), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, sec. 511, Pub. L. 111-24, 123 Stat. 1734 (2009) (15 U.S.C. 1638 note).

**§ 321.7 Severability.**

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2010–24353 Filed 9–29–10: 8:45 am]

BILLING CODE 6750–01–S

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–119046–10]**

**RIN 1545–BJ54**

### Requirements of a Statement Disclosing Uncertain Tax Positions; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking and a notice of public hearing.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking and a notice of public hearing that was published in the **Federal Register** on Thursday, September 9, 2010 (75 FR 54802) allowing the IRS to require corporations to file a schedule disclosing uncertain tax positions related to the tax return as required by the IRS.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Zuba, (202) 622–3400 (not toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The correction notice that is the subject of this document is under section 6012 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking and notice of public hearing (REG–119046–10) contains an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–119046–10), which was the subject of FR Doc. 2010–22624, is corrected as follows:

On page 54802, column 3, under the caption **DATES**, lines 4 and 5, the language "public hearing scheduled for October 15, 2010, at 10 a.m., must be received" is corrected to read "public hearing scheduled for October 19, 2010, at 10 a.m., must be received"

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2010–24488 Filed 9–29–10; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 901

**[SATS No. AL–075–FOR; Docket ID: OSM–2010–0009]**

### Alabama Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposes revisions to its Program regarding their Surface Mining Commission, who is eligible to apply for and obtain a mining license, hearing officers, license fees, and several minor editorial changes throughout the document such as changing "him" to "him or her" and "chairman" to "chair". Alabama intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Alabama program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.d.t., November 1, 2010. If requested, we will hold a public hearing on the amendment on October 25, 2010. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on October 15, 2010.

**ADDRESSES:** You may submit comments, identified by SATS No. AL–075–FOR by any of the following methods:

- *E-mail: swilson@osmre.gov.* Include "SATS No. AL–075–FOR" in the subject line of the message.
- *Mail/Hand Delivery:* Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209.
- *Fax:* (205) 290–7280.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Alabama program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office or going to *http://www.regulations.gov.*

Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, *Telephone:* (205) 290–7282, *E-mail: swilson@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Alabama Surface Mining Commission, 1811 Second Ave., P.O. Box 2390, Jasper, Alabama 35502–2390, *Telephone:* (205) 221–4130.

**FOR FURTHER INFORMATION CONTACT:** Sherry Wilson, Director, Birmingham Field Office. *Telephone:* (205) 290–7282. *E-mail: swilson@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Alabama Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15 and 901.16.

## II. Description of the Proposed Amendment

By letter dated May 12, 2010 (Administrative Record No. AL–661), and revised on July 14, 2010 (Administrative Record No. AL–661–006), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

*A. Alabama Code § 9–16–73(b)*

This change adds the requirements that members of the seven member Commission reflect the racial, gender, geographic, urban/rural and economic diversity of the state. This seven member board appointed by the Governor with the advice and consent of the Alabama State Senate is, pursuant to the approved state program, vested with the power and authority to implement the state Title V program acting through its director and staff.

*B. Alabama Code § 9–16–73(g)*

Authorizes the Commission to meet once every month rather than once every 30 days as previously required.

*C. Alabama Code § 9–16–74(4)*

This addition allows the Commission to promulgate rules and regulations charging reasonable fees for administration of Act provisions including, but not limited to, fees for the certification, renewals, and continuing education of certified blaster applicants.

*D. Alabama Code § 9–16–77(b)*

Amends existing provisions for the hiring or contracting with Hearing Officers to preside over administrative appeals of agency actions. Continues the existing requirements that Hearing Officers be members in good standing with the Alabama State Bar and have no direct or indirect interests in a surface or underground coal mine operation. Adds a prohibition against hearing officers having been employed by or having represented a coal mine operator within the previous 24 months.

*E. Alabama Code § 9–16–78(d)*

Deletes existing provision of law that Hearing Officer facilities be located in a facility apart from Commission offices.

*F. Alabama Code § 9–16–81(b)*

Alabama's approved program requires that coal operators apply for and obtain a surface coal mining license as a qualification for engaging in surface coal mining operations within Alabama. Section 3 of Act No. 2010–153 amends the existing license statute to require that only citizens of the United States or persons legally present in the United States with appropriate documentation from the Federal government and that possess a mining license may engage in surface coal mining operations within Alabama.

*G. Alabama Code § 9–16–81(f)(1)*

Modifies existing law to remove a fixed $1,000 fee and allow the Commission to establish by rule the initial fee for a mining license and annual license update fees. Such fees must be reasonable in amount.

*H. Alabama Code § 9–16–93(b)*

Deletes requirement of existing law that a cessation order alleging imminent harm or danger include a citation for an expeditious hearing before an administrative hearing officer. The amendment conforms the Alabama Statute to the requirements of the corresponding Federal SMCRA provisions.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*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.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on October 15, 2010. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

## List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 2010.

**Ervin J. Barchenger,**

*Regional Director, Mid-Continent Region.*

[FR Doc. 2010–24598 Filed 9–29–10; 8:45 am]

BILLING CODE 4310–05–P

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 918

**[SATS No. LA–023–FOR; Docket ID: OSM–2010–0005]**

## Louisiana Regulatory Program/ Abandoned Mine Land Reclamation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Louisiana regulatory program (Louisiana program) and the Louisiana abandoned mine land reclamation plan (Louisiana plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment consists of revisions, additions, and deletions of regulations pertaining to definitions; lands eligible for remining; general provisions for review of permit application information and entry of information into AVS; review of applicant, operator, and ownership and control information; review of permit history; review of compliance history; permit eligibility determination; unanticipated events or conditions at remining sites; eligibility for provisionally issued permits; written findings for permit application approval; initial review and finding requirements for improvidently issued permits; suspension or rescission requirements for improvidently issued permits; who may challenge ownership or control listings and findings; how to challenge an ownership or control listing or finding; burden of proof for ownership or control challenges; written agency decision on challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; post-permit issuance information requirements for permittees; transfer, assignment, or sale of permit rights; certifying and updating existing permit application information; providing applicant and operator information; providing permit history information; providing violation information; backfilling and grading: previously mined areas; and cessation orders; and contractor eligibility. The amendment is intended to revise the Louisiana program to be no less effective than the corresponding Federal regulations and the Louisiana plan to be consistent with the Federal regulations.

This document gives the times and locations that the Louisiana program, Louisiana plan, and this proposed amendment are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.d.t., November 1, 2010. If requested, we will hold a public hearing on the amendment on October 25, 2010. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on October 15, 2010.

**ADDRESSES:** You may submit comments, identified by SATS No. LA–023–FOR, by any of the following methods:

- *E-mail: swilson@osmre.gov.* Include "SATS No. LA–023–FOR" in the subject line of the message.
- *Mail/Hand Delivery:* Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209.
- *Fax:* (205) 290–7280.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Louisiana program, Louisiana plan, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office or going to *http://www.regulations.gov.*

Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining

Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282, E-mail: *swilson@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Inspection and Mining Division, Louisiana Department of Natural Resources, Office of Conservation, 617 North 3rd Street, 8th Floor, Baton Rouge, Louisiana 70802, Telephone: (225) 342–5515.

**FOR FURTHER INFORMATION CONTACT:** Sherry Wilson, Director, Birmingham Field Office, Telephone: (205) 290–7282. E-mail: *swilson@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Louisiana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the Louisiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Louisiana program effective October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program in the October 10, 1980, **Federal Register** (45 FR 67340). You can also find later actions concerning the Louisiana program and program amendments at 30 CFR 918.10, 918.15, and 918.16.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Louisiana plan on November 10, 1986. You can find background information on the Louisiana plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the November 10, 1986, **Federal Register** (51 FR 40795). You can find later actions concerning the Louisiana plan and amendments to the plan at 30 CFR 918.25.

## II. Description of the Proposed Amendment

By letter dated March 4, 2010 (Administrative Record No. LA–369), Louisiana submitted a proposed amendment to its program and plan pursuant to SMCRA. Louisiana submitted the proposed amendment in response to a September 30, 2009, letter (Administrative Record No. LA–368) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c) and included a section related to its plan on its own initiative. Below is a summary of the changes proposed by Louisiana. The full text of the program and plan amendment is available for you to read at the locations listed above under **ADDRESSES**.

*A. Section 105. Definitions*

1. Louisiana proposes to add the definition for *Applicant/Violator System or AVS.*
2. Louisiana proposes to add the definition for *Control or controller.*
3. Louisiana proposes to delete the definition for *Knowingly.*
4. Louisiana proposes to add the definition for *Knowing or knowingly.*
5. Louisiana proposes to delete the definition for *Owned or Controlled and Owns or Controls.*
6. Louisiana proposes to add the definition for *Own, owner, or ownership.*
7. Louisiana proposes to revise the definition for *Transfer, Assignment or Sale of Rights.*
8. Louisiana proposes to add the definition for *Violation.*
9. Louisiana proposes to add the definition for *Willful or willfully.*
10. Louisiana proposes to delete the definition for *Willfully.*
11. Louisiana proposes to delete the definition for *Willful Violation.*

*B. Section 2913. Lands Eligible for Remining*

Louisiana proposes to add this section to closely follow 30 CFR 785.25.

*C. Section 3113. Review of Permit Application*

Louisiana proposes to revise this section to closely follow 30 CFR 773.8–773.13 by:

(1) Replacing paragraphs C, D, E, and F with new paragraphs C, D, E, and F, and by

(2) adding paragraphs G and H.

*D. Section 3114. Eligibility for Provisionally Issued Permits*

Louisiana proposes to add new paragraphs A, B, and C to closely follow 30 CFR 773.14.

*E. Section 3115. Criteria for Permit Approval or Denial*

Louisiana proposes to add paragraphs A. 17, A. 18, and A. 19 to closely follow 30 CFR 773.15.

*F. Section 3127. Improvidently Issued Permits: General Procedures*

Louisiana proposes to replace paragraphs A, B, and C, with new paragraphs A, B, C, D, and E to closely follow 30 CFR 733.21.

*G. Section 3129. Improvidently Issued Permits: Rescission Procedures*

Louisiana proposes to revise this section to closely follow 30 CFR 773.23 by:

(1) Revising the title by adding "Suspension or," and by

(2) revising paragraph A via several editorial changes.

*H. Section 3131. Challenges to Ownership or Control Listings and Findings*

Louisiana proposes to add this section to closely follow 30 CFR 773.25.

*I. Section 3133. Challenging an Ownership or Control Listing or Finding*

Louisiana proposes to add this section to closely follow 30 CFR 773.26.

*J. Section 3135. Burden of Proof for Ownership or Control Challenges*

Louisiana proposes to add this section to closely follow 30 CFR 773.27.

*K. Section 3137. Written Decision on Challenges to Ownership or Control Listings or Findings*

Louisiana proposes to add this section to closely follow 30 CFR 773.28.

*L. Chapter 35. Permit Reviews and Renewals; Transfers, Sale and Assignment of Rights Granted under Permits*

Louisiana proposes to revise this chapter title by adding additional language to closely follow 30 CFR 774 title.

*M. Section 3521. Post Permit Issuance Requirements for Regulatory Authorities and Other Actions Based on Ownership, Control, and Violation Information*

Louisiana proposes to add this section to closely follow 30 CFR 774.11.

*N. Section 3523. Post-Permit Issuance Information Requirements for Permittees*

Louisiana proposes to add this section to closely follow 30 CFR 774.12.

*O. Section 3517. Transfer, Assignment or Sale of Permit Rights: Obtaining Approval*

Louisiana proposes to amend paragraph C.1 to closely follow 30 CFR 774.17.

*P. Section 2304. Certifying and Updating Existing Permit Application Information*

Louisiana proposes to add this section to closely follow 30 CFR 778.9.

*Q. Section 2305. Identification of Interests*

Louisiana proposes to amend paragraphs A.1, A.2, A.3, and A.4 to closely follow 30 CFR 778.11.

*R. Section 2307. Compliance Information*

Louisiana proposes to amend paragraphs A.1 and A.3 to closely follow 30 CFR 778.14.

*S. Section 5414. Backfilling and Grading: Previously Mined Areas*

Louisiana proposed to add this section to closely follow 30 CFR 816.106.

*T. Section 6501. Cessation Orders*

Louisiana proposes to amend paragraph G to closely follow 30 CFR 843.11.

*U. Section 8509. Contractor Eligibility*

Louisiana proposed to add this section to closely follow 30 CFR 874.16.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Louisiana plan.

*Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*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.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on October 15, 2010. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

## List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 7, 2010.

**William Joseph,**

*Acting Regional Director, Mid-Continent Region.*

[FR Doc. 2010–24601 Filed 9–29–10; 8:45 am]

BILLING CODE 4310–05–P

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 944

**[SATS No. UT–047–FOR; Docket ID OSM–2010–0012]**

## Utah Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Utah proposes revisions to and additions of rules about Valid Existing Rights ("VER"). Utah intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Utah program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., *m.d.t.* November 1, 2010. If requested, we will hold a public hearing on the amendment on October 25, 2010. We will accept requests to speak until 4 p.m., m.d.t. on October 15, 2010.

**ADDRESSES:** You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2010–0012. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* James F. Fulton, Chief Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202.

For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *http://www.regulations.gov,* you may review copies of the Utah program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Denver Office.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202, (303) 293–5015, *jfulton@OSMRE.gov.*

John R. Baza, Director, Utah Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, Salt Lake City, UT 84116, (801) 538–5334, *johnbaza@utah.gov.*

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202 Telephone: (303) 293–5015. Internet: *jfulton@OSMRE.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Utah Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15, and 944.30.

## II. Description of the Proposed Amendment

By letter dated August 9, 2010, Utah sent us a proposed amendment to its program (Administrative Record No. UT–1224) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment in response to a February 1, 2008, letter (Administrative Record No. UT–1223) that we sent to Utah. The letter notified Utah that OSM's December 17, 2000, Valid Existing Rights rule changes had been upheld in court and the State should respond to our September 19, 2000, letter (Administrative Record No. UT–1149) sent in accordance with 30 CFR 732.17(c). That letter required Utah to submit amendments to ensure its program remains consistent with the Federal program. This amendment package is intended to address all required rule changes pertaining to Valid Existing Rights.

Specifically, Utah proposes to amend its administrative rules at R645–100–200 (Definitions); R645–103–224; R645–103–225; R645–103–230 through R645–103–240; R645–201–328; R645–201–342; R645–300–133; R645–301–115; and R645–301–411. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Utah program.

### *Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

### *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 in the electronic docket for this rulemaking at *http://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on October 15, 2010. If you are disabled and need reasonable

accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

## IV. Procedural Determinations

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

## List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 2010.

**Allen D. Klein,**

*Director, Western Region.*

[FR Doc. 2010–24599 Filed 9–29–10; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF THE TREASURY

## 31 CFR Part 103

**RIN 1506–AB01**

## Financial Crimes Enforcement Network; Cross-Border Electronic Transmittals of Funds

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN, a bureau of the Department of the Treasury (Treasury), to further its efforts against money laundering and terrorist financing, and is proposing to issue regulations that would require certain banks and money transmitters to report to FinCEN transmittal orders associated with certain cross-border electronic transmittals of funds (CBETFs). FinCEN is also proposing to require an annual filing with FinCEN by all banks of a list of taxpayer identification numbers of accountholders who transmitted or received a CBETF.

**DATES:** Written comments are welcome and must be received on or before December 29, 2010 [*See* the Compliance Date heading of the **SUPPLEMENTARY INFORMATION** for further dates.]

**ADDRESSES:** Those submitting comments are encouraged to do so *via* the Internet. Comments submitted *via* the Internet may be submitted at *http://www.regulations.gov/search/index.jsp* with the caption in the body of the text, "Attention: Cross-Border Electronic Transmittals of Funds." Comments may also be submitted by written mail to: Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention: Cross-Border Electronic Transmittals of Funds. Please submit your comments by one method only. All comments submitted in response to this notice of proposed rulemaking will become a matter of public record, therefore, you should submit only information that will be available publicly.

*Instructions:* Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must obtain in advance an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call). In general, FinCEN will make all comments publicly available by posting them on *http://www.regulations.gov/search/index.jsp.*

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949–2732 and select Option 3.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory Provisions

The Bank Secrecy Act (BSA) (Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332) authorizes the Secretary of the Treasury (Secretary) to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or counterintelligence matters to protect against international terrorism. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN. The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550) (Annunzio-Wylie). Annunzio-Wylie authorizes the Secretary and the Board of Governors of the Federal Reserve System (the Board) to jointly issue regulations requiring insured banks to maintain records of domestic funds transfers.[1] In addition, Annunzio-Wylie authorizes the Secretary and the Board to jointly issue regulations requiring insured banks and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.[2] Annunzio-Wylie requires the Secretary and the Board, in issuing regulations for international funds transfers and transmittals of funds, to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of the payments system.[3]

The Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) amended the BSA to require the Secretary to prescribe regulations "requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing."

## II. Background Information

*A. Current Regulations Regarding Funds Transfers*

On January 3, 1995, FinCEN and the Board jointly issued a rule that requires

[1] 12 U.S.C. 1829b(b)(2) (2006). Treasury has independent authority to issue regulations requiring nonbank financial institutions to maintain records of domestic transmittals of funds.

[2] 12 U.S.C. 1829b(b)(3) (2006).

[3] *Id.*

banks and nonbank financial institutions to collect and retain information on certain funds transfers and transmittals of funds (Funds Transfer Rule).[4] At the same time, FinCEN issued the "travel rule," which requires banks and nonbank financial institutions to include certain information on funds transfers and transmittals of funds to other banks or nonbank financial institutions.[5]

The recordkeeping and travel rules provide uniform recordkeeping and transmittal requirements for financial institutions and are intended to help law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

Under the "travel rule," a financial institution acting as the transmittor's financial institution must obtain and include in the transmittal order the following information on transmittals of funds of $3,000 or more: (a) Name and, if the payment is ordered from an account, the account number of the transmittor; (b) the address of the transmittor; (c) the amount of the transmittal order; (d) the execution date of the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) either the name and address or the numerical identifier of the transmittor's financial institution. A financial institution acting as an intermediary financial institution must include in its respective transmittal order the same data points listed above, if received from the sender.[6]

Furthermore, under the recordkeeping rule, of the information listed above, a financial institution must retain the following data points for transmittals of funds of $3,000 or more:

- If acting as a transmittor's financial institution, either the original, microfilmed, copied, or electronic record of the information received, or the following data points: (a) The name and address of the transmittor; (b) the amount of the transmittal order; (c) the execution date of the transmittal order; (d) any payment instructions received from the transmittor with the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) if the transmittor's financial institution is a nonbank financial institution, any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.[7]
- If acting as an intermediary financial institution, or a recipient financial institution, either the original, microfilmed, copied, or electronic record of the received transmittal order.[8]

The recordkeeping rule requires that the data be retrievable and available upon request to FinCEN, to law enforcement, and to regulators to whom FinCEN has delegated BSA compliance examination authority. A broad range of government agencies regularly compel under their respective authorities (*e.g.,* subpoena or warrant) financial institutions to provide information maintained pursuant to the recordkeeping rule, albeit in ad hoc and sometimes inconsistent and overlapping ways, depending upon the agency or investigator.

*B. FATF Special Recommendation VII*

Shortly after the attacks of September 11, 2001, the Financial Action Task Force (the FATF)[9] adopted several special recommendations designed to stem the financing of terrorism. Special Recommendation VII (SR VII) was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and detecting such misuse when it occurs.[10]

The FATF in adopting SR VII found that, "due to the potential terrorist financing threat posed by small wire transfers, countries should aim for the ability to trace all wire transfers and should minimize thresholds taking into account the risk of driving transactions underground." The interpretive note to Special Recommendation VII goes on to say that countries may adopt a *de minimis* standard of $1,000, below which countries could exempt institutions from reporting or maintaining records.

*C. 9/11 Commission and Section 6302*

On November 27, 2002, President Bush signed legislation creating the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) (Pub. L. 107–306), which was directed to investigate the "facts and circumstances relating to the terrorist attacks of September 11, 2001," including those involving intelligence agencies, law enforcement agencies, diplomacy, immigration issues and border control, the flow of assets to terrorist organizations, and the role of congressional oversight and resource allocation.[11] To fulfill its mandate, the 9/11 Commission reviewed over 2.5 million pages of documents, conducted interviews of some 1,200 individuals in ten countries, and held 19 days of public hearings featuring testimony from 160 witnesses.

In conducting its review, the 9/11 Commission focused a significant amount of inquiry into the financial transactions undertaken by the 19 hijackers and their associates. The Commission estimated that $400,000–$500,000 was used to support the execution of the attacks of September 11, 2001.[12] The Commission noted that the transactions were not inherently suspicious and the low volumes of the transactions would not have raised alarm at the financial institutions processing the transactions. The Commission also noted that no suspicious activity reports (SARs) were filed on these transactions prior to the attacks of September 11, 2001.[13] The Commission determined that the current reporting and recordkeeping requirements contained in the BSA were insufficient to detect terrorist financing because of the inability of financial institutions to use typical money laundering typologies to detect terrorist financing transactions.[14]

The 9/11 Commission, through its final report and the August 23, 2004 testimony of its Vice-Chairman,[15] noted that vigorous efforts to track terrorist financing must remain front and center

[4] 31 CFR 103.33(e) (2009) (Recordkeeping requirements for banks); 31 CFR 103.33(f) (2009) (Recordkeeping requirements for nonbank financial institutions).

[5] 31 CFR 103.33(g) (2009).

[6] 31 CFR 103.33(g)(1)–(2) (2009).

[7] 31 CFR 103.33(e)(1)(i), (f)(1)(i) (2009).

[8] 31 CFR 103.33(e)(1)(ii)–(iii), (f)(1)(ii)–(iii) (2009).

[9] The FATF is a 36-member inter-governmental policy-making body with the purpose of establishing international standards, and developing and promoting policies, both at national and international levels, to combat money laundering and terrorist financing. *See generally http://www.fatf-gafi.org.* The United States is a member of the FATF.

[10] *Revised Interpretative Note to Special Recommendation VII: Wire Transfers,* FATF (Feb. 29, 2008), *http://www.fatf-gafi.org/dataoecd/16/34/40268416.pdf.*

[11] *The Final Report of the National Commission on Terrorist Attacks Upon the United States* (9/11 Commission Report) (July 22, 2004), *http://www.9-11commission.gov/report/911Report.pdf.*

[12] *Id.* at 169.

[13] *Id.* at 528 n. 116.

[14] *See* National Commission on Terrorist Attacks Upon the United States, *Terrorist Financing Staff Monograph,* 54–58 (2004).

[15] *9/11 Commission* at 382 (Testimony provided by Mr. Lee Hamilton, Vice-Chairman).

in U.S. counterterrorism efforts. The Commission also found that "terrorists have shown considerable creativity in their methods for moving money." [16] Expanding upon this point in his August 23, 2004 testimony, 9/11 Commission Vice-Chairman Hamilton stated: "While we have spent significant resources examining the ways al Qaeda raised and moved money, we are under no illusions that the next attack will use similar methods. As the government has moved to close financial vulnerabilities and loopholes, al Qaeda adapts. We must continually examine our system for loopholes that al Qaeda can exploit, and close them as they are uncovered. This will require constant efforts on the part of this Committee, working with the financial industry, their regulators and the law enforcement and intelligence community."

In response to the findings of the 9/11 Commission, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA),[17] which was signed into law on December 17, 2004, by President Bush. IRTPA encourages the sharing of information across intelligence agencies, protects the civil liberties and privacy of individuals, and provides processes through which intelligence agencies can obtain additional intelligence necessary to protect the United States and its citizens. Specifically, section 6302, codified under 31 U.S.C. 5318(n), requires that the Secretary study the feasibility of "requiring such financial institutions as the Secretary determines to be appropriate to report to [FinCEN] certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing." The law further requires that the regulations be prescribed in final form "before the end of the 3-year period beginning on the date of enactment of the [Act]." [18]

Although no particular provision of IRTPA on its own would have prevented the attacks of September 11, 2001, together these provisions are designed to close the loop-holes that would allow future attacks of a similar design. For example, of the $400,000 to $500,000 used to fund the September 11, 2001 attacks, an estimated $130,000 was received by CBETFs sent from supporters overseas. Several of those transactions were above the $3000 reporting threshold and involved a transmittor or recipient who was either an active target of an investigation at the time the transfer was made, or could have been recognized as a person of interest under the new IRTPA intelligence sharing provisions.

*D. Feasibility of a Cross-Border Electronic Funds Transfer Reporting System Under the Bank Secrecy Act*

Section 6302 of IRTPA requires that, prior to prescribing the contemplated regulations, the Secretary submit a report to Congress that: (a) Identified the information in CBETFs that might be found in particular cases to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing, and outlined the criteria to be used by the Secretary to select the situations in which reporting under this subsection may be required; (b) outlined the appropriate form, manner, content, and frequency of filing of the reports that might be required under such regulations; (c) identified the technology necessary for FinCEN to receive, keep, exploit, protect the security of, and disseminate information from reports of CBETFs to law enforcement and other entities engaged in efforts against money laundering and terrorist financing; and (d) discussed the information security protections required by the exercise of the Secretary's authority under such subsection. In January 2007, the Secretary submitted the feasibility report required under Section 6302 (the "Feasibility Report") to the Congress.[19]

FinCEN's development of the Feasibility Report included multiple approaches. An internal working group of employees drawn from all operational divisions of FinCEN coordinated efforts within the organization, managed contact with external stakeholders, hosted small workshops with law enforcement representatives, visited relevant U.S. and foreign government and private sector organizations, surveyed industry and governmental organizations, solicited input from private sector technology experts,[20] and researched extensively. In addition, FinCEN formed a subcommittee of the Bank Secrecy Act Advisory Group (BSAAG) [21] including representatives from across the spectrum of U.S. financial services industry members, and governmental agencies. The subcommittee did not author or review this report, but provided expert assistance in the identification and analysis of relevant issues, recommendations about the focus of the report, and important contacts within the U.S. financial services industry. FinCEN also drew upon the experience of the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Financial Transactions Reports and Analysis Centre (FINTRAC), FinCEN's counterpart financial intelligence units in Australia and Canada, both of which already collect cross border funds transfer information.[22]

The Feasibility Report produced a general, high-level assessment of:

- What information in a funds transfer is reasonably necessary to collect to conduct efforts to identify money laundering and terrorist financing, and the situations in which reporting may be required; [23]
- The value of such information in fulfilling FinCEN's counter-terrorist financing and anti-money laundering missions; [24]
- The form that any such reporting would take and the potential costs any such reporting requirement would impose on financial institutions;[25]
- The feasibility of FinCEN receiving the reports and warehousing the data, and the resources (technical and human) that would be needed to implement the reporting requirement; [26] and,
- The concerns relating to information security and privacy issues surrounding the reports collected.[27]

The Feasibility Report also identified a number of issues that policy makers were required to consider at any stage of the implementation of the reporting requirement, such as whether the

[16] *Id.* at 383.

[17] Public Law 108–458, 118 Stat. 3638 (2004).

[18] 31 U.S.C. 5318(n) (2006).

[19] Feasibility of a Cross-Border Electronic Funds Transfer Reporting System under the Bank Secrecy Act, FinCEN Report to Congress dated January 17, 2007, available at *http://www.fincen.gov/news_room/rp/files/cross_border.html.*

[20] *See Feasibility Report* App. G. FinCEN Industry Survey (Notice and Request for Comment, 71 Fed. Reg. 14289) and industry responses can be found in Appendix G of the Feasibility Report.

[21] The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from Federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to the requirements of the Bank Secrecy Act, 31 CFR 103 *et seq.* or Section 6050I of the Internal Revenue Code of 1986. The BSAAG is the means by which the Secretary receives advice on the operations of the Bank Secrecy Act. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion. Ultimately, the BSAAG will make policy recommendations to the Secretary on issues considered. BSAAG membership is open to financial institutions and trade groups.

[22] *See Feasibility Report,* at Section 3.0—Overview.

[23] *See Id.* at Section 4.0.

[24] *See Id.* at Section 3.0.

[25] *See Id.* at Section 5.0.

[26] *See Id.* at Section 6.0.

[27] *See Id.* at Section 7.0.

potential value of requiring financial institutions to report information about CBETFs outweighs the potential costs of building the technology, the costs to financial institutions of implementing compliance processes, and the social costs related to privacy and security of the information.

A significant concern for the centralization of information on CBETFs is the cost, both to U.S. financial institutions and to the government, of implementing the reporting requirement and building the technological systems to manage and support the reporting. Related to these concerns are questions about the government's ability to use such data effectively. Another concern is the potential effect that any reporting requirement could have on dollar-based payment systems such as: (1) A shift away from the U.S. dollar toward other currencies (*i.e.,* the Euro) as the basis for international financial transactions; (2) the creation of mechanisms and facilities for clearing dollar-based transactions outside the United States; and (3) interference with the operation of the central payments systems. The United States has economic and national security interests in the continued viability and vitality of dollar-based payments and these possible outcomes must inform and guide the rulemaking process.

These issues were also pointed out by commenters in response to FinCEN's March 2006 survey [28] regarding the reporting of CBETFs. In its response to FinCEN's March 2006 survey, the American Bankers Association "proposes for discussion whether piloting a single channel specific reporting requirement and then evaluating what has been achieved from a law enforcement perspective for what cost from an economic and privacy basis, isn't a preferred alternative to attempting to implement a comprehensive definition-and-exception driven cross-border, cross-system regime." [29] The Feasibility Report concluded that there was some value to a phased implementation of a CBETF reporting system. Building on the ABA's suggestion, the Feasibility Report proposed an incremental development and implementation process. The pre-acquisition phase of the process involved three parallel efforts: user requirement analysis; institutional cost analysis; and value analysis. All three of these efforts provided vital information required to develop detailed requirements for the proposed regulation and technological system. If the concerns noted above or any as-yet unidentified issues would impede the project or cause it to be infeasible, such incremental approach provides the opportunity to alter or halt the effort before FinCEN or the U.S. financial services industry incurs significant costs.

Based on extensive fieldwork and analysis of information and data, the Feasibility Report concluded that:

- The information that FinCEN is seeking to be reported is reasonably necessary to support the Secretary's efforts to combat money laundering and terrorist financing. Specifically, the inability to conduct proactive analysis on the information currently recorded by banks hinders law enforcement's ability to identify significant relationships to active targets.
- The basic information already obtained and maintained by U.S. financial institutions pursuant to the Funds Transfer Rule, including the $3,000 recordkeeping threshold, provides sufficient basis for meaningful data analysis.[30]
- Any threshold should apply only to discrete transactions and not to the aggregated total value of multiple transactions conducted very closely to one another in time.
- Any reporting requirement should apply only to those U.S. institutions that exchange payment instructions directly with foreign institutions. FinCEN determined that a focused approach on those institutions that act as intermediaries would restrict the reporting requirement to those institutions with the systems able to process these reports and limit the implementation costs on the industry as a whole.
- Any reporting requirement should permit institutions to report either through a format prescribed by FinCEN, through the submission of certain pre-existing payment messages that contain the required data, or through an interactive online form for institutions that submit a low volume of such reports. The filing system should accommodate automated daily filing, periodic filing via manual upload, and discrete single report filing on an as-needed basis.[31]
- The implementation of the reporting requirement described in section 6302 would be a staged process, requiring FinCEN to review and update the requirements as necessary.

As to the determination of what type of cross-border movements of funds to include in the first step of the staged process advocated by the Feasibility Report, the definition of "cross-border electronic transmittal of funds" lies at the heart of a successful implementation of the reporting requirement. The nature of the electronic funds transfer process as it has evolved in the United States poses specific difficulties in creating a definition that at once captures all of the nuances of the payment systems and avoids needless complexity. Section 6302 contemplates a reporting requirement that is coextensive with the scope of the BSA funds transfer rule (31 CFR § 103.33). Accordingly, for the purposes of the first step of a phased approach to the cross-border electronic transmittal of funds reporting rulemaking process (the CBETF First Stage), the Feasibility Report focused on electronic "transmittals of funds" as defined in 31 CFR 103.11(jj), and did not address any debit card type of transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).[32] Furthermore, within the current regulatory definition of "transmittals of funds," the Feasibility Report advised concentrating for the CBETF First Stage on those transactions involving depository institutions that exchange transmittal orders through non-proprietary messaging systems, and all money transmitters, and where the U.S. institution sends or receives a transmittal order directing the transfer of funds to or from an account domiciled outside the U.S.. Refining an appropriate regulatory definition of what transactions fall within the new reporting requirement will implicate a number of concerns that were identified by the Feasibility Report and should be further addressed during future studies.

As further preparation for a study of the implications and benefits of implementing the first step of CBETF reporting, the Feasibility Report recommended the following:

- Engaging with partners in the law enforcement, regulatory and intelligence communities to develop detailed user requirements to meet the most central needs of those who access BSA data.
- Engaging in a detailed discussion with representatives of the U.S. financial services industry, along with representatives of the major payment systems and members of the Canadian

[28] 71 FR 14289 (March 21, 2006).

[29] *Feasibility Report,* App. G at 119.

[30] As discussed below, through understanding the processing of transactions by potential third-party reporters, FinCEN removed the reporting threshold for banks and adjusted the reporting threshold for money transmitters to $1,000.

[31] *See Feasibility Report,* at Section 1.0—Executive Summary.

[32] *See Feasibility Report,* at Section 8.0—Conclusions and Recommendations.

and Australian financial services industries. These discussions would focus on quantifying the cost the proposed requirement would impose on reporting institutions and the potential impact on the day-to-day operation of the payment systems.

• Engaging outside support to obtain and analyze a sizable sample of cross-border funds transfer data and exploring means of extracting value from the data, and identifying means to effectively and intelligently use the data to advance efforts to combat money laundering and illicit finance.

## III. Implications and Benefits of Cross-Border Funds Transmittal Reporting

Based on the high-level assessment and recommendations of the Feasibility Report, FinCEN conducted an in-depth Implications and Benefits Study of Cross-Border Funds Transmittal Reporting (the Implications and Benefits Study, or simply the Study) [33] addressing the proposed first step of implementation of CBETF reporting. Significant input into the survey of banks and MSBs that supported the Study [34] was provided by BSAAG. The Study was also supported by interviews with law enforcement and regulatory agencies, information from foreign financial intelligence units,[35] and interviews and surveys of financial institutions.[36] The Study analyzed in detail the implications of CBETF reporting on the financial sector and the benefits to law enforcement of having access to CBETF data to determine the known or potential uses of CBETF data, the implications of reporting on the financial industry, and the technical requirements for accepting reports.

### *A. The Known and Potential Uses of CBETF Data*

As illicit actors adapt to an increasingly transparent system, they must make additional and more complicated efforts to conceal their behavior and resort to slower, riskier, more expensive, and more cumbersome methods of raising and moving money. Every additional step or layer of complexity illicit actors must add to their schemes provides new opportunities for detection, and an increased risk to those who would abuse the financial system. The value of transparency is twofold—it deters those who would use the financial system for illicit activity and promotes the detection of those who do so. As governments throughout the world strive to promote transparency in the financial system, the shortage of tools for detecting schemes that rely on these modern technological payment systems creates a potential blind spot in our efforts to protect the homeland and to combat financial crime.

Traditionally, experts describe three stages of money laundering:

• Placement—introducing cash into the financial system or into legitimate commerce;

• Layering—separating the money from its criminal origins by passing it through several financial transactions;

• Integration—aggregating the funds with legitimately obtained money or providing a plausible explanation for its ownership.

The BSA reporting regime deals well with the placement stage. Some financial institutions file Currency Transaction Reports (CTRs) when a person conducts certain types of large currency transactions, others file Forms 8300 for large amounts of cash or monetary instruments received in a trade or business, and travelers entering the U.S. with more than $10,000 in currency must complete Currency and Monetary Instrument Reports (CMIRs). However, while these three reports address placement, due to their focus on currency-based transactions, they do not provide insights into the rapidly developing electronic aspects of financial transactions. These reports identify the physical movement of currency into and within the U.S. financial system. Electronic funds transfers, by contrast, represent an entirely different mode for the movement of money.

The SAR provides some insight into the layering and integration stages by casting a light on transactions of any amount and type that financial institutions suspect are related to illicit activity or that are suspicious in that they do not appear to fit a known pattern of legitimate business activity. FinCEN has found that electronic funds transfers feature prominently in the layering stage of money laundering activity, which is not addressed in any of the reports currently filed if the transactions do not raise suspicions within the financial institution. Complex electronic funds transfer schemes can deliberately obscure the audit trail and disguise the source and the destination of funds involved in money laundering and illicit finance.[37]

In addition to addressing money laundering, the BSA requires reporting that has a high degree of usefulness in tax proceedings, and provides the Secretary with additional tools to prevent tax evasion. Although some models of tax evasion do follow the placement, layering, and integration models of money laundering, many do not because the proceeds are not illicit until after the money has been transferred overseas. The information proposed to be reported in this rulemaking will assist the government in preventing tax evasion and reducing the tax gap.

A reporting requirement would create a centralized database of this very basic CBETF information in a single format and link it with other highly relevant financial intelligence. Furthermore, this very basic information about such transfers provides both a source of information that can provide new leads standing alone and can potentially enhance the use and utility of current BSA data collected by FinCEN when combined with those other data sources. Currently, the government has no ability on a national scale to systematically and proactively target money laundering, terrorist financing, tax evasion, and other financial crimes that are being conducted through wire transfers. By creating a reporting structure, the government will be able to query the data by geography and transaction value, uncovering linkages such as many people sending money to one person outside the United States or vice versa. These types of linkages play a critical role in the ability of the government to bring cases that it is not able to in today's reporting environment. Among the ways in which FinCEN and its partners can exploit this data are individual searches for known subjects, data matching with other sources of lead information, and link analysis with other financial, law enforcement, and intelligence reporting.[38]

The study team worked with law enforcement and regulatory agencies to identify how CBETF data would be usable for those identified purposes to demonstrate the "reasonable necessity"

[33] *See generally Implications and Benefits of Cross-Border Funds Transmittal Reporting,* FinCEN Analytical Report, FinCEN (Sept. 27, 2010), *http://www.fincen.gov/news_room/rp/rulings/pdf/ImplicationsAndBenefitsOfCBFTR.pdf* [hereinafter *Implications and Benefits Study*].

[34] *See Implications and Benefits Study,* at App. C.

[35] FinCEN continued drawing upon the experience of AUSTRAC and FINTRAC, FinCEN's counterpart financial intelligence units in Australia and Canada, both of which already collect cross border funds transfer information. The extensive and detailed information contributed to this effort by AUSTRAC and FINTRAC is contained in Appendix B (Financial Intelligence Unit Letters of Support) to the Study.

[36] *See* Implications and Benefits Study, at Section 1.0—Executive Summary.

[37] *See Feasibility Report,* at Section 3.0—Overview.

[38] *See Feasibility Report,* at Section 4.0—Data Reasonably Necessary to Identify Illicit Finance, and also Appendix F (Potential Analytical Value of Cross-Border Funds Transfer Report).

of collecting CBETF data. The results of that analysis are summarized in the Implications and Benefits Study as follows:

• Section 4.2, Business Use Case Process, describes the study team's approach to developing the business use cases which illustrate potential uses of the data.

• Section 4.3, Categories of Analysis, explains how the use cases were categorized (*e.g.,* reactive, proactive).

• Section 4.4, Domestic Business Use Case Summary, summarizes the use cases that the study team developed.

• Section 4.5, Use of CBETF Data by International Financial Intelligence Units (FIUs), summarizes the use of CBETF data by FinCEN's counterpart FIUs in foreign countries.

• Section 4.6, Data Usability, Quality, and Prototyping, presents the results of the study team's analysis to validate the usability of the data with CBETF data samples provided by the financial industry.[39]

From its interviews with law enforcement and regulatory agencies, the study team developed primary impact areas, also known as "business use cases," and identified 24 scenarios in which thirteen different Federal and State law enforcement and regulatory agencies, in addition to FinCEN, would benefit from access to CBETF data based upon their investigative mission, current use of BSA data, or existing utilization of CBETF data obtained from financial institutions in the primary impact areas of terrorist financing, money laundering, tax evasion, human and drug smuggling, and regulatory oversight.[40] The results of this work demonstrate how access to CBETF data would greatly improve both the efficiency of these agencies' current investigations and their ability to identify new investigative targets as well as be highly valuable in the U.S. Government's efforts to counter these associated crimes. The following examples are illustrative of the representative business use cases that were developed:

• To support the FBI's efforts in tracking and freezing terrorist assets, the FBI's Terrorism Financing Operations Section (TFOS) analysts conduct sophisticated analysis, cross-referencing multiple disparate data sources, to identify financial transactions indicative of terrorist financing. The availability of CBETF data would significantly improve the efficiency of FBI analysts investigating targets suspected of engaging in terrorist financing by tracing the flow of proceeds to entities associated with terrorist organizations. Such analysis would play a critical role in the ability of the FBI to detect, disrupt, and dismantle terrorist financial support networks.

• The Internal Revenue Service's Abusive Tax Scheme Program, Offshore Compliance Initiatives Group, conducts sophisticated analysis to proactively identify taxpayers using offshore accounts and entities to evade U.S. income tax. The availability of CBETF data would significantly enhance the group's ability to identify potential evasion by identified taxpayers through the analysis of funds transmittals from the United States to offshore accounts.

• United States Immigration and Customs Enforcement (ICE) is establishing Trade Transparency Units (TTUs) with critical partner jurisdictions worldwide, in its effort to identify and eliminate customs fraud and trade-based money laundering. These TTUs have enhanced international cooperative investigative efforts to combat activities designed to exploit vulnerabilities in the U.S. financial and trade systems. As formal international financial systems become more highly regulated and transparent, criminal entities have resorted to alternative means of laundering illicit proceeds. Fraudulent practices in international commerce allow criminals to launder illicit funds while avoiding taxes, tariffs, and customs duties. To enhance combating this threat, ICE TTUs would conduct proactive analysis of CBETF data in conjunction with existing U.S. and foreign trade data to detect money laundering cases involving the international movement of over- or under-valued goods.

Using FinCEN's authority under the recordkeeping rule, FinCEN received a limited sample of CBETF data from several large financial institutions.[41] Based on the business use cases, the study group performed an analysis of the sample data. This analysis yielded several findings:

• CBETF data fields, under current recordkeeping requirements, are sufficient to conduct the type of analyses illustrated in the business use cases, although additional fields could add value.

• Upon implementation, CBETF data would immediately be available to conduct the type of analyses illustrated in the business use cases.

• Having CBETF data for transactions under $3,000 would significantly benefit the type of analysis illustrated in the business use cases.

• The quality of the data in the sample was found to be acceptable to conduct the type of analyses illustrated in the business use cases.

A comparison of a three month limited sample of CBETF data to FinCEN cases revealed a substantial number of instances where CBETF transactions were matched with existing cases and/or pointed to additional investigative leads.[42] Based on the findings from the Study, FinCEN has determined that the collection of CBETF data would be "reasonably necessary" as set forth in Section 6302. This determination is based on the value FinCEN believes this information will have in our efforts to stem money laundering, tax evasion, and terrorist financing. FinCEN believes that a reporting requirement provides a significant advantage to the government's efforts in these areas over the current recordkeeping requirement at a reasonable cost. These advantages are based on the central premise that proactive targeting is more effective with access to a larger dataset.

FinCEN's determination that a reporting requirement is reasonably necessary also rests on the tenet that the government has greater access to information than any individual institution. For example, if a bank or money transmitter has a customer who routinely transfers funds to a foreign country in amounts that, considered alone, would not appear significant, this activity may never be reviewed. By instituting a reporting requirement, the government will be able to observe whether this customer is conducting similar transactions at many other institutions and, if so, can see that the person may be avoiding detection by spreading their transactions across many market participants. Additionally, the government has access to more information than banks and money transmitters. While the government cannot provide the private sector access to trade and tax databases, for example, matching information in these databases with cross-border wire records will further prosecutions in these areas, potentially leading to recouping revenue that may otherwise go uncollected. Lastly, the government will always have access to classified information that cannot be shared with the private sector,

[39] *See Implications and Benefits Study,* at Section 4.0—Benefits to Law Enforcement and Regulatory Agencies.

[40] *See Implications and Benefits Study,* at Section 1.0—Executive Summary.

[41] *See* 31 CFR 103.33(e) (2009) (Office of Management and Budget (OMB) Control Number 1505–0063).

[42] *See Implications and Benefits Study,* at Section 1.0—Executive Summary.

and the ability to run queries based on this information could have a significant impact on mapping a criminal or terrorist support network.

*B. Implications of CBETF Reporting to the Financial Industry*

To solicit input from the financial industry on the effects of a potential CBETF reporting requirement, FinCEN contracted with an experienced survey contractor to gather qualitative information and quantitative data from sectors of the industry that could be affected by the reporting requirement.[43] On behalf of FinCEN, the contractor distributed the CBETF survey to 247 depository institutions and 32 money transmitters that conduct CBETF transactions on behalf of their own customers or that act as a correspondent bank for other financial institutions. Acting on the recommendations of the Feasibility Report:

• "Depository institutions" were defined as depository institution members of the Society of Worldwide Interbank Financial Telecommunications (SWIFT) user group located or doing business in the United States, including offices or agents of non-U.S. chartered depository institutions.

• "Money transmitters" were defined as non-bank financial institutions that were registered with FinCEN as a money transmitter on November 10, 2007 and reported at least 20 branch locations in the United States.[44]

Out of the group of financial institutions surveyed, 81 provided responses to FinCEN on the implications and benefits of a potential CBETF reporting requirement based upon the transactions currently subject to FinCEN's recordkeeping requirement, both at the $3,000 and zero threshold. Key findings from the survey of financial industry entities include the following:

• Respondents expected an increase in the cost of complying with the new reporting requirement as compared to costs under the current process of complying with subpoenas or other legal demands under current recordkeeping requirements.

• Respondents suggested many alternative reporting methods and implementation approaches to reduce the potential costs of a reporting requirement, such as reporting CBETF data weekly or monthly, having FinCEN obtain CBETF information directly from a financial industry entity that currently services the majority of depository institutions' international funds transmittals such as SWIFT or some other centralized repository, either expanding or further limiting which CBETF transactions would need to be reported, or accepting the data in the existing format used by financial institutions.

• Respondents consider customer privacy a significant concern.

• Respondents noted that the security and uses of CBETF data are also a significant concern for financial institutions, especially the perceived ease of accessibility of the data to law enforcement.

• Respondents felt that outreach and guidance both before and after the implementation of a reporting requirement would be critical to its effective implementation; this would include providing clear and specific regulations, detailed technical requirements, published guidance and frequently asked questions, sufficient implementation time, and coordinated testing opportunities.[45]

Survey respondents were given an opportunity to provide additional input on several topics related to a potential CBETF reporting requirement. The study team identified several areas of importance to financial institutions. One of the most significant suggestions received from respondents was to have FinCEN obtain CBETF information directly from SWIFT or some other centralized repository.[46]

Based on financial industry survey responses and interviews with financial institutions and law enforcement agencies, the study team developed the following two potential operating models, documented the uses and usability of the data, developed a rough order of magnitude (ROM) cost for each model, and documented how to apply FinCEN's Information Technology (IT) Modernization Program security and privacy capabilities to CBETF data:

• Standard Reporting Model: Each individual financial industry entity implements its own reporting system and reports CBETF information to FinCEN.

• Hybrid Reporting Model: SWIFT reports CBETF information to FinCEN at the direction of its financial institution members. Large Money Services Businesses (MSBs) will report to FinCEN on their own behalf and small/medium MSBs will use FinCEN-provided e-Filing data entry capabilities rather than implementing their own solutions.[47]

In both of the potential operating models, the study team sought to reduce the effort of financial institutions and increase investigative efficiency of law enforcement by:

• Reducing the number and scope of investigative subpoenas and requests for clarifying information sent from law enforcement agencies to financial institutions.

• Reducing financial institution and law enforcement agency human resources required to execute business processes.

• Increasing the use of technology to automate and standardize the transfer of data between financial institutions, FinCEN, and law enforcement agencies.

• Employing consistent security and privacy controls between the financial institutions, FinCEN, and law enforcement agencies.

• Reducing the number of overlapping requests and increasing the use of data obtained from financial institutions.

Based on the results of their ROM cost analysis, the study team developed the following conclusions:

• The Hybrid Reporting Model significantly reduces the cost of a potential reporting requirement for depository institutions because the depository institutions would only incur annual reporting charges from SWIFT.

• The Hybrid Reporting Model significantly reduces the cost of a potential reporting requirement to MSBs, in aggregate, because the one-time and recurring annual costs of small/medium size MSBs using FinCEN's e-Filing data entry capabilities would be significantly less than the one-time and recurring annual costs of implementing/operating individual solutions. The costs to large MSBs would be the same under both models.

• The Hybrid Reporting Model slightly increases the costs of supporting a potential reporting requirement for FinCEN because of the higher implementation and maintenance/operation costs for the interface to SWIFT and the e-Filing CBETF data entry capabilities for small/medium size MSBs.

• Under both the Standard and Hybrid Reporting Models the cost to law enforcement agencies is the same.[48]

Additionally, FinCEN estimates that fewer than 300 banks and fewer than

[43] *See Implications and Benefits Study,* App. C. at 28 (OMB Control Number 1505–0191).

[44] *See Implications and Benefits Study,* at Section 5.0—Implications to the Financial Industry.

[45] *See Implications and Benefits Study,* at Section 1.0—Executive Summary.

[46] *See Implications and Benefits Study,* at Section 5.0—Implications to the Financial Industry.

[47] *See Implications and Benefits Study,* at Section 1.0—Executive Summary.

[48] *See Implications and Benefits Study,* at Section 1.0—Executive Summary.

800 money transmitters will qualify as reporting financial institutions under the proposal to report individual CBETFs. For a full discussion of the anticipated financial implications associated with this proposal, *see* sections V through VII below.

## IV. Proposed CBETF Reporting Requirements

Based on extensive fieldwork and analysis of information and data provided by the Feasibility Report and the Implications and Benefits Study, FinCEN determined that:

- The basic information already obtained and maintained by U.S. financial institutions pursuant to the Funds Transfer Rule is sufficient to support the Secretary's efforts against money laundering and terrorist financing. Any thresholds should apply only to discrete transactions and not to the aggregated total value of multiple transactions conducted very closely to one another in time.[49]
- Any reporting requirement should apply only to those U.S. institutions that exchange payment instructions directly with foreign institutions. FinCEN determined that a focused approach on those institutions that act as intermediaries as well as originating banks and beneficiary banks would restrict the reporting requirement to those institutions with the systems able to process these reports and limit the implementation costs on the industry as a whole.
- Any reporting requirement should permit institutions to report either through a format prescribed by FinCEN, through the submission of certain pre-existing payment messages that contain the required data, or through an interactive online form for institutions that submit a low volume of such reports. The filing system should accommodate automated daily filing, periodic filing via manual upload, and discrete single report filing on an as-needed basis.[50]
- The implementation of the reporting requirement described in section 6302 would be a staged process, requiring FinCEN to review and update the requirements as necessary.
- The information that FinCEN is seeking to be reported is reasonably necessary to support the Secretary's efforts to combat money laundering and terrorist financing. Specifically, the inability to conduct proactive analysis on the information currently recorded by banks hinders law enforcement's ability to identify significant relationships to active targets.

### *A. General Scope of Proposed Cross-Border Electronic Transmittal of Funds Report*

Based on the result of these efforts, and paying close attention to the above referenced concerns, FinCEN has developed the proposed rule as the initial implementation of the IRTPA. From information gathered during this stage, FinCEN will determine the need for future reporting requirements, and will formulate an improved development plan that incorporates future milestones and permits pilot testing of different aspects of the evolving reporting system. This incremental development approach will enable FinCEN to build the system in manageable stages and to test the system's functionality at each stage before moving on to the next.

For the CBETF First Stage, FinCEN proposes:

- To limit the scope of the subject transactions to those defined as "transmittals of funds" under the current regulation (31 CFR 103.11(jj)).
- To further reduce the scope of the reporting requirement to those transactions involving (a) depository institutions that exchange transmittal orders through non-proprietary messaging systems, and (b) all money transmitters; and where the U.S. institution sends or receives a transmittal order directing the transfer of funds to or from an account domiciled outside the United States, FinCEN is proposing only to require reporting by those two types of financial institutions, because they carry out the great majority of CBETFs. FinCEN is proposing to require banks and money transmitters to report these transfers on a first in/last out basis. Hence, an institution will be required to report transfers to FinCEN only if it is the last U.S. institution to process a transaction prior to the transaction crossing the border or if it is the first U.S. institution to process the transaction received from a foreign financial institution.
- Finally, to adopt the Hybrid Reporting Model, which would provide for (i) some third-party "centralized repository" (such as SWIFT)[51] to report CBFT information to FinCEN at the direction of its financial institution members; (ii) large MSBs to report to FinCEN on their own behalf; and (iii) small/medium MSBs to employ FinCEN-provided e-Filing data entry capabilities, rather than implementing their own solutions.[52]

In proposing a reporting requirement, FinCEN is striving to create the most efficient reporting regime that still achieves the overarching goal of providing the information that is necessary to law enforcement. In addition, FinCEN is trying to avoid requiring large changes to the business systems of the funds transmittal industry in order to implement this reporting regime. As such, FinCEN is proposing that banks report on all CBETFs and that money transmitters report on all CBETFs at or above $1,000. During FinCEN's studies of the proposed reporting entities, FinCEN determined that banks, by and large, keep records for funds transfers regardless of dollar value. FinCEN was aware that, with respect to recordkeeping, many banks would prefer to not have to segregate transactions at certain thresholds due to increased costs.[53] Hence, if required to report on funds transfers, many institutions will find reporting on all transactions less costly than reporting only those transactions that exceed a certain dollar threshold. The segregation or sorting of funds transfers by value, including for transfers denominated in non-U.S. dollar currencies, could require significant changes to the information technology systems of some banks and third-party carriers, at considerable additional costs.

Additionally, transmittal orders carried by third parties are generally encrypted to protect the information therein. FinCEN was advised by industry members and financial regulators that some third-party carriers might be unable to identify the amounts of the encrypted transmittal orders sent through their system without the active intervention of both the sending and receiving financial institution, thereby increasing the cost of the third-party reporting option. Having no transaction threshold would allow third parties to report without adjusting encryption methods to provide them with access to transmittal amounts. Beyond operational difficulties, requiring only those transactions that are above a

[49] As discussed below, through understanding the processing of transactions by potential third-party reporters, FinCEN removed the reporting threshold for banks and adjusted the reporting threshold for money transmitters to $1,000.

[50] *See Feasibility Report,* at Section 1.0—Executive Summary.

[51] *See Implications and Benefits Study,* at Section 5.0—Implications to the Financial Industry.

[52] *See Implications and Benefits Study,* at Section 1.0—Executive Summary.

[53] *See* Ltr. from Krista J. Shonk, Reg. Counsel, America's Community Bankers, to FinCEN, *Re: Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds* 3 (Aug. 21, 2006). *http://www.fincen.gov/statutes_regs/frn/comment_letters/71fr35564_35567_rin1506_aa86/americas_community_bank.pdf* [ hereinafter America's Community Banker's Ltr.].

certain threshold would open financial institutions up to liability under the Right to Financial Privacy Act. If an institution or its designated third-party sent a transaction that was under the threshold, such filing would not be protected from the exclusion in the Right to Financial Privacy Act regarding information required to be reported by the Federal government, subjecting the institution to liability. By requiring the reporting of all transactions, FinCEN is protecting institutions from this potential liability.[54]

For money transmitters the threshold issue must be treated differently because money transmitters have different business models than banks. Money transmitters do not typically establish long-term account relationships with their customers and therefore they do not have a business need to keep detailed records of all transactions, especially small electronic transfers. Money transmitters do, however, currently keep records of transfers to comply with the various recordkeeping requirements of FinCEN and other applicable authorities in the jurisdictions where they operate. Money transmitters that operate in more than one jurisdiction must comply with the recordkeeping requirements of all such jurisdictions. Because of this, many money transmitters have adopted global recordkeeping requirements and keep records at the lowest regulatory threshold required regardless of jurisdiction, thus assuring them of compliance in all applicable jurisdictions. Because many jurisdictions have adopted the $1,000 threshold suggested in SRVII, a large portion of the money transmitter industry, by volume of transactions, is already keeping records at the $1,000 level but is not keeping detailed records of transactions falling below that amount.

*B. What To Include in the Cross-Border Electronic Transmittal of Funds Report*

As a by-product of globally accepted standards, there already is a large degree of standardization in the formats of transmittal orders currently being used by banks. This standardization has been driven by global commercial incentives to allow straight-through processing for funds transfers, *i.e.,* electronic processing without the need for re-keying or manual intervention. FinCEN intends to take advantage of this standardization, to the greatest degree possible, and to accept direct filings of copies of these transmittal orders in the form they are already being processed by institutions.

The Implications and Benefits Study found that there is significant benefit in providing flexibility to the financial industry in how they would be able to comply with any proposed reporting requirement. For example, a large volume of the transmittal orders exchanged between foreign and U.S. banks as part of incoming or outgoing transmittals of funds are sent through a third party, that provides a secure, standardized electronic format for financial messaging between financial institutions, such as SWIFT. For this proposed rule, FinCEN is focusing on messaging systems, rather than financial settlement systems; therefore, the instructions exchanged between financial institutions through these third parties must be settled between the parties by other means (for example, using correspondent accounts or sending payments through a primary industry funds transfer system in the currency of denomination of the transmission of funds). By definition, FinCEN is not collecting information regarding funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), or any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system.

FinCEN proposes to require certain banks to submit copies of certain standard format transmittal orders directly to FinCEN. Banks covered by this option will be required to submit to FinCEN a copy of each full transmittal order. Because a significant portion of the transmittal orders are currently being carried by third parties, this proposed rule would clarify that while the reporting obligation and accountability for compliance rest with the bank, third-party reporting of these transmittal orders at the express direction of a bank would be acceptable to FinCEN. Some financial institutions suggested this option to FinCEN in the course of the interviews and survey conducted as part of FinCEN's Feasibility Report and Implications and Benefits Study.[55] For example, a substantial number of transmittals required to be reported by the proposed rule are processed by SWIFT through standardized formats. FinCEN anticipates that many first-in/last-out institutions will comply with their filing obligations through third-party carriers, like SWIFT, with significant cost savings compared to in-house reporting.

If a bank is not able to submit (or cause to be submitted) copies of these standard format transmittal orders, FinCEN will accept submissions of just the required information in alternative formats to be prescribed by FinCEN. FinCEN proposes to require institutions utilizing this alternative reporting format to submit only the following information, if available,[56] about all CBETFs:

(i) Unique transaction identifier number;

(ii) Either the name and address or the unique identifier of the transmittor's financial institution;

(iii) Name and address of the transmittor;

(iv) The account number of the transmittor (if applicable);

(v) The amount and currency of the funds transfer;

(vi) The execution date of the funds transfer;

(vii) The identity of the recipient's financial institution;

(viii) The name and address of the recipient;

(ix) The account number of the recipient; and

(x) Any other specific identifiers of the recipient or transaction.[57]

Certain money transmitters will be required to report on all transmittals of funds that are at or above the previously mentioned threshold of $1,000. Additionally, for reportable transactions of $3,000 or more, FinCEN is proposing that money transmitters include the U.S. taxpayer identification number of the transmittor or recipient (as applicable),

[54] *See* 12 U.S.C. 1829b(b)(3)(C) (2009) (Any information reported to Treasury or the Board in accordance with section 1829b(b)(3)(C) falls within an exception to the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq* (2009)). *See* 12 U.S.C. 3413(d) (excepting disclosures pursuant to Federal law or rule). Moreover, the Right to Financial Privacy Act does not apply to money transmitters. *See* 12 U.S.C. 3401(1) (2009) (defining a "financial institution" for purposes of the Act's coverage to include banks and other depository institutions).

[55] *See Feasibility Report*—Section 5, n. 21. *See also Implications and Benefits Study*—Section 3.

[56] As discussed in Section II.A above (Background Information—Current Regulations Regarding Funds Transfers), the regulatory obligation of financial institutions in general to obtain and retransmit certain data points of transmittals of funds depends on the role they play in the transmittal chain, and on the amount of the transaction. Therefore, FinCEN acknowledges that some of the reportable fields of CBETFs collected through either method (submitting copies of the actual standard format transmittal orders or utilizing an alternative reporting format) might be empty or contain incomplete data.

[57] FinCEN has consulted with the staff of the Board and has determined that the reporting requirements under this section will exceed the requirements under section 21 of the Federal Deposit Insurance Act and the regulations promulgated thereunder. Further, FinCEN has determined that the reporting of this information is reasonably necessary to conduct our efforts to identify cross-border money laundering and terrorist financing.

or if none, the alien identification number or passport number and country of issuance in their reports. As discussed below, FinCEN has determined that this information is reasonably necessary to assist in the investigation and prosecution of financial crimes including tax evasion. FinCEN will accept submissions from these money transmitters of the required information in formats that are prescribed by FinCEN. FinCEN proposes to require the following information, if available,[58] in these submissions:

(i) Unique transaction identifier number;

(ii) Either the name and address or the unique identifier of the transmittor's financial institution;

(iii) Name and address of the transmittor;

(iv) The account number of the transmittor (if applicable);

(v) The amount and currency of the transmittal of funds;

(vi) The execution date of the transmittal of funds;

(vii) The identity of the recipient's financial institution;

(viii) For transactions over $3,000, the U.S. taxpayer identification number of the transmittor or recipient (as applicable), or if none, the alien identification number or passport number and country of issuance;

(ix) The name and address of the recipient;

(x) The account number of the recipient; and

(xi) Any other specific identifiers of the recipient or transaction.

*C. Filing Methodology and Frequency of Cross-Border Electronic Transmittal of Funds Reports*

FinCEN proposes to require reporting financial institutions to submit the copies of certain standard format transmittal orders or the required data elements through an electronic filing system to be developed and implemented by FinCEN, which shall allow submissions filed either discretely on a transaction-by-transaction basis, or by batching transactions in a format approved by FinCEN. FinCEN believes that electronic filing is the most efficient and effective manner for both the government and the institutions and will result in not only cost savings on both sides of the submission but will also significantly reduce the chances for data corruption during data entry. In special cases, where hardship can be demonstrated, FinCEN is proposing to allow the Director of FinCEN to authorize a reporting financial institution to report in a different manner if the financial institution demonstrates that (a) the form of the required report is unnecessarily burdensome on the institution as prescribed; (b) a report in a different form will provide all the information FinCEN deems necessary; and (c) submission of the information in a different manner will not unduly hinder FinCEN's effective administration of the BSA. Third-party reporters (entities engaged by reporting financial institutions to provide reporting services) will be required to report electronically in a format approved by FinCEN.

FinCEN is considering whether to develop an Internet-based form that could be filed electronically through a secure Internet connection by institutions that have a limited quantity of reportable transactions and do not wish to invest in information technology changes required to file in a more automated fashion, such as batching. By doing this, FinCEN believes that it can provide an effective method for smaller institutions to continue to process a limited number of funds transmittals for their customers while not being required to invest significantly in additional technology.

FinCEN intends to accept transmittal orders currently being carried by SWIFT. FinCEN intends to accept message traffic from other similarly situated entities as well. Given the types of transactions FinCEN is currently proposing to collect, and the current limited number of messaging systems in the marketplace, FinCEN anticipates banks will be able to comply with these regulations through submissions of copies of the transmittal orders currently being carried on SWIFT's messaging format for person-to-person transmittals of funds (MT–103s at the time of the Implications and Benefits Study, but now additionally including 202–COVs).

The Feasibility Report and the Implications and Benefits Study analyzed CBETFs from the point of view of serial payments, where all the information sent to the beneficiary banks goes through the various intermediaries. While these reports were being produced, the financial industry started concentrating on the vulnerabilities of other cross-border transmittal mechanisms, namely, cover payments.[59] Cover payments are generally used by a foreign bank to facilitate funds transfers on behalf of a customer to a recipient in another country and typically involve both (a) a transaction in a currency other than that of the country where the transmittor's or recipient's bank is domiciled, and (b) the transmittor's and recipient's banks not having a relationship with each other that allows them to settle with each other directly. In this circumstance, the originator's bank may directly instruct the beneficiary's bank to effect the payment and advise that transmission of funds to "cover" the interbank obligation created by the payment order has been arranged through a separate channel (the "cover intermediary bank").[60] This cover payment mechanism, where the cover intermediary banks do not necessarily see all the information sent to the beneficiary bank, is distinct from the direct sequential chain of payments envisaged in the FATF Special Recommendation VII on wire transfers.[61]

As a result of an industry initiative, SWIFT developed a change in its message standards, allowing the covering payment (which used to be sent through a MT 202 message which generally provided no information about originator and beneficiary) to include full information about the other parties to the transaction. The new message standard (MT 202–COV) was implemented as of November 2009. On December 17, 2009, the U.S. Federal banking supervisors, in consultation with the Office of Foreign Assets Control (OFAC) and FinCEN, issued interagency guidance to clarify the supervisory perspective on certain key issues involving cover payments.[62] The guidance covers the obligations of U.S. originators of cover payments, the responsibilities of U.S. cover intermediary banks for screening

[58] As discussed in Section II.A above (Background Information—Current Regulations Regarding Funds Transfers), the regulatory obligation of financial institutions in general to obtain and retransmit certain data points of transmittals of funds depends on the role they play in the transmittal chain, and on the amount of the transaction. Therefore, FinCEN acknowledges that some of the reportable fields of CBETFs collected through either method (submitting copies of the actual standard format transmittal orders or utilizing an alternative reporting format) might be empty or contain incomplete data.

[59] *See i.e.,* The Wolfsberg Group, Clearing House Statement on Payment Message Standards: *http://www.wolfsberg-principles.com/pdf/WGNYCH_Statement_on_Payment_Message_Standards_April-19-2007.pdf.*

[60] *See* Basel Committee on Banking Supervision, "Due diligence and transparency regarding cover payment messages related to cross-border wire transfers," May 2009.

[61] *Revised Interpretative Note to Special Recommendation VII: Wire Transfers,* FATF (Feb. 29, 2008), *http://www.fatf-gafi.org/dataoecd/16/34/40268416.pdf.*

[62] Interagency Joint Notice—"Transparency and Compliance for U.S. Banking Organizations Conducting Cross-Border Funds Transfers," available at *http://www.occ.treas.gov/ftp/bulletin/2009-36a.pdf.*

messages for blank key fields and sanctioned entities, and for suspicious activity monitoring, and the supervisory approach to the foreign correspondent banking monitoring obligations of U.S. banks. SWIFT MT 202–COV messages are specifically covered by this proposed rulemaking.

In determining reporting frequency, FinCEN is striving to reach the appropriate balance between providing timely information to law enforcement and limiting the cost of compliance to the institutions. Other nations' financial intelligence units have been able to intercept ongoing criminal activity, such as illegal drug dealings, through the use of daily submissions of CBETF information. At the same time, FinCEN recognizes that requiring institutions to report daily could, in some cases, increase costs as compared to a less frequent reporting period. For this reason, FinCEN is proposing that institutions be required to report on covered transmittals of funds within five business days following the day when the reporting financial institution issued or received the respective transmittal order. This five-business-day interval was discussed with financial institutions and law enforcement during the review of the Implications and Benefits Study. Institutions will be permitted to report more frequently if desired.

*D. Annual Reports Proposed*

In addition to the CBETF reporting proposal, FinCEN is proposing, as a separate but related requirement, an annual report by banks of the account number and accountholder's U.S. tax identification number (TIN) of all accounts used to originate or receive CBETFs subject to reporting under Section 6302 of the IRTPA. The purpose of this proposal is to enhance the usefulness of the funds transfer data to better detect, investigate, and prosecute money laundering and terrorist financing to the extent such crimes also may involve tax evasion. The extent to which offshore bank accounts are used to evade U.S. income tax is considerable and well-documented.[63] The Administration, as part of a comprehensive effort to reduce the use of offshore accounts and entities to evade U.S. tax, has also proposed the collection of certain information regarding certain international transfers of funds.[64]

FinCEN is considering a methodology for this second reporting requirement that would require banks to submit an annual filing with FinCEN (the TIN annual report) that provides the account number and accountholder's U.S. TIN of all accounts used to originate or receive one or more CBETFs in the previous calendar year. This annual reporting requirement would apply to all banks that maintained any customer account that was debited or credited to originate or receive a CBETF subject to reporting under this section, for any amount, during the previous calendar year. FinCEN would then endeavor to have that information matched with CBETF data received throughout the year and made available for the investigation and prosecution of tax evasion and other purposes consistent with the BSA.

*E. Exemptions*

Although myriad systems are available to U.S. financial institutions to process electronic funds transfers, cross-border funds transfers tend to flow through a small number of channels as they enter and leave the United States (*i.e.,* Fedwire, CHIPS and SWIFT). As institutions pass payment orders along through correspondents en route to their destination, those institutions' systems convert the orders from the many available formats to one of only a few. At some point in the cross-border payment chain a single U.S. financial institution must communicate directly with a foreign financial institution.

On the other hand, financial institutions may use standardized or proprietary or internal systems to handle all or part of an electronic funds transfer (*i.e.,* between branches of the same institution). Proprietary systems pose a special challenge to designing a reporting system because of the wide range of potential message formats, communications protocols, and data structures involved. The primary challenge that arises in this context is that a reporting requirement would require that the U.S.-based institution implement processes for identifying and extracting cross-border funds transfer information from its proprietary communications systems. The implementing regulation must take into account this kind of permutation in order to ensure that FinCEN collects CBETFs that follow this pattern.

For banks, FinCEN is proposing to require reporting of all funds transfers that are effected through transmittal orders that are standardized across the banking industry. For this proposed reporting requirement, FinCEN intends to exempt from both reporting requirements funds transfers that are conducted entirely through, and messaged entirely through, systems that are proprietary to banks.[65]

This exemption would not apply to money transmitters because their business model for transmitting funds relies almost solely upon proprietary systems. Additionally, there is no industry-wide adoption of a standardized transmittal order format as exists in the banking industry. The largest MSBs generally maintain centralized communications systems and database records of customer transactions that provide an obvious source for the CBETF information collection.[66] FinCEN is also proposing to exempt from both reporting requirements CBETFs where both the transmittor and the recipient are a bank, *i.e.,* there is no third-party customer to the transaction. There is a lower risk of money laundering and terrorist financing associated with these transactions.

*F. Recordkeeping Rule Issues*

Changes to the regulations implementing Section 21 of the Federal Deposit Insurance Act for banks (31 CFR 103.33 (e) and (f) (the Funds Transfer Rule) and 31 CFR 103.33 (g) (the Travel Rule)), would require a joint determination of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury as to the necessity of such a change. Section 6302 provides that information required to be reported under that section shall not exceed the information already required to be retained by financial institutions pursuant to the Funds Transfer Rule and the Travel Rule unless:

(i) The Board and the Secretary jointly determine that particular items of information are not currently required to be retained under those law and regulations; and (ii) The Secretary determines, after consultation with the Board, that the reporting of such additional information is reasonably necessary to conduct the efforts of the

[63] *See generally* Staff of Sen. Subcomm. on Investigations of the Comm. on Homeland Sec. and Govtl. Affairs, 110th Cong., *Tax Haven Banks and U.S. Tax Compliance,* (Sen. Subcomm. Print 2008); *See generally* Staff of Sen. Subcomm. on Investigations of the Comm. on Homeland Sec. and Govtl. Affairs, 109th Cong., *Tax Haven Abuses: The Enablers, the Tools and Secrecy,* (Sen. Subcomm. Print 2006).

[64] "*General Explanations of the Administration's Fiscal Year 2011 Revenue Proposals,* Miscellaneous Tax Policy Document, at 63 (Treasury, Feb. 2010) *http://www.ustreas.gov/offices/tax-policy/library/greenbk10.pdf.*

[65] These proprietary systems include those developed by banks, or those off-the-shelf systems acquired and adopted or adapted by banks, or by the corporate structure the bank belongs to, to receive payment instructions from their customers (including those financial institutions that maintain correspondent accounts at such banks).

[66] *See Feasibility Report,* at Section 5.0—Form, Manner, and Content of Reporting, and at App. D. *See Id.* App. G, at 134–135.

Secretary to identify money laundering and terrorist financing.

At this time, FinCEN and the Board are not proposing any amendments to the recordkeeping rule affecting banks. Also, FinCEN is not proposing any amendments to the recordkeeping rules affecting nonbank financial institutions. FinCEN understands that institutions collect and maintain a wide range of business records and customer and transaction-related information for business reasons unrelated to regulatory compliance. Additionally, FinCEN acknowledges that this proposed regulation would result in a requirement for institutions to report certain transactions where they are not currently required to keep records or verify customer identification.[67]

*G. Compliance Date*

Section 6302 of the IRTPA requires the Secretary to certify that the information technology systems are in place to accept reports from the regulated industry prior to prescribing regulations requiring institutions to report on transmittals of funds. Because of the statutory language, FinCEN is unable to issue a final rule with a delayed effective date prior to having adequate technological systems in place. FinCEN does not anticipate these systems being in place before 2011. Hence, FinCEN does not anticipate issuing a final rule until after January 1, 2012. FinCEN anticipates delaying the compliance date of the final rule to provide institutions with ample time to adjust necessary systems for compliance.

*H. Technical Requirements*

The development of information technology systems capable of receiving, storing, analyzing, and disseminating an estimated 750 million records a year is a daunting task. FinCEN will implement federated data warehouse architecture to receive, keep, exploit, protect the security of, and disseminate information submitted under the proposed reporting requirement. FinCEN will implement a separate path for the processing, enhancement, and storage of report information and would provide a single point of entry for users to submit queries to all BSA data systems, including CBETF information, in a way that is invisible to the user. A full description of the proposed architecture, procedural paths, and points of entry is contained in Appendices H (Technical Alternatives Analysis), J (Preliminary Work Breakdown Schedule), and L (Project Management and Information Technology Processes) to the Feasibility Report.

*I. Protection of Private Personal Financial Information*

While the benefits of centralizing BSA data have been substantial, these developments pose significant risks to the critical operations of the government and the security of the data contained in these systems. BSA data is highly sensitive data containing details about the financial activity of private persons. Without proper safeguards, this data could be at risk of inadvertent or deliberate disclosure or misuse and FinCEN's mission could be undermined. These risks generally fall into two closely related categories, the privacy of the personal information contained in government systems, and the risk of system compromise or misuse.

FinCEN will apply existing policies and procedures that comply with all applicable legal requirements, industry and government best practices, and the Department of the Treasury's Information Technology Security Program Directive to every phase of the design and implementation of any system built to accommodate reporting of CBETF data. FinCEN also will impose strict limits on the use and re-dissemination of the data it provides to its law enforcement, regulatory, and foreign counterparts and strictly monitor those persons and organizations to which it grants access to the data. CBETF data will be technologically protected and secure and would only be available to FinCEN and the law enforcement and regulatory agencies authorized by law to access it. Compliance with these three requirement types will be subject to certification, and Section 6302 will not permit FinCEN to finalize this proposed rulemaking until such certification is issued and found acceptable.[68]

A number of Federal laws directly control the collection and use of data by government agencies with the aim of protecting the privacy of individual persons—namely, the Right to Financial Privacy Act,[69] the Privacy Act,[70] the Federal Information Security Management Act,[71] and the Bank Secrecy Act itself.[72] Lastly, the E-Government Act of 2002[73] provides a further protection for personal information in government data systems, by requiring that agencies conduct "privacy impact assessments" prior to procuring or developing such systems.[74]

FinCEN has developed policies and procedures for compliance with these requirements in accordance with the Department of the Treasury's Information Technology Security Program Directive. Compliance with these government-wide and department-wide standards ensures that FinCEN designs and operates its information systems in accordance with government best practices for the maintenance and dissemination of sensitive data. In developing a system for the collection, storage, analysis, and sharing of CBETF reports, FinCEN will incorporate compliance with these standards into every phase of the design and implementation of the system. FinCEN has more than twenty years of experience in handling sensitive financial information about persons through the reporting it currently receives from financial institutions in the United States. FinCEN imposes strict limits on the use and re-dissemination of the data it provides to its law enforcement, regulatory, and foreign counterparts and strictly monitors those persons and organizations to which it grants access to the data.[75]

## V. Section-By-Section Analysis

The proposed rule (a) would implement section 6302 of the IRTPA by requiring certain banks and money transmitters ("first-in/last-out" financial institutions) to file periodic reports with respect to certain CBETFs (mostly defined as reportable on the basis of

[67] As discussed in Section II.A above (Background Information—Current Regulations Regarding Funds Transfers), the regulatory obligation of financial institutions in general to obtain and retransmit certain data points of transmittals of funds depends on the role they play in the transmittal chain, and on the amount of the transaction. Therefore, FinCEN acknowledges that some of the reportable fields of CBETFs collected through either method (submitting copies of the actual standard format transmittal orders or utilizing an alternative reporting format) might be empty or contain incomplete data.

[68] 31 U.S.C. 5318(n)(5)(B).

[69] 12 U.S.C. 3401*et seq* (2009).

[70] 5 U.S.C. 552a (2009).

[71] Federal Information Security Management Act of 2002, Title III, E-Government Act of 2002, Public Law 107–347, Dec. 17, 2002.

[72] The routine uses for Bank Secrecy Act data are set forth at 70 FR 45756, 45760 (August 8, 2005) (Bank Secrecy Act Reports System—Treasury/FinCEN .003).

[73] E-Government Act of 2002, Public Law 107–347, section 208, (Dec. 17, 2002).

[74] Office of Management and Budget, Memorandum M–03–22, Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002 (Washington, DC, Sept. 26, 2003).

[75] For a detailed discussion of the collection of the information contained in the proposed rule, *see Feasibility Report* at Section 7.0—Information Security Protection.

method of transmission and monetary threshold), and (b) would require all banks to file an annual report with the account number and accountholder's U.S. tax identification number of accounts involved in certain CBETFs.

The rule describes the types of transmittal orders and advices of transmittal orders that should be subject to report, the information that should be reported, and the timeframe for the filing of the reports.

*General (§ 103.14(a))*

FinCEN proposes to add 31 CFR 103.14(a). That new paragraph would add a requirement that reporting financial institutions (as defined in this section) file reports with FinCEN with respect to CBETFs that meet the conditions in the rule and subject to the exemptions therein. The conditions that make a transaction reportable are the means of communication of the related transmittal order (or the advice of the transmittal order, when applicable), and, in the case of the CBETF periodic report, the position of the financial institution making or receiving the communication in the transmittal chain, and the amount of the transmittal of funds involved.

*Definitions (§ 103.14(b))*

Most of the terms utilized in this section have the meanings previously set forth in Part 103 of Chapter I of Title 31.[76] Some of these terms, and all the terms defined specifically for this section, merit additional comment.

*Account.* Account is defined in 103.90(c). This definition covers "a formal banking or business relationship established to provide regular services, dealings, and other financial transactions * * *," and includes the ongoing contractual relationships between some providers of money transmitting services and their customers. If (1) at the moment of opening an account for a person (or shortly thereafter), the financial institution has obtained and maintains on file the person's name and address, as well as TIN (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance; and (2) the financial institution provides financial services to such person relying on that information, then that person would constitute an "established customer" of the financial institution as defined in 103.11(l).

*Cross-Border Electronic Transmittal of Funds.* The definition of "cross-border electronic transmittal of funds" lies at the heart of a successful implementation of the reporting requirement. The nature of the electronic funds transfer process as it has evolved in the United States poses specific difficulties in creating a definition that at once captures all of the nuances of the payment systems and avoids needless complexity. Section 6302 contemplates a reporting requirement that is coextensive with the scope of the BSA funds transfer rule (31 CFR 103.33). Accordingly, for the purposes of the first stage of a phased approach to the cross-border electronic transmittal of funds reporting rulemaking process, the Feasibility Report focused on electronic "transmittals of funds" as defined in 31 CFR 103.11, and did not address any debit card type of transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).[77] Furthermore, within the current regulatory definition of "transmittals of funds," the Feasibility Report concentrated for the first step in the staged implementation of Section 6302 of the IRTPA on those transactions involving depository institutions that exchange transmittal orders through non-proprietary messaging systems, and all money transmitters, and where the U.S. institution sends or receives a transmittal order directing the transfer of funds to or from an account domiciled outside the U.S. Refining an appropriate regulatory definition of what transactions fall within the new reporting requirement will implicate a number of concerns that were identified by the Feasibility Report and should be further addressed during future studies.

In consideration of these determinations, FinCEN proposes to define a CBETF generally as "[a] transmittal of funds where either the transmittal order or the advice is: (i) communicated through electronic means; and (ii) sent or received by either a first-in or a last-out financial institution."

The definition as provided concentrates on the evidence of the payment (as opposed to the actual payment itself), represented by a transmittal order (the combination of an instruction to pay and an authorization to debit an account or a confirmation of how the reimbursement for the payment is being disbursed) or an advice of a transmittal order (the notification that a credit to an account has been made, in relation to a CBETF). These messages have to be exchanged by electronic means between a foreign financial institution and either a first-in financial institution (for incoming CBETFs) or a last-out financial institution (for outgoing CBETFs).

The definition does not intend to capture either (1) notifications of a debit to the account maintained by the foreign financial institution at the first-in financial institution, effected to cover the CBETF; (2) a retransmission of a transmittal order for the sole purpose of adding authentication; or (3) notifications to the third party that originates or is the beneficiary of the transmittal of funds. In certain business systems currently in use, the notification to a foreign financial institution of the credit to its correspondent account, processed in connection with a CBETF, is used by the foreign financial institution as the operative instrument for the payment to the beneficiary; this type of advice, which is used in lieu of the more traditional transmittal order, is among the types of additional electronic communication that the regulation seeks to capture.

Additionally, the regulation will require the reporting of transmittal orders where the actual payment of the order does not occur for any reason. FinCEN acknowledges that this will result in the reporting of transactions where settlement never occurred, populating the database with unsettled transmittal orders. However, because the settlement could be cancelled after the reporting of the transmittal order to FinCEN, if FinCEN did not require the reporting of this message the financial institution would be subject to liability under the Right to Financial Privacy Act. Thus, to protect financial institutions and limit the costs of reporting, FinCEN will review whether there are classes of transactions where settlement did not occur for which it would be practicable and appropriate for FinCEN to arrange to exclude from the database.[78]

*Electronic means* are those means that utilize technology that has electrical, digital, magnetic, wireless, optical,

[76] *See* 31 CFR 103.11 (2009).

[77] *See Feasibility Report,* at Section 8.0—Conclusions and Recommendations.

[78] *See Feasibility Report,* at Section 5.0—Form, Manner, and Content of Reporting. The ABA suggests, "regardless of the nature of any imagined reporting requirement, the financial services industry's responsibility should extend only to the simple transmittal of raw data, with FinCEN assuming full responsibility for the refinement and distillation of the data into a format useful to law enforcement agencies." While FinCEN believes that accommodation of every possible format is unreasonable, the approach proposed in the text recognizes the potential cost and strikes a balance aimed at accommodating the widest possible variation in reporting formats.

electromagnetic, or similar capabilities.[79]

*First-in financial institution.* For purposes of this section, in an incoming CBETF, FinCEN defines a first-in financial institution as any bank or money transmitter that receives a transmittal order or the advice of a transmittal order from a foreign financial institution. FinCEN views the bank or money transmitter in an incoming CBETF that received the transmittal order or the advice of the transmittal order directly from the foreign financial institution and maintains such foreign financial institution's correspondent account, as having more consistently complete information about the transaction than other U.S. financial institutions that may be involved in the same transmittal of funds.[80]

*Last-out financial institution.* For purposes of this section, in an outgoing CBETF, FinCEN defines a last-out financial institution as any bank or money transmitter that sends the transmittal order or the advice of the transmittal order to a foreign financial institution. The last-out financial institution will have more consistently complete information about the transaction than other U.S. financial institutions that may be involved in the same transmittal of funds.[81]

*Reporting Financial Institution.* For purposes of this section, FinCEN defines a reporting financial institution as any bank (reporting bank) or money transmitter (reporting money transmitter) acting as a first-in or last-out financial institution.

Whether a "first in" or "last out" institution, because of the size and nature of institutions that serve in correspondent roles for CBETFs, these banks are more likely to be connected with and use centralized message systems (SWIFT, Fedwire, CHIPS) and their standardized message formats. These standardized formats increase the ability of these institutions to handle the transactions with little manual intervention. In addition, these larger banks may often automatically "map over" messages from one system's format to another (*e.g.,* from SWIFT to Fedwire; from SWIFT to CHIPS). Accordingly, many would have systems in place to perform much of the data extraction necessary to create the reports required.

In other words, the obligation to report should fall upon those U.S. institutions that transmit an electronic funds transfer instruction directly to a non-U.S. financial institution or conversely, those that receive such instructions directly from a non-U.S. financial institution. This approach aims to capture a funds transfer instruction at the point at which it crosses the U.S. border. The advantages of the approach are that it focuses the reporting requirement upon larger institutions that are most familiar with international funds transfers, have the technological systems in place to facilitate such transfers, and are in the best economic position to implement compliance systems and processes.[82]

*Reporting Threshold.* Reporting banks would be required to file periodic CBETF reports on transactions of any amount (zero threshold), while reporting money transmitters would be required to file periodic CBETF reports on transactions for amounts equal to or greater than $1,000, or its equivalent in any other currency. In the case of transactions denominated in foreign currency, the exchange rate that is applied should be that exchange rate that was provided to the customer at the time of the transaction.

*Filing Procedures (§ 103.14(c))*

This section describes what reporting banks and reporting money transmitters would be required to report under the CBETF report proposal, in what format they must report the information, how often they must report it, and explicitly recognizes the possibility of reporting via a third party although responsibility for compliance with the reporting obligations would remain with the reporting financial institution.

To accommodate these requirements, FinCEN had to adopt a limited number of standard forms for CBETF reporting. These standards had to accommodate automated filing of large collections of CBETF reports, manual uploading of mid-sized collections of CBETF reports, and discrete filing by small volume CBETF service providers. In addition, the standards had to assimilate the variations between the different CBETF message systems from which the reporting institutions would extract the data. Finally, the standards had to be such that reporting institutions could convert the source data from their systems into the required format with a minimum of manual intervention or system modifications.[83] The proposed regulation will permit institutions to comply with this requirement through the submission of customized reports that comply with a format prescribed by FinCEN or through the submission of certain pre-existing formats (*e.g.,* CHIPS or SWIFT messages) that contain the required data elements. The pre-existing forms deemed acceptable by FinCEN would serve as proxies for formally prepared reports.

Reporting financial institutions would be required to report on CBETF at or above their respective thresholds (no threshold for banks and a $1,000 threshold for money transmitters) by submitting a copy of the respective transmittal order or advice of the transmittal order, provided that the transmittal order or advice format has been approved for direct submission by FinCEN. If the reporting financial institution is unable to submit a copy of the respective, approved transmittal order or advice, then the reporting

[79] 15 U.S.C. 7006(2) (2006).

[80] The quantity and quality of the information that is transmitted along the payment chain, either embedded in the payment itself or contained in a separate message, tends to degrade as such information is communicated among the links of the chain; the details contained in optional fields may be lost, abridged, or transcribed with errors from transmittal order to transmittal order along the chain.

[81] *See the Feasibility Report* at 12–14. If more than one U.S. financial institution took part in the transmittal of funds, the last-out financial institution's records should identify the transmittor, the transmittor's financial institution, and other information about the transaction (*e.g.,* recipient, recipient's financial institution, information exchange, additional financial institutions involved and their roles, date, amount, *etc.*). Similarly, the U.S. bank's records may provide a more complete picture of the entities involved in the overall chain of the transaction. Investigators and analysts could then determine where to turn for further information on the transaction and customer. In addition, the customer identification (to the extent it is included in the original message) and other transaction detail information should remain intact and available throughout this correspondent stage and therefore remain available in the instructions handled by the last-out financial institution.

[82] In its response to FinCEN's March 2006 industry survey, the American Bankers Association offered that "An unscientific poll of bankers visiting ABA's compliance Web page revealed that only 1 in 4 respondents identified themselves as conducting "last out, first in" cross-border transfers." The ABA also noted "for some [banks] it required less IT logic to be built into the reporting system." Significantly, the ABA opined "* * * a "last out, first in" reporting obligation would suffice to capture the cross border transfer of funds and whatever information is attached to that transmittal. Although this method shifts much of the reporting cost to a smaller number of generally larger banks, many of the[m] possess sufficient capacity to perform the reporting with greater efficiency than would be the case if the obligation rested with all originating or beneficiary's institutions."

[83] *See Feasibility Report,* at Section 5.0—Form, Manner, and Content of Reporting. The ABA suggests, "regardless of the nature of any imagined reporting requirement, the financial services industry's responsibility should extend only to the simple transmittal of raw data, with FinCEN assuming full responsibility for the refinement and distillation of the data into a format useful to law enforcement agencies." While FinCEN believes that accommodation of every possible format is unreasonable, the approach proposed in the text recognizes the potential cost and strikes a balance aimed at accommodating the widest possible variation in reporting formats.

financial institution may discharge its reporting obligation by submitting the following information, if available, in a form specified by FinCEN:

(i) Unique transaction identifier number;

(ii) Either the name and address or the unique identifier of the transmittor's financial institution;

(iii) Name and address of the transmittor;

(iv) The account number of the transmittor (if applicable);

(v) The amount and currency of the transmittal of funds;

(vi) The execution date of the transmittal of funds;

(vii) The identity of the recipient's financial institution;

(viii) The name and address of the recipient;

(ix) The account number of the recipient;

(x) Any other specific identifiers of the recipient or transaction; and

(xi) For transactions of $3,000 or more conducted through a money transmitter, the U.S. taxpayer identification number of the transmittor or recipient (as applicable) or, if none, the alien identification number or passport number and country of issuance.

The data points requested coincide with the combined recordkeeping requirements imposed on financial institutions by the recordkeeping rule [84] and the travel rule,[85] with the addition of the unique transaction identifier number, if such an identifier exists. The addition of the identifier is an operational necessity for FinCEN, for two major reasons: (1) Given the very large amount of transactions processed on a daily basis by reporting financial institutions involving the same amounts, transmittors, recipients, and intermediary financial institutions, the unique identifier number may be the only effective and efficient way for FinCEN and law enforcement to distinguish one particular transaction from others, which will become particularly useful in facilitating any follow-up communications with reporting financial institutions, and (2) given that a certain degree of duplication on the reporting is considered unavoidable, the unique transaction identifier is the most effective and efficient tool to allow deconfliction of several reports involving the same CBETF by FinCEN without requiring institutions to expend resources segregating reports relating to the same transaction.

This section requires the reporting financial institution to file reports with FinCEN no later than five business days after issuing or receiving the transmittal notice or its advice.

FinCEN understands that an institution required to file reports under section 103.14 may prefer to designate a third party to file those reports. As long as the reports are filed in the manner required by section 103.14, FinCEN will allow such a designation. However, it is important to emphasize that it is the responsibility of the reporting financial institution to comply with the reporting obligation, and the reporting financial institution is ultimately liable for any failures by the designated third party to file a report as required by the proposed rule.

*Nature and Form of Reports (§ 103.14(d))*

All CBETF reports shall consist of electronic submissions filed either discretely on a transaction-by-transaction basis or by batching transactions in a format approved by FinCEN. FinCEN may authorize a designated reporting financial institution to report in a different manner if the financial institution demonstrates to FinCEN (1) that the form of the required report is unnecessarily onerous on the institution as prescribed; (2) that a report in a different form will provide all the information FinCEN deems necessary; and (3) that submission of the information in a different manner will not unduly hinder the effective administration of this part.

*Additional Annual Reports (§ 103.14(e))*

On an annual basis, all banks must submit to FinCEN a report that provides the following information: the account number that was credited or debited to originate or receive a CBETF, and the U.S. taxpayer identification number of the respective accountholder. This report shall be submitted to FinCEN no later than April 15 of the year following the transaction date of the CBETF.

FinCEN shall endeavor to link the periodic information submitted in the CBETF reports with the information provided in the TIN annual reports, matching transactions on the basis of common key data items contained in both reports: the U.S. transmittor's or receiver's account number. FinCEN's ability to combine both sets of information will depend on the quality and integrity of the common key data items.

*Exemptions (§ 103.14(f))*

At this time, FinCEN proposes that the following CBETFs be exempted from reporting requirements: (1) CBETFs where either the transmittor is a bank as defined in 31 CFR 103.11(c), and the recipient is a foreign (not within the United States) bank, or, the transmittor is a foreign bank and the recipient is a bank, and, in each case, there is no third-party customer to the transaction; or (2) the transmittal order and advice of the transmittal order are communicated solely through systems proprietary to a bank.

**VI. Proposed Location in Chapter X**

As discussed in a previous **Federal Register** Notice, 73 FR 66414, Nov. 7, 2008, FinCEN is separately proposing to remove Part 103 of Chapter I of Title 31, Code of Federal Regulations, and add Parts 1000 to 1099 (Chapter X). If the notice of proposed rulemaking for Chapter X is finalized, the changes in the present proposed rule would be reorganized according to the proposed Chapter X. The planned reorganization will have no substantive effect on the regulatory changes herein. The regulatory changes of this specific rulemaking would be renumbered according to the proposed Chapter X as follows:

Section 103.14 would be moved to § 1010.380.

**VII. Executive Order 12866**

This proposed rule is a significant regulatory action, although not economically significant, and has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866 (EO 12866).

**VIII. Unfunded Mandates Act of 1995 Statement**

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance the proposals in the Notice of Proposed Rulemaking provide the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

[84] *See* 31 CFR 103.33(e), (f) (2009).

[85] *See* 31 CFR 103.33(g) (2009).

## IX. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

*Reporting of Cross-Border Electronic Transmittals of Funds*

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

The reporting requirement proposed pursuant to the IRTPA, requires certain banks and money transmitters to report to FinCEN information associated with individual CBETFs on a periodic basis.

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $175 million in assets.[86] Of the estimated 8,000 banks, 80% have less than $175 million in assets and are considered small entities.[87] Of the estimated 7,000 credit unions, 90% have less than $175 million in assets.[88] FinCEN estimates that this rule will impact 300 banks and credit unions. Of these 300 banks and credit unions, FinCEN estimates that no more than 190 are small entities.[89] While all banks [90] can maintain customer accounts that are used to originate or receive CBETFs, not all banks are equipped to complete a CBETF on their own: for example, in the case of an outgoing CBETF the actual transaction may have to be channeled from small/medium banks to large, internationally active banks with whom they maintain correspondent banking relationships (last-out banks), and from these to a foreign bank. As part of the ordinary process of a transaction (and, in the case of outgoing CBETFs for amounts of $3,000 or higher, also because of BSA/AML regulatory requirements),[91] these larger first-in/last-out banks receive from the typically smaller originating bank all the data points FinCEN has deemed necessary to request. Therefore, FinCEN estimates that this reporting requirement will only impact 1.5% of all small banks and credit unions because, as stated above, these smaller institutions rely on large banks to process CBETFs.

For the purposes of the RFA, a money transmitter is considered small if it has less than seven million in gross receipts annually. Of the estimated 19,000 money transmitters, FinCEN estimates 95% have less than seven million in gross receipts annually.[92] Generally, small money transmitters do not have the infrastructure and international network necessary to process CBETFs resulting in a relatively small percentage of the total population that act as first-in or last-out institutions. Therefore, FinCEN estimates, the proposed rule will impact an estimated 4% of these small money transmitters. Therefore, FinCEN has determined that neither a substantial number of small banks nor money transmitters will be significantly impacted by the proposal.

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

During a week that a bank processes at least one CBETF as a first-in or last-out institution, the bank must report to FinCEN up to 10 data items for each CBETF processed. These data items are necessary for the proper messaging and settlement of a CBETF, and also correspond to data banks are obligated to obtain, retain, and retransmit for transactions at or above $3,000. During a week that a money transmitter conducts a CBETF as a first-in or last-out institution, a money transmitter will be required to report up to 10 data items per transaction at or above $1,000 and an additional 11th data point for transactions at or above $3,000. The information money transmitters will be required to report is information that they already obtain either in the ordinary course of business or to comply with other regulatory obligations.

For RFA analysis, and relying on its specific studies, FinCEN has determined that this requirement would impose a significant impact on these first-in and last-out institutions. However, as discussed above, this significant impact would be limited to a minimal number of small entities that conduct fewer CBETFs. In the year 2006, FinCEN estimates that each large bank (as defined above) conducted 2 million reportable transactions on average. FinCEN estimates that small banks (also as defined above) conducted only eight thousand reportable transactions on average.[93]

The specific studies revealed that the individual average estimated cost of implementing the CBETF periodic report would consist of $94,000 per year for large banks, and $11,900 for small banks.[94] In the case of money transmitters, the same cost would be split into a set-up and an annual ongoing portion: $250,000 set-up cost and $52,000 annual costs for large money transmitters, and no set-up cost and $20,000 annual costs for small money transmitters.[95]

[86] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* Small Business Administration Size Standards 28 (SBA Aug. 22, 2008) [hereinafter *SBA Size Standards*].

[87] Federal Deposit Insurance Corporation, *Bank Find, http://www2.fdic.gov/idasp/main_bankfind.asp; select* Size or Performance: Total Assets, *type* Equal or less than $: "175000", *select* Find [hereinafter FDIC Bank Find].

[88] National Credit Union Administration, *Credit Union Data, http://webapps.ncua.gov/customquery/; select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: "175000000", *select* Go [hereinafter NCUA Data].

[89] *See Implications and Benefits Study,* App. C, 6 figs. 1–2. FinCEN was able to determine that 110 institutions that would be impacted by the proposed rule had assets over $1 billion. FinCEN also determined that 8 institutions that would be impacted by the proposed rule had assets less than $175 million. FinCEN was unable to determine an asset size for the estimated 182 additional institutions that would be impacted by the proposed rule. For purposes of estimating the population impacted by the rule for purposes of the RFA analysis, FinCEN includes these additional institutions in the estimate of small entities.

[90] *See* 31 CFR 103.11(c) (2009) (The definition of "bank" under the BSA regulations includes commercial banks and trusts, private banks, savings and loan associations, credit unions, U.S. agencies and branches of foreign banks, *etc.*)

[91] 31 CFR 103.33(e) (2009) (Recordkeeping requirements for banks); 31 CFR 103.33(f) (2009) (Recordkeeping requirements for nonbank financial institutions).

[92] *See* FinCEN *MSB Registration List (2/10/2010), http://www.fincen.gov/financial_institutions/msb/msbstateselector.html* (Sort list by entities that engage in money transmission and remove repeat registrations).

[93] *Implications and Benefits Study,* App. C, 11 fig. 13. The number of annual reportable transactions per large bank (as defined under the RFA) covered a wide range, with few very large institutions processing tens of millions of reportable transactions, and a large number of relatively smaller institutions processing reportable transactions in the tens of thousands or fewer. The average of 2 million transactions per large bank compensates both extremes of this wide range.

[94] *Implications and Benefits Study* at 45 tbl. 6–1. As indicated in table 6–1, the annual cost for medium sized banks (92 institutions) is $20,100 and the annual cost for small banks (150 institutions) is $6,800. For purposes of the Regulatory Flexibility Act analysis, FinCEN is considering both medium and small banks to be small banks. Therefore, the weighted average annual effect on these institutions is $11,900. These figures, which assume use of the hybrid model (*supra* III. Sec. B.), were based on separate, but limited follow-up information received from industry and not the numbers pertaining to cost estimates received from industry through FinCEN's CFI survey per se. The hybrid model was conceived based on some of the general survey responses, but was not a targeted matter of inquiry with respect to costs in the CFI survey (*supra* III. Sec. B.). Given the evolution of services available to the financial sector within the context of third-party centralized messaging systems since then, FinCEN, as emphasized infra (X. Request for Comments), is soliciting comment from industry on the current validity of these cost estimates.

[95] *Id.* The cost estimates in table 6–1 were derived in consideration of a $3,000 reporting threshold.

Although the impact of the proposal will, for purposes of the RFA, be significant, the proposal will not impact a substantial number of institutions. Additionally, the impact on small institutions will be much less than the impact on larger institutions.

*Reporting of Taxpayer Identification Numbers of Accountholders*

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

The second reporting requirement contained within this proposal would require all banks to report the account number and TIN information of accountholders that transmitted or received a CBETF required to be reported under this section. For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $175 million in assets.[96] Of the estimated 8,000 banks, 80% have less than $175 million in assets and are considered small entities.[97] Of the estimated 7,000 credit unions, 90% have less than $175 million in assets.[98] Banks and credit unions that would not be considered first-in/last-out institutions may still be required to report under this second proposal. This is because they may have one or more customers that transmitted or received a CBETF during the year. Therefore FinCEN estimates that this rule will impact all banks and credit unions.

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

The second reporting requirement contained within this proposal would require all banks to report on an annual basis the account number and TIN information of accountholders that transmitted or received a CBETF required to be reported under this section. The economic impact of this proposal will not be significant. The information required to be reported is information that banks are already required to record as part of their customer identification procedures.[99]

FinCEN understands that banks will be able to leverage from automated systems already designed to address current regulatory requirements, make relatively inexpensive internal modifications to existing queries that extract information from their customer information and transactional databases, and produce a summary annual report when a customer account shows evidence of CBETF activity during the year. The cost of the TIN annual reporting is based on the burden (measured in hours) of running these queries and producing and formatting the report (at clerical level), and spot-checking the report prior to transmission (at supervisory level).

FinCEN has determined that existing regulatory reports of a similar nature involve an annual burden of 1 hour. Therefore, FinCEN estimates that the impact on a small bank to produce this report would be $24.47 annually[100] with a collective impact on small banks of $7,000. As such, FinCEN does not believe the impact of generating such report is significant.

*Certification*

When viewed as a whole, FinCEN does not anticipate the proposals contained in this rulemaking will have a significant impact on a substantial number of small businesses. Accordingly, FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FinCEN is seeking comments on this determination.

## X. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the information collection should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503, or by the Internet to *oira_submission@omb.eop.gov* with a copy to the Financial Crimes Enforcement Network by mail or as part of the comments through the Internet. Comments are welcome and must be received by November 29, 2010.

*Cross-border Electronic Transmittals of Funds Report (the "CBETF Periodic Report")*

*Description of Affected Financial Institutions:* Banks as defined in 31 CFR 103.11(c) and money transmitters as defined in 31 CFR 103.11(uu)(5).

*Estimate Number of Affected Financial Institutions:* 1,000 (300 banks[101] and 700 money transmitters operating as principals).[102]

*Estimated Average Annual Burden Hours Per Affected Financial Institution:* On a weekly basis, first-in and last-out institutions will be required to submit a report containing information on all CBETFs conducted during the week. Each institution will be required to submit a maximum of 52 reports per year. For a large institution, FinCEN estimates that on the average each weekly report will contain information on 40,000 CBETFs.[103] For a small institution, FinCEN estimates that each weekly report will contain information on 115 CBETFs. Despite the number of CBETFs contained in each report, FinCEN estimates that the average burden associated with verifying and filing the report is one hour for each weekly report. FinCEN is not considering the time necessary to gather the information required for the

The proposed rule anticipates a $1,000 reporting threshold for money transmitters and no reporting threshold for banks. This change will affect the cost estimate for small money transmitters because FinCEN anticipates that such transmitters will comply through discrete transaction-by-transaction reporting. FinCEN anticipates that the change in threshold will increase the number of reports and consequently increase the average annual effect on small money transmitters from $395 to $20,000. Alternatively, because FinCEN anticipates that banks and large money transmitters will utilize automated reporting systems, a change in the threshold does not change the estimated annual costs. *See* America's Community Banker's Ltr. *supra* n. 53; *see Implications and Benefits Study* at 45 tbl. 6–1 (one-time implementation cost of developing automated reporting systems is estimated at $250,000). Furthermore, several new reporting services have evolved or been made more widely available by third-party centralized messaging systems such as SWIFT, since the research period of the Implications and Benefits Study, which could reduce the annual reporting cost of banks significantly below the figures calculated in the Study.

[96] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* Small Business Administration Size Standards 28 (SBA Aug. 22, 2008) [hereinafter *SBA Size Standards*].

[97] Federal Deposit Insurance Corporation, *Bank Find, http://www2.fdic.gov/idasp/main_bankfind.asp; select* Size or Performance: Total Assets, *type* Equal or less than $: "175000", *select* Find [hereinafter FDIC Bank Find].

[98] National Credit Union Administration, *Credit Union Data, http://webapps.ncua.gov/customquery/;select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: "175000000", *select* Go [hereinafter NCUA Data].

[99] *See* 31 CFR 103.121 (2009).

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

[101] *See* 31 CFR 103.11(c) (2009) (For purposes of the BSA, the term "bank" includes credit unions).

[102] *Implications and Benefits Study* at ii.

[103] *Implications and Benefits Study,* App. C, 11 fig. 13. The number of annual reportable transactions per large bank (as defined under the RFA) covered a wide range, with few very large institutions processing tens of millions of reportable transactions, and a large number of relatively smaller institutions processing reportable transactions in the tens of thousands or fewer. The average of 2 million transactions per large bank compensates both extremes of this wide range.

report because the gathering of this information is usual and customary in processing these transactions. For banks, this information is included in the message that is transmitted between institutions and only needs to be retransmitted to FinCEN in the same messaging format as was originally sent.

For money transmitters, FinCEN understands that to be active in the highly competitive cross-border remittances market, and to comply with current BSA/AML monitoring requirements involving their own activity and the activity of their agents, all money transmitters covered by the proposed reporting requirement must already possess a degree of automation that will allow them to generate the CBETF periodic report with minimal manual intervention. Manual intervention at operator level will consist of running the queries on the transaction and customer information databases, and inserting a single FinCEN Uniform Resource Locator (URL) in the computer-generated report; manual intervention at supervisor level will consist of spot-checking the generated report prior to transmitting it to FinCEN. While the number of weekly CBETFs per individual money transmitter (large or small) might vary, the actual number of weekly CBETFs is not considered a burden-determinant factor: having an operator execute and address an automated weekly report would require substantially the same time regardless of the number of transactions. The time required by manual intervention at the supervisory level for quality assurance will be affected by the number of weekly transactions; however, the sample size required for spot-checking at an industry-standard confidence level will not have to be increased in direct proportion to the number of reported transactions. Furthermore, those money transmitters that process the largest portion of CBETFs subject to reporting are also those that currently possess enough technological resources to automate not only the generation of the report, but the spot-checking function as well.

*Estimated Average Total Number of CBETF Periodic Reports per Annum:* 52,000 (52 weekly reports submitted by 1,000 reporting institutions).

*Estimated Total Annual Burden:* 52,000 hours (52,000 reports at 1 hour per report).

The total number of reports to be filed per calendar year (or, in the case of banks, the number of times a year SWIFT retransmits their CBETF activity to FinCEN) is a function of the mandated periodicity of the reports. The proposal reflects the obligation to file a weekly report (an average of 52 reports per reporting institution per calendar year). Total number of weekly reports to be filed by all reporting banks is 15,600 a year; total number of weekly reports to be filed by all reporting money transmitters is 36,400 a year.

*Annual Tax Identification Number Report (the "TIN Annual Report")*

*Description of Affected Financial Institutions:* Banks as defined in 31 CFR 103.11(c).

*Estimate Number of Affected Financial Institutions:* 15,000 banks.

*Estimated Average Total Number of TIN annual reports per Annum:* 15,000 (1 annual report submitted by 15,000 reporting institutions).

*Estimated Total Annual Burden:* 15,000 hours (15,000 reports at 1 hour per report).

Under the TIN annual reporting portion of this proposed rule, FinCEN estimates that the number of affected banks would increase to a maximum of 15,000.[104] FinCEN stipulates that the banks covered by the proposed TIN annual report requirement already possess the degree of automation required to search their transaction and customer information databases and generate the report with minimum manual intervention: the same bank population is currently subject to other regulatory reporting requirements, such as annual reporting on the IRS series of 1099 forms that require substantially similar data processing capacity. The estimated average burden is one hour per reporting bank per year. Therefore, the average total annual burden hours would increase to 15,000.

*Request for Comments Regarding the Paperwork Reduction Act Analysis*

FinCEN is seeking comments on these estimates. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of FinCEN, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and,
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

## XI. Request for Comments

FinCEN invites comments on any and all aspects of the proposal to require select financial institutions to report to FinCEN transmittal orders associated with certain CBETFs. If you are commenting on behalf of a bank, please indicate in your response whether you are a small institution (less than $175 million in assets). If you are commenting on behalf of an MSB, please indicate in your response whether you are a small MSB (gross receipts are below $7 million annually).[105]

FinCEN specifically invites comment on requests above, as well as the following:

*Third-party Carriers:* In the proposed rule, banks will be able to report by either submitting the complete copy of the transmittal order that it sends or receives or by submitting the ten data points listed in 103.14(c) of the proposed regulation. FinCEN anticipates that banks, which provide complete copies of the CBETF transmittal orders, will fulfill this obligation by using third-party carriers of the transmittal orders to submit the copy on behalf of the bank. Alternatively, for banks that submit the ten data points requested in 103.14(c) of the proposed regulation, FinCEN anticipates providing an Internet-based form to report the information. FinCEN requests comments on alternative formats for reporting the proposed information that FinCEN should consider in developing systems to accept CBETF reporting. Additionally, FinCEN requests comments on third-party carriers, other than SWIFT, that could make such reports on behalf of the bank. Although FinCEN is focusing on messaging systems, FinCEN welcomes comments from the public regarding possible payment or settlement systems that could provide the information requested under the proposed rule.

*Message Standards:* If institutions that would be covered by this rule believe that there is a significant portion of their funds transfers that would be required to be reported under this proposed rule that would not be covered by reporting the identified standardized person-to-person transmittal orders (MT 103 and

[104] Federal Deposit Insurance Corporation, *Bank Find, http://www2.fdic.gov/idasp/main_bankfind.asp; select* Find; *Credit Union Directory 2009,* NCUA Credit Union Directory 190–192 (NCUA, 2009).

[105] Please note that the inclusion of this information is not a condition of FinCEN's full consideration of your comment. However, this data will help FinCEN allocate the comment among the population of large and small business entities, and produce a better evaluation of the impact of the proposed rule in accordance with the Regulatory Flexibility Act.

MT 202–COV), FinCEN encourages comments in this area.

*Bank Proprietary Systems:* FinCEN requests comment on the utility of reporting CBETFs that are processed solely through bank proprietary systems and on the potential costs of supplying such reports. At this time, FinCEN is not proposing to collect information on CBETFs that are processed through bank proprietary systems. FinCEN acknowledges that these systems are used in a limited context and that within these contexts there is a higher degree of transparency. When commenting, please note if you have information contrary to these acknowledgements.

*Duplicate Messages:* FinCEN is requiring submissions of copies of transmittal orders or advices with the intention of collecting the evidence that a transmittal of funds has occurred or will occur. FinCEN is asking for advices in order to capture situations where a proprietary system may be used in order to execute the transmittal order but where a third-party system is used in addition to sending an advice to facilitate straight-through processing. It is not FinCEN's intention to collect duplicate records in the rare cases where a transmittal order and an advice are both covered under this proposed regulation. As such, FinCEN is seeking comments on situations where the regulations as proposed might result in duplicate reporting and, if so, whether institutions view this duplication as something that they believe is less costly to simply report (with FinCEN reconciling the two reports) or whether they believe that it would be of value to exempt duplicate filings, with suggestions as to how to avoid such duplication.

*Frequency of Reports:* FinCEN requests comments on the frequency that reports are required to be provided including the feasibility of requiring daily reporting. FinCEN is aware that other countries require daily reporting with significant benefits accruing to law enforcement from the access to near real-time information. FinCEN is interested in receiving information from financial institutions about the impacts that this would have on their operations. In determining the costs of compliance with this proposal, FinCEN has relied on feedback from banks stating that the reporting requirements of the proposal can be fulfilled by copying FinCEN on a SWIFT message. Thus, FinCEN anticipates that the costs of compliance for banks would not be significantly increased if these messages are sent to FinCEN daily as opposed to batch-sent to FinCEN weekly. If your institution (including any money transmitter) has information suggesting otherwise, please include that information within your comment.

*Effects of the Rule on Customer Privacy:* FinCEN has included an extensive discussion of its proposal for ensuring the security of the information in this NPRM.[106] In addition, it is also seeking comments regarding the impact of this information collection on customer privacy and on the ability of banks and MSBs to continue to fulfill their obligations to preserve their customer's privacy while implementing the provisions of this rule.

*Effects of FinCEN's Proposed Reporting Requirements:* To establish an efficient reporting system that not only meets the goal of providing information that is needed by law enforcement but does not require significant changes in the business and payment systems of banks and MSBs, FinCEN is proposing that first-in/last-out banks report all CBETFs and that first-in/last-out money transmitters report all CBETFs at or above $1,000. FinCEN discussed its estimates of the implications of the proposed rule in its Regulatory Flexibility Analysis [107] and its discussion of the Implications and Benefits Study.[108] Considering these discussions and the reporting requirements defined by FinCEN in the NPRM, FinCEN is seeking comments from banks and MSBs on the costs and impact of these broad parameters on the funds transfer operations and systems of the banks and MSBs affected by this rule.

*Migration to other CBETF Channels:* FinCEN would like to solicit comments from institutions regarding specific instances where they believe that, as a result of such a reporting requirement, financial institutions or their customers may move to execute CBETFs by some other means that would not be subject to the proposed reporting requirement, including informal value transfer mechanisms or non-U.S. based payment mechanisms (please provide details).

*Effect of the Rule on Remittances:* FinCEN requests comments on the effect any such reporting is likely to have on retail consumers of cross-border remittances, including how any such reporting may change the relationship between the remittance consumer and the money transmitter and how such reporting may produce cost or price effects likely to be passed on to such consumers. Please be specific in identifying any such monetary effects, as well as any non-monetary effects caused by such a proposed rule, if adopted.

*Reporting Channels:* In the proposed rule, FinCEN requires reporting from money transmitters for transactions of $1,000 or more. FinCEN anticipates that large money transmitters will implement automated systems to provide the information requested in 103.14(c) of the proposed regulation. FinCEN requests comments on possible formats for this reporting to assist FinCEN in developing a user-friendly format to reduce the implications on money transmitters. FinCEN understands that smaller institutions might benefit from submitting reports on an Internet-based form provided by FinCEN. For those institutions with a lower volume of CBETF transactions, FinCEN believes that use of the Internet-based form would allow cost savings versus self-implemented automated reporting systems and requests comments from the industry on this proposal.

*Foreign-Exchange Conversions:* In the proposed rule, FinCEN requires reporting from money transmitters for transactions of $1,000 or more or the equivalent in other currencies. FinCEN would like to solicit comments on how, with respect to non-U.S. dollar denominated transactions, institutions would perform the currency exchange rate calculations in practice and what systems or approaches may be available to facilitate compliance with this requirement.

*Effect of TIN Reporting on the Banking Industry:* FinCEN requests comments on how the annual TIN reporting requirement will impact the banking industry and how the industry will comply with this requirement, including how reportable accounts would be identified for reporting under this methodology. FinCEN understands that banks will be able to leverage from automated systems already designed to address current regulatory requirements, and make relatively inexpensive internal modifications to existing queries that extract information from their customer information and transactional databases, and produce a summary annual report when a customer account shows evidence of CBETF activity during the year. These automated systems are used to comply with other regulatory requirements including the filing of the IRS series of Form 1099. If you have information suggesting that banks are unable to leverage off of these systems, please

[106] *Supra* IV. Sec. I Protection of Private Personal Financial Information.

[107] *Supra* IX. Regulatory Flexibility Act.

[108] *Supra* III. Sec. B. Implications of CBETF Reporting of the Financial Industry.

include that information within your comment.

*Effect of TIN Reporting on the Money Transmitter Industry:* FinCEN is interested in soliciting comments from the money transmitter industry regarding the additional requirement of providing the TIN of the transmittor or recipient for transactions of $3,000 or more. As stipulated above, in order to be active in the highly competitive cross-border remittances market, and to comply with current BSA monitoring requirements involving their own activity and the activity of their agents, all money transmitters covered by the proposed periodic reporting requirement must already possess a degree of automation that will allow them to generate the CBETF periodic report with minimal manual intervention. If you have information suggesting that money transmitters that process CBETFs are unable to rely on automated systems coupled with minimal manual transaction testing, please include that information in your comment.

*TIN Reporting Threshold for the Money Transmitter Industry:* Lastly, FinCEN solicits comments on whether the money transmitters required to report under these proposals would prefer to consolidate the reporting thresholds ($1,000 for CBETF reports and the $3,000 level for including the taxpayer identification number in the report) into a single $1,000 threshold for both reporting the transaction and reporting the taxpayer identification number (meaning that a TIN would be required with every CBETF reported).

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

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

**Authority and Issuance**

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

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

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

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Add new § 103.14, to read as follows:

**§ 103.14 Reporting relating to cross-border electronic transmittal of funds.**

(a) *Periodic Reports.* Each reporting financial institution shall file periodic reports with FinCEN with respect to any cross-border electronic transmittal of funds, denominated in any currency, for an amount equal to or exceeding the applicable reporting threshold, to the extent and in the manner required by this section.

(b) *Definitions— In general.* For purposes of this section, the following terms shall have the meanings set forth below:

(1) *Account* shall have the meaning set forth in 31 CFR 103.90(c).

(2) *Bank* shall have the meaning set forth in 31 CFR 103.11(c).

(3) *Money transmitter* shall have the meaning set forth in 31 CFR 103.11(uu)(5).

(4) *Recipient* shall have the meaning set forth in 31 CFR 103.11(cc).

(5) *Transmittor* shall have the meaning set forth in 31 CFR 103.11(ll).

(6) *Transmittal order* shall have the meaning set forth in 31 CFR 103.11(kk).

(7) *Transmittal of funds* shall have the meaning set forth in 31 CFR 103.11 (jj).

(8) *Electronic means.* Means that utilize technology that has electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(9) *Financial institution* shall have the meaning set forth in 31 CFR 103.11(n).

(10) *Foreign financial institution* shall have the meaning set forth in 31 CFR 103.175(h).

(11) *First-in financial institution.* The first financial institution with respect to a transmittal of funds that receives a transmittal order or advice from a foreign financial institution.

(12) *Last-out financial institution.* The last financial institution with respect to a transmittal of funds that sends a transmittal order or advice to a foreign financial institution.

(13) *Cross-border electronic transmittal of funds.* A transmittal of funds where either the transmittal order or the advice is:

(i) Communicated by electronic means; and

(ii) Sent or received by either a first-in or last-out financial institution.

(14) *Reporting financial institution.* Any bank ('reporting bank') or money transmitter ('reporting money transmitter') acting as a first-in or last-out financial institution.

(15) *Reporting threshold.* For reporting banks, the reporting threshold is zero. For reporting money transmitters, the reporting thresholds for the periodic cross-border electronic transmittal of funds is $1,000 or more, or the equivalent in other currencies.

(c) *Filing procedures*—(1) *What to file.* Reporting financial institutions shall discharge their reporting obligations with respect to cross-border electronic transmittals of funds required by paragraph (a) of this section by submitting a copy of the respective transmittal order or advice, provided that the transmittal order or advice is in a standardized format that has been approved for direct submission by FinCEN. If the reporting financial institution is unable to submit a copy of the respective transmittal order or advice in an approved format, then the reporting financial institution may discharge its reporting obligation by submitting the following information, if available, in a form specified by FinCEN:

(i) Unique transaction identifier number;

(ii) Either the name and address or the unique identifier of the transmittor's financial institution;

(iii) Name and address of the transmittor;

(iv) The account number of the transmittor (if applicable);

(v) The amount and currency of the transmittal of funds;

(vi) The execution date of the transmittal of funds;

(vii) The identity of the recipient's financial institution;

(viii) The name and address of the recipient;

(ix) The account number of the recipient (if applicable);

(x) Any other specific identifiers of the recipient or transaction, and

(xi) For transactions of $3,000 or more, reporting money transmitters shall also include the U.S. taxpayer identification number of the transmittor or recipient (as applicable) or, if none, the alien identification number or passport number and country of issuance.

(2) *Where to file.* A report required by paragraph (a) of this section shall be filed with FinCEN, unless otherwise specified.

(3) *When to file.* A report required by paragraph (a) of this section shall be filed by the reporting financial institution within five business days following the day when the reporting financial institution sent or received the transmittal order.

(4) *Designated third-party filers.* A reporting financial institution may designate a third party to file a report required under this section utilizing procedures prescribed by FinCEN.

(d) *Nature and form of reports.* All reports required by paragraph (a) of this

section shall consist of electronic submissions filed in a format approved by FinCEN either discretely, on a transaction-by-transaction basis, or by batching transactions. FinCEN may authorize a designated reporting financial institution to report in a non-electronic manner if the financial institution demonstrates to FinCEN that the form of the required report is unnecessarily onerous on the institution as prescribed; that a report in a different form will provide the information FinCEN deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this part.

(e) *Annual Reports.* On an annual basis, all banks must submit to FinCEN a report that provides the following information: the number of the account that was credited or debited to originate or receive a cross-border electronic transmittal of funds, and the U.S. taxpayer identification number of the respective accountholder. This report shall be submitted to FinCEN no later than April 15 of the year following the transaction date of the cross-border electronic transmittal of funds. The report shall be in a form and manner to be determined by FinCEN.

(f) *Exemptions.* The following cross-border electronic transmittals of funds are not subject to the reporting requirements of paragraphs (a) and (e) of this section:

(1) Cross-border electronic transmittals of funds where either the transmittor is a bank and the recipient is a foreign bank, or the transmittor is a foreign bank and the recipient is a bank and, in each case, there is no third-party customer to the transaction; or

(2) The transmittal order and advice of the transmittal order are communicated solely through systems proprietary to a bank.

Dated: September 24, 2010.

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

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2010–24417 Filed 9–29–10; 8:45 am]

BILLING CODE 4810–02–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 285

**[DoD–OS–2010–0103; RIN 0790–AI51]**

### DoD Freedom of Information Act (FOIA) Program

**AGENCY:** Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense is proposing to update current policies and procedures to reflect the DoD FOIA Program as prescribed by Executive Order 13392. The changes will ensure appropriate agency disclosure of information and offer consistency with the goals of section 552 of title 5, United States Code.

**DATES:** Submit comments on or before November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. James Hogan, (703) 696–468 fax number: (703) 696–4506.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866, "Regulatory Planning and Review"**

It has been certified that 32 CFR part 285 does not:

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

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

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

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

**Sec. 202, Pub. L. 104–4, "Unfunded Mandates Reform Act"**

It has been certified that 32 CFR part 285 does not contain a Federal mandate that may result in the expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

**Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been certified that 32 CFR part 285 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

**Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

It has been certified that 32 CFR part 285 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, "Federalism"**

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

**List of Subjects in 32 CFR Part 285**

Freedom of information.

Accordingly, 32 CFR part 285 is proposed to be amended as follows.

## PART 285—[AMENDED]

1. The authority citation for part 285 continues to read as follows:

**Authority:** 5 U.S.C. 552.

2. Section 285.1 is amended by revising paragraph (c) to read as follows:

**§ 285.1 Purpose.**

* * * * *

(c) Implements E.O. 13392, Presidential Memorandum, "Freedom of Information Act," January 21, 2009 (available at *http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/*), and Attorney General Memorandum, "The Freedom of Information Act (FOIA)," March 19, 2009 (available at *http://www.justice.gov/ag/foia-memo-march2009.pdf*) within the Department of Defense.

* * * * *

3. Section 285.2 is amended by revising paragraph (a) to read as follows:

**§ 285.2 Applicability.**

* * * * *

(a) The Office of the Secretary of Defense (OSD), the Military

Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

* * * * *

4. Section 285.3 is amended by revising paragraph (a) to read as follows:

**§ 285.3 Policy.**

* * * * *

(a) Promote transparency and accountability by adopting a presumption in favor of disclosure in all decisions involving the FOIA and responding promptly to requests in a spirit of cooperation.

* * * * *

5. Section 285.4 is amended by:

a. Revising paragraph (a)(1), the first sentence of paragraph (a)(3), paragraph (a)(4), and paragraph (e)(7).

b. Adding a sentence to the end of paragraph (e)(5).

The revisions and amendments read as follows:

**§ 285.4 Responsibilities.**

(a) * * *

(1) Serve as the DoD Chief FOIA Officer in accordance with Section 552 of title 5, United States Code.

* * * * *

(3) Designate the FOIA Public Liaisons for the Department of Defense in accordance with Section 552 of title 5, United States Code. * * *

(4) Prepare and submit to the Attorney General the DoD Annual Freedom of Information Act Report as required by 5 U.S.C., and other reports as required by E.O. 13392 and Attorney General Memorandum, "The Freedom of Information Act (FOIA)," March 19, 2009.

* * * * *

(e) * * *

(5) * * * Additionally, DoD Component FOIA offices will provide DFOIPO with information copies of significant FOIA requests and responses.

* * * * *

(7) Submit to the DA&M, through DFOIPO, DoD Component inputs to the DoD FOIA Annual Report prescribed in 32 CFR part 286 and E.O. 13392 and other reports or data requested by the DA&M. All such submissions will be made by the FOIA Public Liaisons.

* * * * *

Dated: September 24, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24537 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[EPA–R09–RCRA–2010–0598; FRL–9205–1]**

## California: Proposed Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** California has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed California's application and made the tentative decision that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes. EPA is also proposing that the State's requirements regulating facilities that are conditionally exempt from the federal rules as Conditionally Exempt Small Quantity Generators ("CESQGs") be treated as more stringent than federal requirements, thereby making these provisions federally enforceable.

**DATES:** EPA must receive written comments on California's application for authorization for changes to its hazardous waste management program by November 1, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–RCRA–2010–0598 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: smith.rebecca@epa.gov.*
- *Fax:* (415) 947–3533 (prior to faxing, please notify Rebecca Smith at 415–972–3313)
- *Mail:* Send written comments to: Rebecca Smith, WST–2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.
- *Hand Delivery or Courier:* Rebecca Smith, EPA Region 9 (WST–2), 75 Hawthorne Street, San Francisco, CA 94105. Such deliveries are only accepted during the office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* We must receive your comments by November 1, 2010. Direct your comments to Docket ID No. EPA–R09–RCRA–2010–0598. 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 the disclosure of which is restricted by statute, or you make special arrangements with the EPA contact. 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 you do so, this information will become a part of the public record, unless you have made arrangements with EPA prior to the submittal of your comments. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*).

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy.

You may view and copy California's application at the following addresses: California Environmental Protection Agency, Environmental Services Center, 1001 I Street, 22nd Floor, Sacramento,

CA 95814, Phone: (916) 324–0912, from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Thursday (appointment preferred but not required); and U.S. EPA Region 9 Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, Phone: (415) 947–4406, from 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. Monday through Thursday. Copy services are not available in Sacramento, but should be arranged by the viewer.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Smith, EPA Region 9 (WST–2), 75 Hawthorne Street, San Francisco, CA 94105, Phone: (415) 972–3313. E-mail: smith.rebecca@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must revise their programs and ask EPA to authorize the revisions. Revisions to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

## B. What decisions have we made in this rule?

EPA has made the tentative determination that California's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant California final authorization to operate its hazardous waste program with the changes described in this authorization application. California will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian country) and for carrying out all authorized aspects of the RCRA program described in its revised program application, subject to the limitations of RCRA's Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by HSWA regulations take effect as a matter of Federal law in authorized states before those states are authorized for such requirements. Thus, EPA will implement those requirements and prohibitions in California, including issuing permits, until the State is granted authorization to do so.

## C. What is the effect of this authorization decision?

If California is authorized for these changes, a facility in California subject to RCRA will have to comply with the authorized State requirements instead of the corresponding Federal requirements in order to comply with RCRA. Additionally, facilities must comply with certain Federal requirements, *i.e.,* HSWA regulations issued by EPA for which California has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements such as requirements for the exportation of hazardous waste. California continues to have enforcement responsibilities under its State law to pursue violations of its hazardous waste management program. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements (including State-issued statutes and regulations that are authorized by EPA and any applicable Federally-issued statutes and regulations) and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions would not impose additional requirements on the regulated community because the regulations for which California will be authorized are already effective under State law and are not changed by the act of authorization.

## D. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

## E. For what has California previously been authorized?

California initially received final authorization for the base RCRA program on July 23, 1992, effective August 1, 1992 (57 FR 32726). EPA granted authorization for changes to California's program on September 26, 2001, effective September 26, 2001 (66 FR 49118).

## F. What changes are we proposing with this action?

On August 2, 2004 and August 17, 2004 California submitted final complete program revision applications, seeking authorization of those changes in accordance with 40 CFR 271.21. We have made a tentative determination that California's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

California has applied for only the Federal changes relating to the corrective action management units, the Bevill exclusion and the land disposal restrictions. There are several changes to the Federal program for which California has not yet applied for authorization. The major areas of changes for which California has not yet applied for authorization are: The used oil regulations; consolidated liability requirements; military munitions; universal waste; modification to the hazardous waste manifest system; standardized permit requirements; burden reduction regulations; and the NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule).

California submits packages to EPA relating to its efforts to seek authorization for updates to its program based on revisions to the Federal program. EPA publishes a series of checklists to aid California and the other states in such efforts (*see* EPA's RCRA State Authorization Web page at *http://www.epa.gov/epaoswer/hazwaste/state/revision/program.htm*). Each checklist generally reflects changes made to the Federal regulations pursuant to a particular **Federal Register** notice. California's submittals have been grouped into general categories (*e.g.,* Corrective Action Management Units, Land Disposal Restrictions, etc.). Each submittal may have reflected changes based on one or more **Federal Register** notices and would have thus referenced one or more corresponding checklists.

What follows is a summary, for each general category identified by California in its submittals, of the specific subjects of changes to the Federal program for that category. Although the changes to the Federal program are identified in the summary, California did not necessarily make revisions to its program as a result of each Federal revision noted. For example, certain revisions to the Federal program may have resulted in less stringent regulation than that which previously existed. Since states may maintain programs which are more stringent than the Federal program,

states have the option whether or not to adopt such revisions.

*1. Changes California Identified as Relating to Corrective Action Management Units*

We are proposing to grant California final authorization for all revisions to its program due to certain changes to the Federal Corrective Action Management Unit program.

*2. Changes California Identified as Relating to Land Disposal Restrictions Phases 3 and 4*

We are proposing to grant California final authorization for all revisions, if any, to its program due to certain changes to the Federal program in the following areas: (1) Land Disposal Restrictions Phase III—Decharacterized Wastewaters; (2) Emergency Extension of the K088 Capacity Variance; (3) Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; (4) Emergency Revision of the Carbamate Land Disposal Restrictions; (5) Clarification of Standards for Hazardous Waste LDR Treatment Variances; (6) Treatment Standards for Metal Wastes and Mineral Processing Wastes; (7) Hazardous Soils Treatment Standards and Exclusions; (8) Administrative Stay for Zinc Micronutrient Fertilizers; (9) Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production; (10) Extension of Compliance Date for Characteristic Slags; (11) Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); (12) Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes; (13) Deferral for PCBs in Soil; and (14) Certain Land Disposal Restrictions Technical Corrections and Clarifications. Note that California has not yet adopted the provisions addressed by the following Federal final rules which are also part of Phase IV of the land disposal restrictions requirements: LDR Revision Checklist 195 (66 FR 58258, November 20, 2001, as amended by 67 FR 17119, April 9, 2002); non-LDR Revision Checklist 200 (67 FR 28393, July 24, 2002); and LDR Revision Checklist 201 (67 FR 62618, October 7, 2002).

*3. Changes California Identified as Relating to the Bevill Exclusion*

We are proposing to grant California final authorization for all revisions to its program due to certain changes to the Federal program in the Bevill Exclusion requirements.

The following table shows the Federal and analogous State provisions involved in this tentative decision and the relevant corresponding checklists:

| Description of Federal requirement (checklist #) | **Federal Register** page and date | Analogous State authority |
|---|---|---|
| 40 Code of Federal Regulations (40 CFR), 260.10 Corrective Action Management Units (CAMU), checklist 196. | (196) 67 FR 2962, Jan. 22, 2002 | (196) Title 22, California code of Regulations (22 CCR) 66260.10, amended July 19, 2004. |
| 40 CFR 261.1 Land Disposal Restrictions (LDR), checklist 157. | (157) 62 FR 25998, May 12, 1997 | (157) California did not adopt these exclusions. |
| 40 CFR 261.2 LDR, checklists 157, 179 | (179) 64 FR 2548, May 11, 1999 | (157, 179) California did not adopt these regulations. |
| 40 CFR 261.3, Bevill Exclusion, checklist 167E | (167E) 63 FR 28556, May 26, 1998 | (167E) 66261.3, amended March 15, 2003. |
| 40 CFR 261.4, Bevill Exclusion, checklist 167E | | (167E) 66261.4, amended November 12, 1998. |
| 40 CFR 262.34 LDR, checklists 179, 183 | (183) 64 FR 56469, October 20, 1999 | (179, 183) 22 CCR 66262.34, amended Sept. 11, 2000. |
| 40 CFR 264.550 through 264.552 CAMU, checklist 196. | | (196) 22 CCR 66264.550 through 66264.552, amended July 19, 2004. |
| 40 CFR 264.554 and 264.555 CAMU, checklist 196. | | (196) California did not adopt these regulations. |
| 40 CFR 268.1 LDR, checklists 151, 157 | (151) 61 FR 15566 April 8, 1996; [amended 61 FR 15660 April 8, 1996; 61 FR 19117 April 30, 1996; 61 FR 33680 June 28, 1996; 61 FR 36419 July 10, 1996; 61 FR 43924 August 26, 1996; and 62 FR 7502 February 19, 1997]. | (151, 157) 22 CCR 66268.1, amended June 4, 1999 |
| 40 CFR 268.2 LDR, checklists 151, 167A, 167B, 179. | (167A, 167B) 63 FR 28556, May 26, 1998 [amended 63 FR 31266 June 8, 1998]. | (151, 167A, 167B, 179) 22 CCR 66260.10, amended Feb. 26, 2004. |
| 40 CFR 268.3(b) LDR checklist 151 | | (151) California Health and Safety Code (HSC) Division 20, 25179.2(e) enacted 1995. California did not adopt the dilution exception. |
| 40 CFR 268.3(c) and (d) LDR checklists 151, 167A. | | (151, 167A) 22 CCR 66268.3(b) and (c) amended June 4, 1999 |
| 40 CFR 268.4 LDR checklist 167C | (167C) 63 FR 28556, May 26, 1998 [amended 63 FR 31266, June 8, 1998]. | (167C) HSC, Division 20, 25179.11 amended 1996. 22 CCR 66268.1 amended June 4, 1999. |
| 40 CFR 268.7 LDR, checklists 151, 157, 167B, 167C, 179, 183. | | (151, 157, 167B, 167C, 179, 183) 22 CCR 66268.7 amended Feb. 26, 2004; (157) California did not adopt the Federal exemption at 40 CFR 268.7(b)(6). |
| 40 CFR 268.9 LDR checklists 151, 157, 179 | | (151, 157, 179) 22 CCR 66268.9 amended Feb. 26, 2004. |
| 40 CFR 268.30 LDR checklist 157 | | (157) 22 CCR 66268.30 amended June 4, 1999. |
| 40 CFR 268.32 LDR checklists 157, 190 | (190) 65 FR 81373 December 26, 2000 | (157, 190) 22 CCR 66268.31.5 amended July 3, 2002. |
| 40 CFR 268.33 LDR checklist 189 | (189) 65 FR 67068, November 8, 2000 | (189) 22 CCR 66268.33 amended July 3, 2002. |

| Description of Federal requirement (checklist #) | Federal Register page and date | Analogous State authority |
|---|---|---|
| 40 CFR 268.34 LDR checklists 167A, 172 | (167A, 172) 63 FR 48124, September 9, 1998 | (167A, 172) 22 CCR 66268.34 amended Sept. 11, 2000. |
| 40 CFR 268.39 LDR checklists 151, 155, 159, 160, 173. | (155) 62 FR 1992, January 14, 1997; (160) 62 FR 37694, July 14, 1997; (173) 63 FR 51254, September 24, 1998. | (151, 155, 159, 160, 173) 22 CCR 66268.39 amended Sept. 11, 2000. |
| 40 CFR 268.40 LDR checklists 151, 161, 167A, 167C, 171, 179, 183. | (161) 62 FR 45568, August 28, 1997; (170) 63 FR 46332 August 31, 1998; (171) 63 FR 47410, September 4, 1998. | (151, 161, 167A, 167C, 171, 179, 183) 22 CCR 66268.40 amended July 3, 2002. |
| 40 CFR 268.40/Table checklists 151, 157, 167A, 167C, 171, 173 179, 183, 189. | | (151, 157, 167A, 167C, 171, 173 179, 183, 189) 22 CCR 66268.40/Table amended July 3, 2002. |
| 40 CFR 268.42 LDR checklists 151, 157, 167C | | (151, 157, 167C) 22 CCR 66268.42 amended Feb. 26, 2004. |
| 40 CFR 268.44(a) LDR checklist 162 | (162) 62 FR 64504, December 5, 1997 | (162) California is not seeking to have this provision delegated. |
| 40 CFR 268.44(h), (m) LDR checklists 162, 167B. | | (162, 167B) 22 CCR 66268.44 amended June 4, 1999. |
| 40 CFR 268.45 LDR checklist 167C | | (167C) 22 CCR 66268.45 amended June 4, 1999. |
| 40 CFR 268.48(a)/Table UTS LDR checklists 151, 161, 167A, 167C, 171, 179, 189, 190. | | (151, 161, 167A, 167C, 171, 179, 189, 190) 22 CCR 66268.48(a)/Table UTS amended July 3, 2002. |
| 40 CFR 268.49 LDR checklists 167B, 183, 179, 190. | | (167B, 183, 179, 190) 22 CCR 66268.49 amended July 3, 2002. |
| 40 CFR 268, Appendices I, II, X LDR checklist 157. | | (157) 22 CCR, Chapter 18, Appendices I, II, X [reserved] amended June 4, 1999. |
| 40 CFR 268, Appendix III LDR checklists 157, 190. | | (157, 190) 22 CCR Chapter 18, Appendices III amended July 3, 2002. |
| 40 CFR 268, Appendix VI LDR checklist 157 | | (157) 22 CCR Chapter 18, Appendices VI amended June 4, 1999. |
| 40 CFR 268, Appendix VII/Table 1 LDR checklists 157, 167C, 192B. | (192B) 66 FR 27266, May 16, 2001 | (157, 167C, 192B) 22 CCR Chapter 18, Appendix VII/Table 1 amended July 3, 2002. |
| 40 CFR 268, Appendix VII/Table 2 and Appendix VIII LDR checklists 157, 167C. | | (157, 167C) 22 CCR Chapter 18, Appendix VII/Table 2 amended June 4, 1999. |
| 40 CFR 268, Appendix XI LDR checklist 151 | | (151) 22 CCR Chapter 18, Appendix XI amended June 4, 1999. |

**G. Where are the revised state rules different from the federal rules?**

State requirements that go beyond the scope of the Federal program are not part of the authorized program and EPA cannot enforce them. Although you must comply with these requirements in accordance with California law, they are not RCRA requirements. We consider that the following State requirements, which pertain to the revisions involved in this tentative decision, go beyond the scope of the Federal program.

1. The definition of "remediation waste" at 22 CCR. 66260.10 is broader in scope than the Federal definition at 40 CFR 260.10 only to the extent California's definition includes hazardous substances which are neither "hazardous wastes" nor "'solid wastes."

2. California regulation subjects CAMUs for non-RCRA hazardous waste to state-specific requirements under 22 CCR 66264.552.5. The state requirement at 22 CCR 66264.552.5 is broader in scope because the federal program does not consider these wastes to be hazardous. In addition, 22 CCR 66264.550(a) is also considered broader in scope to the extent that it subjects non-RCRA wastes to the state-only CAMU requirements.

3. California did not adopt the Federal definitions at 40 CFR 261.1(c)(9)–(12), 261.4(a)(13)–(14), and 261.6(a)(3)(ii) addressing scrap metals or the related Federal changes to 40 CFR 261.2(c)(4)/Table. California is broader in scope to the extent that its statutory provisions at HS&C § 25143.2(a) and (e), do not exclude these scrap metals from regulation.

4. The California provisions at 22 CCR 66268.7(a)-(c) are broader in scope than the Federal land disposal treatment provisions at 40 CFR 268.7(a)-(c) to the extent that the State's provisions also apply to non-RCRA wastes. Similarly, California's variance petition provisions at 22 CCR 66268.44(c) and 66268.44(h) are also broader in scope to the extent that they apply to non-RCRA wastes.

**H. What is EPA's position on California's regulation of conditionally exempt small quantity generators?**

When California initially received final authorization for the base RCRA program on July 23, 1992, effective August 1, 1992 (57 FR 32726), EPA Pacific Southwest Region (Region IX) identified California's failure to adopt the federal exclusion for conditionally exempt small quantity generators ("CESQGs") (found, generally, at 40 CFR 261.5) as "broader in scope" than the federal program. (*See also* 40 CFR 270.1(c)(2)(iii).) However, EPA's position regarding the absence of the conditional exclusion for CESQGs in a state program has changed and EPA now clearly regards the absence of any such exclusion as more stringent than the federal program, making state regulation of CESQGs federally enforceable when authorized. See United States v. Southern Union Co., 643 F. Supp. 2d 201 (D.R.I. 2009). In order to harmonize our authorization of California's program with EPA's position with respect to CESQGs, EPA is hereby proposing to redesignate California's regulation of CESQGs as more stringent than the federal program. EPA is also seeking public comment on this proposed change to California's authorization. If EPA makes a final determination that California's regulation of CESQGs is more stringent than the federal program, then the State's regulation of such federally exempt CESQGs will be part of the authorized state program and will be

federally enforceable within the State of California. Specifically, this change will allow federal enforcement of State requirements applicable to CESQGs who are conditionally exempt under the federal provisions found at 40 CFR 261.5, 266.100(b)(3) and 270.1(c)(2)(iii). This change will not result in any new requirements on CESQGs, but will only mean that the more stringent State requirements for CESQGs will be federally enforceable.

**I. Who handles permits after the authorization takes effect?**

California will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA prior to California being authorized for these revisions, if any, will continue in force until the effective date of the State's issuance or denial of a State RCRA permit, or the permit otherwise expires or is revoked. California will administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until such time as California has issued a corresponding State permit. EPA will not issue any more new permits or new portions of permits for provisions for which California is authorized after the effective date of this authorization. EPA will retain responsibility to issue permits needed for HSWA requirements for which California is not yet authorized.

**J. How would authorizing California for these revisions affect Indian country (18 U.S.C. Section 1151) in California?**

California is not authorized to carry out its hazardous waste program in Indian country within the State. Indian country includes all lands within the exterior boundaries of an Indian reservation, any land held in trust by the United States for an Indian tribe whether or not formally designated as an Indian reservation, and any other land, whether within or outside of an Indian reservation, that qualifies as Indian country under 18 U.S.C. 1151. A list of Indian Tribes in California can be found on the Web at *http://www.doi.gov/bureau-indian-affairs.html* under Tribal Leaders Directory. Therefore, this proposed action would have no effect on the Indian country within the State's borders. EPA will continue to implement and administer the RCRA program in Indian country within the State.

**K. What is codification and is EPA codifying California's hazardous waste management program as authorized in this rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart F for this authorization of California's program changes until a later date.

**L. Statutory and Executive Order Reviews**

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

*1. Executive Order 12866: Regulatory Planning Review*

The Office of Management and Budget has exempted this proposed rule from its review under Executive Order (EO) 12866, (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB.

*2. Paperwork Reduction Act*

This proposed rule does not impose an information collection burden under the Paperwork Reduction Act.

*3. Regulatory Flexibility Act*

After considering the economic impacts of this proposed rule on small entities under the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

*4. Unfunded Mandates Reform Act*

Because this proposed rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act.

*5. Executive Order 13132: Federalism*

EO 13132 does not apply to this proposed rule because it will not have federalism implications (*i.e.,* substantial direct effects on the State, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government) as described in EO 13132.

*6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

EO13175 does not apply to this proposed rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). As stated previously, this proposed action would have no effect on the Indian country within the State's borders and EPA will continue to implement and administer the RCRA program in Indian country within the State.

*7. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

This proposed rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866.

*9. National Technology Transfer Advancement Act*

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, Section 12(d) of the National Technology Transfer and Advance Act does not apply to this proposed rule.

*10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*

Because this rule addresses authorizing pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

*11. Executive Order 12988*

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7,

1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

*12. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings*

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 13, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region 9.*

[FR Doc. 2010–24001 Filed 9–29–10; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register

Vol. 75, No. 189

Thursday, September 30, 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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

**[OMB Control Number: 3002–0003]**

### Information Collection Request Submitted to Office of Management and Budget

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995, the Administrative Conference of the United States will submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) requesting approval for the following collection of information: 3002–0003, Substitute Confidential Employment and Financial Disclosure. This form is a substitute for Standard Form 450, issued by the Office of Government Ethics (OGE), which non-government members of the Conference would otherwise be required to file. OGE has approved the use of this substitute form. Before submitting this ICR to OMB, the Administrative Conference is inviting comments on the information collection.

**DATES:** Comments must be received by November 29, 2010.

**ADDRESSES:** Submit comments to either of the following:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* ICR Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** General Counsel, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036; Telephone 202–480–2080.

**SUPPLEMENTARY INFORMATION:** The Administrative Conference of the United States (ACUS) is charged with developing recommendations for the improvement of Federal administrative procedures (5 U.S.C. 591). Its recommendations are the product of a research process overseen by a small staff, but ultimately adopted by a membership of 101 experts, including approximately 45 non-government members—5 Council members and up to 40 others (5 U.S.C. 593(b) and 5 U.S.C. 595(b)). These individuals are deemed to be "special government employees" within the meaning of 18 U.S.C. 202(a) and, therefore, are subject to confidential financial disclosure requirements of the Ethics in Government Act (5 U.S.C. App. 107) and regulations of the Office of Government Ethics (OGE). The ACUS "Substitute Confidential Employment and Financial Disclosure" form submitted ("Substitute Disclosure Form") is a substitute for OGE Standard Form 450, which ACUS non-government members would otherwise be required to file.

In addition to the non-government members of the Conference, the Chairman, with the approval of the Council established under 5 U.S.C. 595(b) and appointed by the President, may appoint additional persons in various categories, for participation in Conference activities, but without voting privileges. These categories include senior fellows, special counsels, and liaison representatives from other government entities or professional associations. The estimated maximum number of such individuals that may also be required to submit the Substitute Disclosure Form at any particular time is 45.

Prior to the termination of funding for ACUS in 1995, the agency was authorized to use for this purpose a simplified form that was a substitute for OGE Standard Form 450. The simplified substitute form was approved by OGE following a determination by the ACUS Chairman, pursuant to 5 CFR 2634.905(a), that greater disclosure is not required because the limited nature of the agency's authority makes very remote the possibility that a real or apparent conflict of interest will occur. ACUS received OMB approval for the simplified substitute form in 1994.

ACUS has now been re-established in 2010. On June 10, 2010, OGE renewed its approval for this simplified substitute form, which ACUS must provide to its non-government members in advance of membership meetings. OMB has given emergency approval under 5 CFR 1320.13 for use of this form through March 31, 2011, so that there will be no delay in commencing the committee and Conference activities of the non-government members necessary to the implementation of its statutory responsibilities to identify and recommend improvements of Federal administrative procedures.

As required by the Ethics in Government Act, 5 U.S.C. App. 107(a); Executive Order 12674, sec. 201(d); and OGE regulations, 5 CFR 2634.901(d), copies of the substitute form submitted to ACUS by its members are confidential and may not be released to the public.

The proposed "Substitute Confidential Employment and Financial Disclosure" form and the Supporting Statement submitted to OMB may be viewed at: *http://www.reginfo.gov/public/do/PRAMain.*

To view these documents, select "Administrative Conference of the United States" under Current Inventory; click on the ICR Reference Number; then click on either "View Information Collection (IC) List" or "View Supporting Statement and Other Documents."

The total annual burden on respondents is estimated to be 135 hours, based on estimates of 90 persons submitting the form an average of 6 times per year, requiring no more than 15 minutes per response.

Interested persons are invited to submit comments regarding this burden estimate or any other aspect of this information collection, including its necessity, utility and clarity for the proper performance of the Conference's functions.

Dated: September 23, 2010.

**Paul R. Verkuil,**

*Chairman.*

[FR Doc. 2010–24506 Filed 9–29–10; 8:45 am]

BILLING CODE 6110–01–P

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Housing Service (RHS), USDA Rural Development.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Technical and Supervisory Assistance (TSA) grants.

**DATES:** Comments on this notice must be received by November 29, 2010 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Myron Wooden, Senior Loan Specialist, Single Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Mail STOP 0783, 1400 Independence Ave., SW., Washington, DC 20250–0783, Telephone 202–720–4780.

**SUPPLEMENTARY INFORMATION:**

*Title:* Technical & Supervisory Assistance Grants.

*OMB Number:* 0575–0188.

*Expiration Date of Approval:* January 31, 2011.

*Type of Request:* Extension of currently approved information collection.

*Abstract:* RHS is authorized under Section 525 of Title V of the Housing Act of 1949, as amended, to make grants to or to enter into contracts to pay part or all of the cost of developing, conducting, administering or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, State and local housing programs in rural areas.

Recipient public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes and other associations approved by the Secretary assist low-income individuals by providing homebuyer training, preparing applications for loan and other housing assistance, and counseling those with delinquent Rural Development housing loans. RHS refers to this program as Technical and Supervisory Assistance. RHS annually publishes a Notice of Funds Availability (NOFA) in the **Federal Register** to invite grant proposals. The NOFA sets forth the eligibility and application requirements.

Information is collected from applicants and grant recipients by Rural Development staff in its local, State and National offices. This information will be used to determine applicant eligibility for a grant, project feasibility, to select grants for funding, and to monitor performance of selected grantees. If an applicant's proposal is selected for funding, it will be notified of the selection and given the opportunity to submit a formal application.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .58 hours per response.

*Respondents:* Public and private nonprofit corporations, agencies, institutions, organizations, and Indian tribes.

*Estimated Number of Respondents:* 30.

*Estimated Number of Responses per Respondent:* 12.96.

*Estimated Number of Responses:* 389.

*Estimated Total Annual Burden on Respondents:* 661 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

**Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. 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.

Dated: September 22, 2010.

**Tammye Treviño,**

*Administrator, Rural Housing Service.*

[FR Doc. 2010–24492 Filed 9–29–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lincoln National Forest, New Mexico, Integrated Non-Native Invasive Plant Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Lincoln National Forest (LNF) proposes to implement an integrated Forest-wide management strategy to control spread of non-native invasive plants (NNIP) within the LNF. The proposal utilizes several management tools, including registered herbicides, biological agents, controlled grazing, manual/mechanical methods, and adaptive management. Invasive plants designated by the State of New Mexico as noxious weeds are the primary focus of this project. By definition, noxious weeds pose a potential threat to human health and/or economic activity. The LNF proposes to manage occurrences of other NNIP species that pose an identifiable threat to native species diversity, ecological function, or resilience of native habitats.

**DATES:** Comments concerning scope of analysis must be received by November 29, 2010. The draft environmental impact statement is expected January 2011 and the final environmental impact statement is expected April 2011.

**ADDRESSES:** Send written comments to NNIP Project, Lincoln National Forest, 3463 Las Palomas Road, Alamogordo, NM 88310. Comments may also be sent via e-mail to *comments-southwestern-lincoln@fs.fed.us,* or via facsimile to (575) 434–7218.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

**FOR FURTHER INFORMATION CONTACT:** Sabrina Flores, Interdisciplinary Team Leader, Lincoln National Forest—SO, 3463 Las Palomas Road, Alamogordo,

NM 88310. Telephone: (575) 434–7237 or electronic address: *sflores@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

As provided by direction in Executive Order 13112, the Forest Service Manual, and LNF Land and Resource Management Plan, as amended (Forest Plan), the primary purpose of and need for this project is to protect and restore resilience, abundance, and biological diversity of desired native plant communities. This project is part of the LNF's ongoing ecosystem restoration effort. Management activities would result in Forest-wide progress toward site- or situation-specific needs, for all management areas within the LNF. This proposal is needed because existing populations of NNIP occur within the LNF and are degrading natural communities. Inventoried and new or unknown infestations continue to spread unchecked. Past projects to control NNIP on the LNF have been authorized with budgetary and geographic limitations. These limitations have kept the LNF from keeping pace with the extent in which several NNIP species spread and encroach into new areas.

**Proposed Action**

The LNF proposes to implement an integrated weed management (IWM) strategy as defined in the Forest Service Manual for prevention, eradication, suppression, and reduction of existing and future NNIP infestations. The IWM strategy is based on ecological factors and includes consideration of site conditions, other resource values, resource uses, NNIP characteristics, and potential effectiveness of control measures for specific circumstances. The proposed action includes both non-treatment and treatment practices: Strategies for awareness and education in order to prevent new infestations; early detection of and rapid response to newly discovered infestations; control of outbreaks of existing infestations that threaten sensitive and native habitats; containment of established infestations by maintaining treatments along spread pathways and previously treated areas; and cost-effective maintenance of vegetation treatments including those designed to reduce hazardous fuels and improve wildlife habitat; use of all treatment "tools" such as chemical, mechanical, biological, and controlled grazing management practices; treatment followed by restoration and revegetation (as appropriate), as well as monitoring of NNIP-impacted lands; and close coordination across jurisdictional boundaries through cooperative partnerships.

**Cooperating Agencies**

The LNF initiated correspondence with 61 entities as an invitation as a cooperating agency on September 17, 2010.

**Possible Alternatives**

The No Action alternative will serve as a baseline for comparison of alternatives. Under the No Action alternative, the LNF would continue to deal with NNIP species as authorized under existing National Environmental Policy Act (NEPA) documents including; current noxious weed and other site-specific projects. Additional action alternatives may be developed to respond to significant issues, if any.

**Responsible Official**

The Forest Service Southwestern Regional Forester is the responsible official for portions of the project that propose herbicide treatment of NNIP species within congressionally designated wilderness and research natural areas within the LNF. The LNF Forest Supervisor is the responsible official for all other portions of the LNF and non-herbicide treatment within wilderness and research natural areas.

**Nature of Decision To Be Made**

The Forest Service Southwestern Regional Forester and the LNF Forest Supervisor will decide whether or not management of NNIP species on the LNF will be Forest-wide with a more comprehensive approach, and if so, what resource protection measures and monitoring requirements will be required for implementation.

**Preliminary Issues**

Several analysis efforts related to the treatment of NNIP species on National Forests in New Mexico and Arizona (Region 3) have been completed or are currently on-going at this time. Unintended detrimental environmental effects to non-target species could result from the application of herbicide or release of biological agents. The application of herbicide could result in an increase of toxic chemicals in groundwater.

**Scoping Process**

This notice of intent initiates the scoping process, which guides development of the environmental impact statement (EIS). To assist the LNF in identifying and considering issues and concerns about the proposed action, public comment opportunities will continue to be provided throughout the EIS process. In addition to taking written comments, the LNF will consider holding a series of public meetings during the fall/winter of 2010 to ensure that those who are interested have every opportunity to provide additional information or comments and to identify any issues or concerns they may have relative to the proposed action. It is important that reviewers provide their comments at such times and in such a way that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, respondents who submit anonymous comments will not be granted standing to appeal the subsequent decision under 36 Code of Federal Regulation (CFR) Part 215 or judicial review. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Dated: September 23, 2010.

**Garth Smelser,**

*Deputy Forest Supervisor.*

[FR Doc. 2010–24545 Filed 9–29–10; 8:45 am]

**BILLING CODE 3410–11–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

**DATE AND TIME:** Friday, October 8, 2010; 9:30 a.m. EDT.

**PLACE:** 624 9th St., NW., Room 540, Washington, DC 20425.

**Meeting Agenda**

This meeting is open to the public.

I. Approval of Agenda
II. Program Planning
- Approval of Part A of Briefing Report on English-Only in the Workplace
- Consideration of Findings and Recommendations for Briefing Report on Health Care Disparities
- Consideration of FY 2011 Enforcement Report Topic
- Consideration of Policy on Commissioner Statements and Rebuttals
- Update on New Black Panther Party Enforcement Report
- Update on Sex Discrimination in Liberal Arts College Admissions—Some of the discussion of this agenda item may be held in closed session
- Update on Clearinghouse Project

III. Staff Director's Report
IV. Announcements
V. Approval of Minutes of September 24 Meeting
VI. Adjourn

**CONTACT PERSON FOR FURTHER INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: September 28, 2010.

**David Blackwood,**

*General Counsel.*

[FR Doc. 2010–24734 Filed 9–28–10; 4:15 pm]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Cook Inlet Beluga Whale Protection Pretest Economic Survey.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (request for review of a new information collection).

*Number of Respondents:* 298.

*Average Hours per Response:* Full survey, 25 minutes. Follow-up telephone call with short interview, 5 minutes.

*Burden Hours:* 102.

*Needs and Uses:* The population of Cook Inlet beluga whales found in the Cook Inlet of Alaska is one of five distinct population segments in United States (U.S.) waters. It was listed as endangered under the Endangered Species Act on October 22, 2008 (73 FR 62919). The public benefits associated with the results of protection actions on the Cook Inlet beluga whale, such as population increases, are primarily the result of the non-consumptive value people attribute to such protection (*e.g.,* active use values associated with being able to view beluga whales and passive use values unrelated to direct human use). Little is known about these values, yet such information is needed for decision makers to more fully understand the trade-offs involved in choosing among potential protection alternatives and to complement other information available about the costs, benefits, and impacts of protection alternatives.

The National Marine Fisheries Service plans to conduct a pilot survey to test a survey instrument that will be used to collect data for measuring the economic benefits the public receives for providing additional protection, beyond current levels, to the Cook Inlet beluga whale. These preferences are currently not known, but are needed to assist in the evaluation of alternative measures to further protect and recover the species' population, such as in the evaluation of critical habitat designations. The pilot survey consists of conducting a small-scale mail-telephone survey of U.S. households that will collect information needed to evaluate the survey instrument and implementation procedures.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

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 6616, 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 *OIRA_Submission@omb.eop.gov.*

Dated: September 24, 2010.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–24507 Filed 9–29–10; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Gulf of the Farallones National Marine Sanctuary Permit Application Project Titled: Fine Scale, Long-Term Tracking of Adult White Sharks

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Draft environmental assessment; notice of availability; request for public comment.

**SUMMARY:** The Gulf of the Farallones National Marine Sanctuary (GFNMS) has developed a draft environmental assessment (EA) pursuant to the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) to analyze the potential impacts of issuing a research permit that would allow the attraction and approach of white sharks in the sanctuary. The purpose of the proposed study is to improve our knowledge of the full migratory cycle of white sharks by attaching location transmitters to up to eleven (11) white sharks that seasonally visit the sanctuary. The EA is available for download on the web site: *http://farallones.noaa.gov/eco/sharks/pdf/ea_mcsi_permit2009.pdf.*

**DATES:** Comments on this draft environmental assessment may be made on or before October 15, 2010.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Mail:* Carliane Johnson, Acting Permit Coordinator, Gulf of the Farallones National Marine Sanctuary, The Presidio, 991 Marine Drive, San Francisco, CA 94129.

- *E-mail: carliane.johnson@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Carliane Johnson, Acting Permit Coordinator, Gulf of the Farallones National Marine Sanctuary, The Presidio, 991 Marine Drive, San Francisco, CA 94129. Phone: (703) 969–5544.

Dated: September 24, 2010.

**Daniel J. Basta,**

*Director for the Office of National Marine Sanctuaries.*

[FR Doc. 2010–24584 Filed 9–29–10; 8:45 am]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Government Programs To Assist Businesses Protect Their Intellectual Property Rights (IPR) in Foreign Markets: Request of the International Trade Administration's Office of Intellectual Property Rights, Department of Commerce

**AGENCY:** Office of Intellectual Property Rights, International Trade Administration, Department of Commerce.

**ACTION:** Request for written submissions from the public.

**SUMMARY:** The Department of Commerce invites public input and participation in shaping government programs for protecting the intellectual property rights of U.S. businesses, including Small- and Medium-Sized Enterprises (SMEs), in foreign markets. As evidenced by the launch of the President's National Export Initiative, improving U.S. Government support for U.S. business in overseas markets is an Administration priority. Unfortunately, American exporters face various barriers to entry in overseas markets including barriers related to intellectual property rights.

In coordination with the Intellectual Property Enforcement Coordinator ("IPEC") and to implement certain action items in the 2010 Joint Strategic Plan on Intellectual Property Enforcement submitted to Congress by the IPEC, the Department of Commerce is conducting a comprehensive review of existing U.S. Government efforts to educate, guide, and provide resources to U.S. businesses that are:

1. Acquiring intellectual property rights in foreign markets;

2. Contemplating exporting intellectual property-based products or choosing markets for export;

3. Actively entering foreign markets or facing difficulties entering foreign markets; or

4. Encountering difficulties enforcing their intellectual property rights in foreign markets.

The goal of the review is to improve efforts to support U.S. businesses facing barriers related to intellectual property rights protection and enforcement in overseas markets.

The Department of Commerce is hereby requesting written submissions from the public. In responding, please consider the questions and information requests posed below, but do not limit comments to these areas.

1. Describe your level of familiarity with intellectual property rights in general and intellectual property rights in foreign markets in particular.

2. Identify specific challenges businesses, including SMEs, face in protecting their intellectual property rights abroad.

3. In what countries or regions do businesses need the most assistance protecting their intellectual property rights? In responding please prioritize any countries identified.

4. Which specific types of intellectual property (copyrights, trademarks, patents, trade secrets) present the most challenges to SMEs? Should U.S. government programs focus on specific areas of intellectual property protection?

5. Suggest particular outreach, programs or assistance that the government can provide that would help U.S. businesses overcome those challenges.

6. Describe your familiarity with or use of current U.S. Government services and tools related to IPR protection and enforcement in foreign markets, and assess their usefulness and/or gaps.

7. Assess the adequacy of the intellectual property resources, tools, services and programs that the U.S. government currently provides to SMEs.

8. What specific outreach formats (*e.g.,* conferences, webinars, publications, podcasts) work best for educating U.S. businesses on how to protect their IPR abroad?

9. Identify specific existing programs provided by the U.S. Government or governments of other countries that have been particularly effective at assisting U.S. businesses with protecting their intellectual property rights in foreign markets (including, if possible, specific examples illustrating the effectiveness of those methods).

10. Identify specific existing programs involving cooperation between stakeholders and the U.S. Government (or between stakeholders and other governments) that have been particularly effective at assisting SMEs with the protection of their IP in foreign markets.

11. What additional role(s) should the government play in assisting businesses with the protection of their intellectual property rights abroad?

12. Identify additional resources and tools the U.S. Government could provide to support SMEs as they enforce their intellectual property rights in foreign markets.

13. Identify the most effective and efficient ways to inform U.S. businesses of new and existing government offerings that support U.S. businesses in their efforts to protect their intellectual property abroad.

14. In a recent report by the International Trade Commission, combining resources through trade associations or through less formal groups was one strategy SMEs suggested to reduce trade barriers. Describe ways the government can support SMEs as they pool resources to combat infringement abroad.

**DATES:** Submissions must be received on or before Friday, October 29, 2010, at 5 p.m.

**ADDRESSES:** Comments must be in English. All comments should be sent electronically via *http://www.regulations.gov*, docket number ITA–2010–0006.

To submit comments to *http://www.regulations.gov*, find the docket by entering the number ITA–2010–0006 in the "Enter Keyword or ID" window at the *http://www.regulations.gov* 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 & Upload file" field, or by attaching a document. Attached documents are preferable. If a document is attached, please type "IPR Assistance Review" in the "Type comment & Upload file" field. Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If the submission is in an application other than those two, please indicate the name of the application in the "Comments" field.

**FOR FURTHER INFORMATION CONTACT:** For questions on the submission of comments, please contact Christine Peterson at (202) 482–1432 or Andrea Cornwell at (202) 482–0998.

*Publication and Confidential Information:*

Submissions filed in response to this request will be made available to the public by posting them on the Internet. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you have confidential business information that would support your recommendation or that you believe would help the U.S. Government formulate an effective enforcement strategy, please let us know, and we may request that additional information.

**SUPPLEMENTARY INFORMATION:** It is difficult to overstate the value of intellectual property rights (IPR) to innovation, investment and economic development for U.S. businesses. Intellectual property rights are also critical to our small and medium-sized enterprises (SMEs). The U.S. Chamber of Commerce [1] estimates that IP-intensive industries employ 18 million Americans, and the Small Business Administration has estimated that SMEs alone employ half of Americans and account for 65 percent [2] of new jobs. The theft of IP from SMEs is a serious matter, as it stifles innovation, slows economic growth, weakens the competitiveness of U.S. employers, and threatens American jobs. Intellectual property theft at the hands of foreign companies, consumers, and even governments, has an adverse impact on all IP-based innovation and economic success. SMEs are particularly vulnerable because they are at a distinct disadvantage when confronting these difficulties in foreign markets. The Department of Commerce's priorities include ensuring that intellectual property remains a viable driver or innovation, and that our IP-based industries can compete effectively in the international marketplace. Commerce Bureaus, namely the U.S. Patent and Trademark Office (USPTO) and the International Trade Administration (ITA), work alongside the IPEC and the agencies involved in intellectual property rights enforcement to help businesses secure and enforce intellectual property rights at home and abroad.

To educate and assist all businesses, and SMEs in particular, the Department of Commerce has developed a number of IPR tools and resources. ITA, on behalf of U.S. intellectual property agencies, launched a Web site in 2004 (*http://www.stopfakes.gov*) to provide updates and links to Executive Branch IPR programs. On the Web site, there are additional resources for businesses such as an online IPR tutorial, which is available in three languages, country-specific IPR toolkits and links to other resources such as the American Bar Association's International IP Advisory Program. The site also allows businesses to file complaints about IPR-related trade problems, which are answered by a trade specialist from ITA. The Department of Commerce also established the 1–866–999–HALT hotline answered by PTO IPR experts, who work with ITA's Office of Intellectual Property Rights (OIPR) to help businesses secure and enforce their IPR through international treaties. Though this list is non-exhaustive, U.S. agencies recognize that there may be additional government tools and support on IPR protection and enforcement that could assist U.S. exporters.

Dated: Friday, September 24, 2010.

**Eileen Hill,**

*Acting Deputy Assistant Secretary, Trade Agreements and Compliance, Market Access and Compliance, International Trade Administration, U.S. Department of Commerce.*

[FR Doc. 2010–24508 Filed 9–29–10; 8:45 am]

**BILLING CODE 3510–DA–P**

[1] Global Intellectual Property Center, *Intellectual Property: Creating Jobs, Saving Lives, Improving the World,* 2009.

[2] Karen Mills, Administrator of the U.S. Small Business Administration (SBA), speech at "*Jobs on Main Street, Customers Around the World*" event hosted by USTR 01–21–10.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–900]**

### Diamond Sawblades and Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* September 30, 2010.

**SUMMARY:** The Department of Commerce ("Department") has received information sufficient to warrant the initiation of a changed circumstances review "CCR" of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China ("PRC"). Specifically, based on requests filed by the Diamond Sawblade Manufacturers Coalition ("DSMC") and Hebei Jikai,[1] the Department is initiating a CCR to determine whether Hebei Husqvarna-Jikai Diamond Tools Co., Ltd. is the successor-in-interest to (1) Hebei Jikai Industrial Group Co., Ltd. or (2) Electrolux Construction Products (Xiamen) Co., Ltd. ("Electrolux Xiamen").

**FOR FURTHER INFORMATION CONTACT:** Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5403.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 4, 2009, the Department published antidumping duty orders on diamond sawblades and parts thereof from the PRC and the Republic of Korea,[2] as a result of the United States International Trade Commission reversing its initial negative determination on remand from the United States Court of International Trade. As part of those orders, in the investigation, Hebei Jikai Industrial Group Co., Ltd. received a calculated rate of 48.5 percent while Electrolux Xiamen received the PRC-wide rate of 164.09 percent.[3] On August 13, 2010, DSMC filed a submission with the Department requesting that it conduct a CCR of the antidumping duty order on diamond sawblades and parts thereof from the PRC to determine whether Hebei Husqvarna-Jikai Diamond Tools Co., Ltd. is a successor-in-interest to Electrolux Xiamen.[4] On August 20, 2010, DSMC submitted further information supporting its claim that Hebei Husqvarna-Jikai Diamond Tools Co., Ltd. should be found to be the successor-in-interest to Electrolux Xiamen. DSMC provided a narrative and supporting documentation accounting for changes in the name, ownership, production location, management, and

[1] Husqvarna Construction Products North America, Inc., Hebei Husqvarna-Jikai Diamond Tools Co., Ltd., and Hebei Jikai Industrial Group Co., Ltd. (collectively "Hebei Jikai").

[2] *Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009) ("*Order*").

[3] *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

[4] *See* Letter from DSMC to the Department regarding Diamond Sawblades and Parts Thereof from the People's Republic of China—Request for Initiation of Changed Circumstances Review, dated August 13, 2010.

product line involving the entities at issue.[5]

On September 13, 2010, Hebei Jikai filed a submission with the Department requesting that it CCR review and, at the time of initiation, find that Hebei Husqvarna-Jikai Diamond Tools Co., Ltd. is the successor-in-interest to Hebei Jikai Industrial Group Co., Ltd. Hebei Jikai provided a narrative description and supporting documentation addressing changes in: (1) Production facilities; (2) supplier relationships; (3) management; and (4) customer base.[6]

On September 20, 2010, DSMC submitted a request that at the time of initiation that the Department should also issue its preliminary determination that all subject merchandise exported by Hebei Jikai should be subject to the PRC-wide rate of 164.09 percent.[7]

**Scope of the Order**

The products covered by this order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of these orders are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of these orders. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of these orders. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of these orders. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of these orders. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of these orders. Merchandise subject to these orders is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of these orders is dispositive.

**Initiation of CCR**

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended ("Act"), the Department will conduct a CCR upon receipt of information concerning, or a request from, an interested party for a review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.

In accordance with 19 CFR 351.216(d), the Department has determined that the information submitted by DSMC and Hebei Jikai constitutes sufficient evidence to initiate a CCR. In an antidumping duty changed circumstances review involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[8] Although no single factor will necessarily provide a dispositive indication that the requestor is the successor-in-interest to the predecessor company, generally, the Department will consider one company to be a successor-in-interest to another company if its resulting operation is essentially similar to that of its predecessor.[9] Therefore, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor.[10]

Based on the information provided in their submissions, DSMC and Hebei Jikai have provided sufficient evidence to initiate a review to determine whether Hebei Husqvarna-Jikai Diamond Tools Co., Ltd. is the successor-in-interest to Electrolux Xiamen or Hebei Jikai Industrial Group Co., Ltd. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a CCR. Although Hebei Jikai submitted documentation regarding changes in management, suppliers, customer base, and production facilities that the Department considers in its successor-in-interest analysis, we will need additional time to explore Electrolux Xiamen's involvement in Hebei Husqvarna-Jikai Diamond Tools Co., Ltd. prior to reaching a preliminary determination. Accordingly, the Department has determined that it is not expediting this action by combining the preliminary results of review with this notice of initiation.[11]

The Department intends to issue questionnaires requesting additional information for the review and will publish in the **Federal Register** a notice of the preliminary results of the antidumping duty CCR, in accordance with 19 CFR 351.221(b)(2) and 351.221(c)(3)(i). That notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty CCR not later than 270 days after the date on which the review is initiated.

[5] *See* Letter from DSMC to the Department regarding Diamond Sawblades and Parts Thereof from the People's Republic of China—Supplementary Information on Request for Initiation of Changed Circumstances Review, dated August 20, 2010.

[6] *See* Letter from Hebei Jikai to the Department regarding Diamond Sawblades and Parts Thereof from the People's Republic of China—Request for Initiation of a Changed Circumstances Review.

[7] *See* Letter from DSMC to the Department regarding Diamond Sawblades and Parts Thereof from the People's Republic of China—Request for Simultaneous Initiation of Changed Circumstances Review and Issuance of Preliminary Determination, dated September 20, 2010.

[8] *See, e.g., Pure Magnesium In Granular Form from the People's Republic of China: Initiation of Changed Circumstances Review,* 75 FR 51002 (August 18, 2010).

[9] *See, e.g., Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India,* 71 FR 327 (January 4, 2006).

[10] *See Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan,* 67 FR 58 (January 2, 2002); *see also Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979 (March 1, 1999).

[11] *See* 19 CFR 351.221(c)(3)(ii); *see also Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Pasta From Turkey,* 74 FR 681 (January 7, 2009).

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: September 24, 2010.

**Susan H. Kuhbach,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010–24602 Filed 9–29–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### The Manufacturing Council: Meeting of the Manufacturing Council

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an Open Meeting.

**SUMMARY:** The Manufacturing Council will hold a meeting to discuss and identify the priority issues affecting the U.S. manufacturing industry, which may include increasing exports, supply chain and access to credit, among others. The Council was re-chartered on April 8, 2010, to advise the Secretary of Commerce on matters relating to the U.S. manufacturing industry.

**DATES:** October 14, 2010

*Time:* 10 a.m.

**ADDRESSES:** Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC, 20230. Because of building security, all non-government attendees must pre-register. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than October 7, 2010, to Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC, 20230, telephone 202–482–4501, *jennifer.pilat@trade.gov.* Last minute requests will be accepted, but may be impossible to fill.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC, 20230, telephone: 202–482–4501, e-mail: *jennifer.pilat@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. Eastern Time on October 7, 2010, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: September 27, 2010.

**Jennifer Pilat,**

*Executive Secretary, The Manufacturing Council.*

[FR Doc. 2010–24604 Filed 9–27–10; 4:15 pm]

**BILLING CODE 3510–DR–P**

## COMMODITY FUTURES TRADING COMMISSION

### Request for Comment on Options for a Proposed Exemptive Order Relating to the Trading and Clearing of Precious Metal Commodity-Based ETFs; Concept Release

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of options for a proposed exemptive order and request for comment; concept release.

**SUMMARY:** Recently, the Commodity Futures Trading Commission ("Commission," or "CFTC") has been confronted with the question of how to treat certain transactions on fractional undivided interests, or shares, in single commodity investment products referred to as exchange traded funds ("ETF" or "ETFs"),[1] primarily in the metals complex. The ETFs have in all relevant instances been structured as trusts (singularly, "ETF Trust" or "Trust"),[2] the assets of which consist of holdings of one specific physical commodity.[3] The explicit and sole investment objective of each of these ETF Trusts is to track as nearly as possible the spot price of the underlying physical commodity less the expenses of trust operations. The listing of these ETF shares provides shareholders with efficient exposure to commodity market price movements.[4] These Precious Metal Commodity-Based ETFs have primarily focused on holding either gold or silver, with a recent expansion into palladium and platinum. The Commission has issued Orders pursuant to Section 4(c) of the Commodity Exchange Act (the "Act") permitting the trading and clearing of certain transactions on these Trusts as, respectively, options on securities and security futures.[5] The Previous Orders have provided exemptions from certain provisions of the Act, or the Commission's regulations thereunder, which might have been transgressed by trading or clearing, among other things, options and futures on Commodity-Based ETFs. The exemption mechanism has enabled the Commission to reserve judgment as to the jurisdictional classification (*i.e.* commodity or security) of Commodity-Based ETFs and options and futures on Commodity-Based ETFs while at the same time providing a mechanism to ensure both that the Commission's regulatory

[1] This Release is limited to those "Commodity ETFs" that are structured as grantor trusts with an investment objective of achieving the price performance of the underlying commodity or commodities held by such trust, less expenses. Further, for purposes of this Release, the term or label "ETF" is loosely applied to precious metal commodity-based ETFs (as used interchangeably herein, "Precious Metal Commodity-Based ETFs" or "Commodity-Based ETFs"), *see* section 3(a)(1) of the Investment Company Act of 1940 (the "1940 Act") and Securities and Exchange Commission ("SEC"), *Exchange-Traded Funds,* Investment Company Act Release No. 28192 (March 11, 2008), 73 FR 14618, 14623 (March 18, 2008). As used herein, "Precious Metal" indicates either gold, silver, palladium, or platinum.

Additionally, when we refer to an "ETF" in this Concept Release, we are not (unless the context otherwise requires) referring to an entity that meets the definition of an "investment company" and is registered under the 1940 Act. This Release also does not address those "ETF Commodity Pools" that attempt to track a benchmark index or commodity by engaging in the purchase of commodity futures and/or options contracts. These ETF Commodity Pools are subject to regulation by the Commission as a commodity pool operator ("CPO") and/or commodity trading adviser ("CTA") and may not implicate regulatory issues raised in this Release.

[2] *See e.g.* NYSEArca Rule 8.201 (Commodity-Based Trust Shares); NYSEAmex Rule 1200A (Commodity-Based Trust Shares); NYSE Rule 1300 (streetTracks Gold Shares); and BATS Exchange Rule 14.4.

[3] *See,* however, Securities Exchange Act Release Nos. 62402 (June 29, 2010), 75 FR 39292 (July 8, 2010) (notice of filing of a proposal to list and trade shares of the ETFS Precious Metals Basket Trust consisting of gold, silver, palladium, and platinum) and 62620 (July 30, 2010) (notice of a proposal to list and trade shares of ETFS White Metals Basket Trust consisting of silver, palladium, and platinum).

[4] For a previous Commission discussion of the structural and arbitrage mechanisms underlying a physical gold ETF, *see Description of the Underlying Commodity* in CFTC, *Proposed Exemptive Order for ST Gold Futures Contracts,* 73 FR 13867, at 13868 (March 14, 2008).

[5] *See* CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to SPDR® Gold Trust Shares,* 73 FR 31981 (June 5, 2008), CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to iShares® COMEX Gold Trust Shares and iShares® Silver Trust Shares,* 73 FR 79830 (December 30, 2008), and CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares,* 75 FR 37406 (June 29, 2010) (collectively, the "Previous Orders").

oversight needs are satisfied (whether through regulation by the Securities and Exchange Commission ("SEC") or by attaching conditions to the exemption orders) and that novel products may be introduced without undue delay for market participant and investor use.

More recently, the Options Clearing Corporation (the "OCC") has sought approval of rules permitting similar treatment of options and futures on certain ETFs based on palladium and platinum.

The Commission is issuing this Release to solicit comments on: (i) Options for a proposed exemptive order in connection with the OCC's request for approval of a rule change; and (ii) the Commission's treatment of Precious Metal Commodity-Based ETFs generally, including whether the Commission should exempt the trading and clearing of certain options and futures transactions on gold and silver, and/or palladium and platinum, Commodity-Based ETFs on a categorical basis.

**DATES:** Comments must be received on or before November 1, 2010. All comments must be in English, or if not in English, accompanied by an English translation.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: CommodityETFs@cftc.gov.* Include "Commodity Based ETFs" in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Ryne Miller, Attorney Advisor, 202–418–5921, *rmiller@cftc.gov,* or David Van Wagner, Chief Counsel, 202–418–5481, *dvanwagner@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

## Part I—Proposed Exemptive Order

### *A. Background*

The first Commodity-Based ETF in the U.S. was listed and traded on the New York Stock Exchange ("NYSE") in November 2004.[6] Since that time, Commodity-Based ETFs have generally focused on the precious metals of gold and silver,[7] with palladium and platinum [8] having been the subject of a Commodity-Based ETF only recently.

The structure and trading of Commodity-Based ETFs is virtually identical to traditional ETFs listed and traded on national securities exchanges. Shares of ETFs are bought and sold throughout the trading day on national securities exchanges. Unlike traditional mutual funds, ETFs do not sell or redeem their individual shares at net asset value ("NAV").[9] Instead, large institutional investors known as Authorized Participants ("APs") buy shares of the ETF directly from the Trust in creation unit sizes ("Creation Units"), varying from 25,000 to 200,000 shares, generally in exchange for an in-kind deposit of securities.[10] Conversely, APs may sell or redeem shares of an ETF only in Creation Unit size and generally in exchange for portfolio securities ("Redemption Baskets"). In limited cases, such as an ETF investing in illiquid securities or derivatives, APs may deposit cash instead of securities in exchange for shares of an ETF. For Commodity-Based ETFs, Creation Units and Redemption Baskets require the delivery of the relevant physical commodity plus any cash based on the ETF's NAV. ETF shares are traded on national securities exchanges at market prices that may, and do, differ from NAV.

APs, who are typically exchange market makers or specialists, use their ability to exchange Creation Units with their underlying assets to provide liquidity for the ETF shares and help ensure that their intraday market price approximates the NAV of the ETF. Other investors trade ETF shares on national securities exchanges in the secondary market. The ability to purchase and redeem Creation Units and Redemption Baskets gives ETFs an inherent arbitrage mechanism intended to minimize the potential deviation between the market price and NAV of ETF shares.[11] Existing ETFs (including Commodity-Based ETFs) have daily transparent portfolios, so that APs and investors know exactly what portfolio assets they must assemble if they wish to purchase a Creation Unit. The national securities exchanges that trade ETF shares disseminate an updated indicative NAV throughout the trading day, typically at 15-second intervals.

Although similar in practice to traditional ETFs that invest in securities, by law, Commodity-Based ETFs are not subject to specific SEC regulation under the 1940 Act. Instead, Commodity-Based ETFs are subject to SEC disclosure review by the SEC's Division of Corporation Finance as well as exchange regulation.

Based on the belief that options and security futures trading benefits the liquidity and relative success of the underlying ETF, the national securities exchanges and ETF sponsors have sought to be able to trade options and futures on Commodity-Based ETFs. In 2008, the Commission and the SEC provided regulatory approvals and exemptions so that options on shares of the streetTracks Gold Trust (predecessor to the SPDR Gold Trust) (symbol: GLD) would be able to be listed and traded on the various options exchanges.[12] Since 2008, the Commission has permitted options and futures on several other gold and silver Commodity-Based ETFs.[13]

[6] *See* NYSE Information Memo Number 04–59 (November 18, 2004) (trading of streetTRACKS Gold Shares: Rules 1300 and 1301) and Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approval of the listing and trading of streetTRACKS Gold Shares).

[7] *See, e.g.,* Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approval of the iShares COMEX Gold Trust (IAU)); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (approval of the iShares Silver Trust (SLV)); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (approval of the ETFS Silver Trust); and 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (approval of the ETFS Gold Trust).

[8] *See* Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (approval of ETFS Palladium) and 60970 (November 9, 2009), 74 FR 59319 (November 17, 2009) (approval of ETFS Platinum).

[9] NAV is the amount by which the value of an entity's assets exceeds the value of its liabilities. NAV is typically calculated on a per-share basis by dividing the total value of all assets in a portfolio, less any liabilities, by the number of shares outstanding.

[10] *See* NYSE Explanation of ETFs, available at *http://www.nyse.com/pdfs/ETFs7109.pdf,* and SEC statement regarding ETFs, available at *http://www.sec.gov/answers/etf.htm. See also* Kathleen Moriarty, Exchange-Traded Funds: Legal and Structural Issues Worldwide, 29 Int'l Bus. L. 346 (2001); Stuart M. Strauss, Exchange-Traded Funds—the Wave of the Future? 7 Investment Lawyer 1 (2000); and Stuart Strauss & Scott M. Zoltowski, Exchange Traded Funds, in A.L.I.–A.B.A., Investment Mgmt Reg. 67 (Aug. 2006).

[11] *See* Grimm, *A Process of Natural Correction: Arbitrage and the Regulation of Exchange-Traded Funds Under the Investment Company Act,* 1 U. Pa. J. Bus & Emp. Law 95 (2008). *See also* Securities Exchange Act Release No. 31591 (), 57 FR 60253 (December 18, 1992) (File No. SR–AMEX–92–18) (order approving proposed rule change by the Amex relating to Portfolio Depository Receipts), n. 25.

[12] *See* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (approval of SPDR Gold Trust options), and CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares,* 73 FR 31981 (June 5, 2008), and *Exemptive Order for SPDR Gold Futures Contracts,* 73 FR 31979 (June 5, 2008).

[13] *See* footnote 5, *supra.*

From a procedural standpoint, the issue of the regulation of Commodity-Based ETFs comes before the CFTC through filings by a contract market or a clearing organization in its capacity as a CFTC registrant, requesting Commission approval of certain proposed rule change(s) which would permit it to treat options and futures transactions on such ETFs as options on securities and security futures, respectively. In order to approve such rule changes, the Commission has issued exemptive orders for the options or futures in question pursuant to its exemptive authority under Section 4(c)(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6(c).[14] As noted above, the Commission has issued three such exemptive ETF orders, all of which have been confined to options and futures on shares of specific physical gold and silver ETFs.[15]

Notably, in issuing the Previous Orders providing Section 4(c) exemptions for options and futures on gold and silver ETF shares, the Commission did not make any finding that the options were either options on securities or options subject to the Act, nor did it make any finding that the futures were, or were not, security futures.[16] Rather, the exemptions permitted the trading and clearing of options and/or futures on the Commodity-Based ETFs as, respectively, options on securities and security futures. In doing so, the Commission reserved making any affirmative determination as to whether shares of Commodity-Based ETFs are more properly characterized as either commodities or securities. That is, the exemptions have enabled the Commission to reserve judgment as to the appropriate jurisdictional classification of Commodity-Based ETFs and options and futures on Commodity-Based ETFs. The Commission's approach is consistent with the framework envisioned by Congress. In the future, and upon the Dodd-Frank Wall Street Reform and Consumer Protection Act's ("Dodd-Frank Act")[17] effective date, certain provisions in the Dodd-Frank Act will provide the Commission and the SEC with a legal and procedural framework to use exemptive authority to tailor joint regulatory solutions for novel products that raise jurisdictional questions—such as those raised by Commodity-Based ETFs and options and futures on Commodity-Based ETFs.[18]

*B. Pending OCC Submission—Transactions on Palladium and Platinum ETFs*

By a submission dated March 1, 2010, the OCC has submitted for Commission approval, pursuant to Section 5c(c)(2) of the Act and Commission Regulations 39.4(a) and 40.5, a proposed amendment to an interpretation of Article I, Section 1.F.(8) of their By-Laws.[19] The interpretation, as amended, would state that the OCC will clear and treat as options on securities any options on ETFS Palladium Shares ("Palladium Products")[20] or ETFS Platinum Shares ("Platinum Products"),[21] and will clear and treat as security futures any futures contracts on the Palladium and Platinum Products. Section 5c(c)(3) of the Act provides that the Commission must approve any such rules or rule amendments, which includes a proposed amendment of an interpretation, submitted for approval unless it finds that the rules or rule amendments would violate the Act. The Commission initially extended the review period of the OCC's submission by forty-five days, pursuant to Commission Regulation 40.5(c)(1), to June 1, 2010. By letter dated June 1, 2010 and pursuant to Commission Regulation 40.5(c)(2), the OCC consented to a further extension of the review period to September 30, 2010. While the OCC's pending rule submission deals with options and futures on two specific palladium and platinum Commodity-Based ETFs (the Palladium and Platinum Products), the Commission is also requesting comment on options for a proposed exemption that would permit the trading and clearing, as options on securities and security futures, of options and futures on gold and silver, and/or palladium and platinum Commodity-Based ETFs on a categorical basis, *i.e.,* regardless of issuer.

*C. Regulatory Implications of Precious Metal Commodity-Based ETFs*

The Commission is issuing this Release because, among other things, the Commission believes that options and futures on Commodity-Based ETFs may raise certain regulatory issues due to their economic similarity to options on commodities and futures on commodities traded on designated contract markets. The Commission's concerns include the potential that futures contracts based on the commodities underlying the ETFs could be affected by withdrawal of the deliverable supply for futures contracts, and also, that the Commission would lack the jurisdictional capability to surveil persons with positions in the Commodity-Based ETFs.[22]

The concerns are heightened by the reality that options and futures on Commodity-Based ETFs allow market participants to take positions in instruments that appear economically similar to Commission-regulated products, including products that would otherwise fall under, for example, the Commission's market and trade practice surveillance and large trader reporting

[14] Section 4(c)(1) of the Act provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

[15] *See* footnote 5, *supra.*

[16] Under Section 4(c), the Commission is not required to make an express finding of jurisdiction over a product as a condition precedent to issuing a Section 4(c) exemption. The 4(c) Conference Report states: "The Conferees do not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward. Rather than making a finding as to whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption." *See* House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3214–3215 ("4(c) Conf. Report").

[17] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[18] *See e.g.* §§ 717 and 718 of the Dodd-Frank Act, which cover "New Product Approval CFTC—SEC Process" and "Determining Status of Novel Derivative Products", respectively.

[19] The complete submission is made available on the Commission's Web site at: *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul030110occ001.pdf.*

[20] Shares of the Palladium Products are traded on NYSE Arca under the symbol "PALL".

[21] Shares of the Platinum Products are traded on NYSE Arca under the symbol "PPLT".

[22] These concerns arise from the Commission's statutory mandate under Section 6(c) of the Act, which charges the Commission with manipulation authority regarding price of "any commodity, in interstate commerce, or for future delivery [* * *]." *See* Section 6(c) of the Act.

system.[23] By taking positions in options and futures on Commodity-Based ETFs traded on national securities exchanges, which can achieve the same investment objectives and are functionally the same as Commission-regulated products, market participants potentially avoid incurring any obligation to comply with the Commission's rules and regulations (although the market participants do remain subject to the existing regulatory regime applicable to the securities markets). Beyond this concern, the Commission has examined, and continues to examine, the palladium and platinum markets relative to the gold and silver markets to review empirical findings which may justify a different regulatory resolution for the Palladium and Platinum Products as compared to the Commission's approach to gold and silver ETF products under the Previous Orders (discussed further at section D, *infra*).

At the same time, the Commission is seeking comment as to whether the trading and clearing (as options on securities or security futures) of options and futures on all or some Precious Metal Commodity-Based ETFs should be categorically exempted from the Act to the extent necessary to permit them to be so traded and cleared, whether absolutely or subject to conditions. Related to that issue, the Commission has been encouraged by market participants to adopt a "generic" approach for addressing the transactions in question on Precious Metal Commodity-Based ETFs as opposed to the existing process of performing a case-by-case basis review.[24] This Release is intended to assist in the Commission's consideration relating to a potential "generic" approach, and the Commission is seeking comments to that end.

*D. Empirical Observations: Palladium and Platinum v. Gold and Silver*

There are significant empirical differences across the precious metal markets which may support the Commission taking a different regulatory approach with respect to options and futures on Commodity-Based ETFs holding palladium and platinum than it has previously taken with respect to options and futures on Commodity-Based ETFs holding gold and silver.

Global palladium and platinum supplies are considerably smaller in volume than supplies of gold and silver, and come predominantly from mine production concentrated in a small number of countries, namely, South Africa and Russia ("Producer Countries").[25] These factors make palladium and platinum markets potentially more susceptible to tightness during periods of economic growth and subject to potential supply shocks from isolated events in either of the Producer Countries. Palladium and platinum futures markets consequently become more susceptible to price volatility that may result from relatively small changes in demand. These concerns were observed in January 2010 when the Palladium and Platinum Products were initially listed for trading on NYSE Arca, resulting in an apparent one-time increase in short-term demand for physical palladium and platinum,[26] and the NYMEX palladium and platinum futures markets entered nearby backwardation.[27] Indeed, the Prospectuses for the Palladium and Platinum Products, dated December 30, 2009, and filed with the SEC, acknowledge that purchase of the shares may affect the prices of palladium and platinum, respectively, and may impact the supply of, and demand for, palladium and platinum, respectively.[28]

In addition to these distinguishing features, industrial demand constitutes a greater percentage of the total demand for both palladium and platinum[29] as compared to industrial demand as a percentage of total demand for gold and silver,[30] and palladium and platinum have traditionally not been held for investment purposes to nearly the same extent as gold and silver.[31] Accordingly, the Commission requests comment on whether these empirical differences suggest the need for a different regulatory approach for options and futures on the Palladium and Platinum Products, or any palladium or platinum Commodity-Based ETF, as compared to options and futures on the gold and silver Commodity-Based ETFs covered by the Previous Orders.

**Part II—Issues for Comment**

The Commission requests comment, taking into account all of the issues presented in this Release and

[23] The Commission has previously considered whether special conditions should be attached to related exemptions granted pursuant to Section 4(c) of the Act:

In order to preserve the integrity of the price discovery and risk management functions of Commission regulated markets, it may be that national securities exchanges that list the options [on precious metal commodity-based ETFs] should comply with market reporting requirements and brokers and traders that carry accounts or trade in options on gold and silver products should comply with large trader reporting requirements.

*See* CFTC, *Request for Comment on a Proposal to Exempt, Pursuant to the Authority in Section 4(c) of the Commodity Exchange Act, the Trading and Clearing of Certain Products Related to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares,* 75 FR 19619 (April 15, 2010) at 19621. In its order exempting the trading and clearing of products related to the ETFS Physical Swiss Gold Shares and the ETFS Physical Swiss Silver Shares, the Commission did not impose market reporting and large trader reporting requirements. However, the Commission noted the comments received and future consideration with respect to market and large trader reporting for certain gold and silver option products. *See* CFTC, Order Exempting the Trading and Clearing of Certain Products Related to ETFS Physical Swiss Gold Shares and ETFS Physical Swiss Silver Shares, footnote 5, *supra.*

[24] Specifically, on April 15, 2010, the OCC and the Chicago Board Options Exchange ("CBOE") jointly delivered a letter to the Chairmen of both the Commission and the SEC, expressing their concern about the delays incurred in the case-by-case review method of these products. The letter is referenced in a public presentation available on the CBOE's Web site at: *http://cboenews.cboe.com/pdfs/PressBriefingOIC2010FINAL.pdf,* at page 7.

[25] Data from the Johnson Matthey Platinum 2010 publication indicates that 76.5% of global platinum supplies came from South Africa in 2009, while 51.1% of global palladium supplies came from Russia. Global platinum and palladium supplies for 2009 totaled 5.9 million ounces and 7.1 million ounces respectively (based on Johnson Matthey's data), compared to much larger 2009 global supplies of gold (116.6 million ounces) and silver (826.1 million ounces), based on data from the CPM Group Gold and Silver Yearbooks for 2010.

[26] For example, NYMEX settlement data shows that the April 2010 to July 2010 active spread for platinum futures was in backwardation on 18 out of 19 trading days between January 14, 2010, and February 10, 2010, ranging from +$0.20 to +$2.00. The March 2010 to June 2010 active spread for palladium futures was in backwardation on 5 of 6 trading days from January 14, 2010 to January 22, 2010, ranging from +$0.05 to +$1.00.

[27] Nearby backwardation occurs when the price for the nearby futures contract is higher than the price for the next nearest expiring contract, a generally unusual circumstance in the precious metals markets.

[28] *See http://www.sec.gov/Archives/edgar/data/1459862/000093041310000057/c58962_424b3.htm,* at page 7; *see also http://www.sec.gov/Archives/edgar/data/1460235/000093041310000056/c58731_424b3.htm,* at page 7.

[29] The Prospectus for the Palladium Products states that "autocatalysts, automobile components that use palladium, accounted for approximately 57% of the global demand in palladium in 2008." *See* citation in footnote 26, at page 9. The Prospectus for the Platinum Products states that autocatalysts accounted for approximately 51% of the 2008 global demand for platinum. *See* citation in footnote 26, at page 9.

[30] In comparison, the CPM Group Gold and Silver Yearbooks for 2010 indicate that 12.5% of global gold demand was for industrial purposes in 2009 (this includes electronics and dental/medical products), while 45.3% of global silver demand was for industrial purposes (this includes photography and electronics and batteries). Jewelry demand is not included in these figures.

[31] The Johnson Matthey Platinum 2010 publication indicates that 9.4% of global demand for platinum in 2009 was for investment purposes, while 8.0% of global demand for palladium was for investment. In contrast, the CPM Group Gold and Silver Yearbooks for 2010 indicate that net private investment in gold accounted for a larger 44.7% share of global gold demand in 2009 (this includes official coins, bullion and medallions), with net private investment accounting for around 30.0% of global silver demand in 2009 (this includes bullion and coins).

considering the Commission's future treatment of options and futures on Precious Metal Commodity-Based ETFs as required pursuant to the Dodd-Frank Act, on each of the following options for a proposed exemptive order:

1. Is there any reason the Commission should not provide a categorical Section 4(c) exemption for the trading and clearing of the transactions in question on gold and/or silver Commodity-Based ETFs?

2. Are the palladium and platinum markets sufficiently distinct from the gold and silver markets to justify a different regulatory approach, for the purposes of a Section 4(c) exemption, for options and futures on the Palladium and Platinum Products (*i.e.* the specific ETF products identified in the OCC's pending submission) as compared to that for options and futures on gold and silver Commodity-Based ETFs.

3. More generally, should the Commission consider extending such a Section 4(c) exemption to options and futures on palladium and platinum Commodity-Based ETFs on a categorical basis (*i.e.* without respect to issuer)?

4. If the Commission continues granting Section 4(c) exemptions, whether on an individual or categorical basis, when presented with a request to allow options and futures on Commodity-Based ETFs, should the Commission include additional conditions and requirements? For example, should the Commission consider imposing large trader reporting obligations, position limits,[32] or other analogous requirements when exempting options and futures on Precious Metal Commodity-Based ETFs from the Commission's jurisdiction?

**Related Matters**

*A. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 ("PRA")[33] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. At least some of the options for a proposed exemptive order described above, if issued with substantive reporting or similar conditions, would require a new collection of information from any entities that would be subject to the proposed order.

*B. Cost-Benefit Analysis*

In considering the options for a Section 4(c) exemption allowing the trading and clearing as options on securities any options on gold, silver, palladium, and platinum Commodity-Based ETFs, and to clear and treat as security futures any futures contracts on gold, silver, palladium, and platinum Commodity-Based ETFs, Section 15(a) of the Act,[34] as amended by Section 119 of the Commodity Futures Modernization Act of 2000, requires the Commission to consider the costs and benefits of its action before issuing an order under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission is considering the costs and benefits of the options for a proposed order described above in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* National securities exchanges, OCC, and their members who would intermediate the above-described options and security futures on gold, silver, palladium, and platinum Commodity-Based ETFs are subject to extensive regulatory oversight; however, this regulatory oversight in the securities markets does not completely parallel the oversight programs seen in CFTC regulated markets.

2. *Efficiency, competition, and financial integrity.* The options for a proposed exemption may enhance market efficiency and competition since they could encourage potential trading of options and security futures on the gold, silver, palladium, and platinum Commodity-Based ETFs through modes other than those normally applicable; that is, designated contract markets or derivatives transaction execution facilities. Financial integrity will not be affected since the options and security futures on gold, silver, palladium, and platinum Commodity-Based ETFs will be cleared by the OCC, a DCO and SEC-registered clearing agency, and intermediated by SEC-registered broker-dealers.

3. *Price discovery.* Price discovery may be enhanced through market competition.

4. *Sound risk management practices.* The options and security futures on the gold, silver, palladium, and platinum Commodity-Based ETFs will be subject to OCC's current risk-management practices including its margining system.

5. *Other public interest considerations.* The options for a proposed exemption may encourage development of derivative products through market competition without unnecessary regulatory burden.

After considering these factors, the Commission has determined to seek comment on the matters discussed above. The Commission invites public comment on its application of the cost-benefit provision.

* * * * *

Issued in Washington, DC, on September 24, 2010 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010–24586 Filed 9–29–10; 8:45 am]

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[32] The Commission understands that certain position and exercise limits on Commodity-Based ETF options currently exist in the securities options markets. *See, e.g.,* ISE Rules 412 and 414; *see also* NYSE Amex Rules 904 and 905. In addition, certain position limits and position accountability rules apply to security futures products listed and traded on OneChicago. *See* OneChicago Rule 414.

[33] 44 U.S.C. 3507(d).

[34] 7 U.S.C. 19(a).

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–OS–0129]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Defense Human Resource Activity), ATTN: Sam Yousef, 4000 Defense Pentagon, Washington, DC 20301–4000 or call at (703) 696–0478.

*Title, Associated Form, and OMB Control Number:* Application for Identification Card/DEERS Enrollment, DD Form 1172–2, OMB Control Number 0704–0415.

*Needs and Uses:* This information collection requirement is necessary to validate eligibility for all individuals applying for Department of Defense benefits and privileges. These benefits and privileges include but are not limited to, medical coverage, DoD Identification Cards, access to DoD installations, buildings or facilities, and access to DoD computer systems and networks. This information collection is required to obtain the necessary data elements to determine eligible individual's benefits and privileges, to provide a proper identification card reflecting those benefits and privileges, and to maintain a centralized database of the eligible population.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 400,000.

*Number of Respondents:* 4,800,000.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 5 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This information collected is used to determine an eligible individual's benefits and privileges, to provide a proper identification card reflecting those benefits and privileges, and to maintain a centralized database of the eligible population.

Dated: September 10, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24528 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2010–HA–0131]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to TRICARE Management Activity, Office of General Counsel, 61401 E. Centretech Parkway, *Attn:* Michael Bibbo, Aurora, CO 80011, or call TRICARE Management Activity, Office of General Counsel, at (303) 676–3705.

*Title; Associated Form; and OMB Number:* Statement of Personal Injury—Possible Third Party Liability, TRICARE Management Activity; DD Form 2527; OMB Control Number 0720–0003.

*Needs and Uses:* This information collection is completed by TRICARE (formerly CHAMPUS) beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

*Affected Public:* Individuals or households; Federal Government.

*Annual Burden Hours:* 56,100.

*Number of Respondents:* 224,399.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The Federal Medical Recovery Act, 42 U.S.C. 2651–2653 as implemented by Executive Order No. 11060 and 28 CFR part 43 provides for recovery of the

reasonable value of medical care provided by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in a third person. DD Form 2527 is required for investigating and asserting claims in favor of the United States arising out of such incidents.

When a claim for TRICARE benefits is identified as involving possible third party liability and the information is not submitted with the claim, the TRICARE contractor requests that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government, the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated appropriate legal officer of the Uniformed Services. The responsible Uniformed Services legal officer uses the information as a basis for asserting and settling the Government's claim. When appropriate, the information is forwarded to the Department of Justice as the basis for litigation.

Section 1 of the Form is used to collect general information, such as name, address and telephone numbers about the military sponsor and the injured beneficiary and the date, time and location where the injured occurred.

Section 2 of the Form is used to collect information about accidental injuries. Most of the investigations for third party liability involve motor vehicle accidents. Information about insurance coverage for the parties involved in the accident is collected. Section 2 of the Form is also used to collect information about accidents not involving motor vehicles. Information such as the type of accident, the place where the injury occurred, the name of the property owner where the injury occurred and cause of the injury is collected. The name and address of the employer is collected when the injury was work related.

Section 3 of the Form is used for miscellaneous information such as possible medical treatment at a Government hospital, the name and address of the beneficiary's attorney, and information regarding any possible releases or settlements with another party to the accident. It also contains the certification, date and signature of the beneficiary (or a designee).

Dated: September 17, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24529 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–HA–0133]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the TRICARE Management Activity, Medical Benefits and Reimbursement Branch, Ann N. Fazzini, Aurora, CO 80011 or phone 303–676–3803.

*Title; Associated Form; and OMB Number:* Diagnosis Related Groups (DRG) Reimbursement; OMB Control Number 0720–0017.

*Needs and Uses:* The TRICARE/CHAMPUS contractors will use the information collected to reimburse hospitals for TRICARE/CHAMPUS share of capital and direct medical education costs. Respondents are institutional providers.

*Affected Public:* Business or other for-profit.

*Annual Burden Hours:* 4,993.

*Number of Respondents:* 4,993.

*Responses per Respondent:* 1.

*Average Burden per Response:* 1 hour.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The Department of Defense Authorization Act, 1984, Public Law 98–94 amended Title 10, section 1079(j)(2)(A) of the U.S.C. and provided the Civilian Health and Medical Program of the Uniform Services (CHAMPUS) with the statutory authority to reimburse institutional providers based on diagnosis-related groups (DRGs). The CHAMPUS DRG-based payment system, except for children's hospitals (whose capital and direct medical education costs are incorporated in the children's hospital differential), who want to be reimbursed for allowed capital and direct medical education costs must submit a request for payment to the TRICARE/CHAMPUS contractor. The request allows TRICARE to collect the information necessary to properly reimburse hospitals for its share of these costs. The information can be submitted in any form, most likely in the form of a letter. The contractor will calculate the TRICARE/CHAMPUS share of capital and direct medical educations costs and make a lump-sum payment to the hospital. The TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and was implemented on October 1, 1987. Initially, under 42 CFR 412.46 of the Medicare regulations, physicians were required to sign attestation and acknowledgment statements. These requirements were implemented to ensure a means of holding hospitals and

physicians accountable for the information they submit on the Medicare claim forms. Being modeled on the Medicare PPS, CHAMPUS also adopted these requirements. The physicians attestation and physician acknowledgment required by Medicare under 42 CFR 412.46 are also required for CHAMPUS as a condition for payment and may be satisfied by the same statements as required for Medicare, with substitution or addition of "CHAMPUS" when the word "Medicare" is used. Physicians sign a physician acknowledgement, maintained by the institution, at the time the physician is granted admitting privileges. This acknowledgement indicates the physician understands the importance of a correct medical record, and misrepresentation may be subject to penalties.

Dated: September 10, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24530 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–HA–0132]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to TRICARE Management Activity, Contract Operations Branch, 16401 E. Centretech Parkway, Attn: Kenneth Zimmerman, Aurora, CO 80011, or call TRICARE Management Activity, Contract Operations Branch, at (303–676–3502).

*Title; Associated Form; and OMB Number:* TRICARE Retiree Dental Program Enrollment Application Form; OMB Number 0720–0015.

*Needs and Uses:* This information collection is completed by Uniformed Services members entitled to retired pay and their eligible family members who are seeking enrollment in the TRICARE Retiree Dental Program (TRDP). The information is necessary to enable the DoD-contracted third party administrator of the program to identify the program's applicants, determine their eligibility for TRDP enrollment, establish the premium payment amount, and to verify by the applicant's signature that the applicant understands the benefits and rules of the program.

*Affected Public:* Individuals or household.

*Annual Burden Hours:* 17,833.

*Number of Respondents:* 71,332.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 15 minutes.

*Frequency:* Annually.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The TRICARE Retiree Dental Program (32 CFR 199.22) was implemented in 1998 based on the authority of 10 U.S.C. 1076c. Dental coverage under the program is available on a voluntary basis to retirees of the Uniformed Services entitled to retired pay and their family members.

The information collection requirements under this proposed extension are similar to those under the current collection. Information on the applicant, such as name, address, telephone numbers, date of birth, and retiree's social security number, is necessary for identification purposes, as is information on the family members to be enrolled. The form also contains information on premium payment enrollment options and a certification statement for the applicant to sign and date. The primary change in the proposed extension of the information collection is to update the expiration date of the Enrollment Application.

Dated: September 10, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24531 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–HA–0134]**

### Proposed Collection; Comment Request

**AGENCY:** Uniformed Services University of the Health Sciences, Graduate School of Nursing, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506 (c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Uniformed Services University of the Health Sciences proposes a new public information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact Sandra C. Garmon Bibb, DNSc, RN, Department of Health Systems, Risk and Contingency Management, Graduate School of Nursing, Uniformed Services University of the Health Sciences; (301) 295–1206.

*Title; Associated Form; and OMB Number:* Military Nurse Recruitment Surveys; OMB Control Number 0720–TBD.

*Needs and Uses:* The information collection requirement is necessary to obtain and assess the willingness of potential student populations to consider accepting an undergraduate nursing education in return for a commission as a nurse officer in the Armed Forces with a required service obligation.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 1,000 hours.

*Number of Respondents:* 4,000 (2,000 non-nursing students and 2,000 nursing students).

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* One time.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are students in nursing school programs, or attending institutions where nursing school programs are offered; possibly to include qualified applicants who are not accepted for admission due to space limitations.

The United States healthcare system is facing an acute nursing shortage of unprecedented magnitude. This shortage is also affecting the Nursing Corps of the three military services. In this environment of a short supply of nurses, several initiatives are being explored to increase the number of nurses recruited annually by the military services. Data are needed for planning that will allow for an assessment of the potential impact of recruitment incentives on the receptiveness of targeted populations of likely future nurses and nursing students. In order to maintain the level of recruitment required by the military to maintain an adequate nursing workforce, a more thorough assessment of the future military nursing workforce is required. The national survey of young adults ages 18–40 will capture critical information on public perceptions of and interest in nursing and military careers and aid policy planning efforts to estimate available labor supply. The survey of nursing students enrolled in nursing programs throughout the US will provide critical data on the willingness of those with a demonstrated interest in nursing to consider a military nursing career.

Dated: September 10, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24532 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2009–HA–0157]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title and OMB Number:* Retired Troops to Nurse Teachers Survey; OMB Control Number 0720–TBD.

*Type of Request:* New.

*Number of Respondents:* 1,744.

*Responses per Respondent:* 1.

*Annual Responses:* 1,744.

*Average Burden per Response:* 20 minutes.

*Annual Burden Hours:* 576 hours.

*Needs and Uses:* The 2008 National Defense Authorization Act (Conference Report) gives impetus to this study, which calls for an evaluation of the provision in the Troops to Nurse Teachers (TNT) Act of 2008. Specifically, DoD will examine the feasibility and merits of this congressional proposal that outlines a program to encourage former military nurses to take faculty positions in nursing schools, for the purpose of encouraging more nurse graduates to consider military service. The Department will survey military nurses who are on active duty but close to retirement eligibility (20 years of service), or recently retired. The primary purpose of collecting data from this group is to determine what factors would attract a retiree to teach nursing. The survey will also cover civilian nursing school students to determine what incentives might entice them to seek positions in the military.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 23, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24533 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–OS–0128]**

### Proposed Collection; Comment Request

**AGENCY:** Department of Defense, Office of the Deputy Under Secretary of Defense (Installations and Environment).

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Deputy Under Secretary of Defense (Installations and Environment) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Under Secretary of Defense (Installations & Environment), 3400 Defense Pentagon, Washington, DC 20301–3400, or call (703) 695–6107.

*Title; Associated Form; and OMB Number:* Technical Assistance for Public Participation (TAPP) Application, DD Form 2749, OMB Control Number 0704–0392.

*Needs and Uses:* The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

*Affected Public:* Not-for-profit institutions.

*Annual Burden Hours:* 200.

*Number of Respondents:* 50.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 4 hours.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

#### Summary of Information Collection

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will assist communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review communities receiving the products and services.

Dated: September 17, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24526 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2010–OS–0032]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title and OMB Number:* Personal Check Cashing Agreement, DD Form 2761; OMB Number 0730–0005.

*Type of Request:* Extension.

*Number of Respondents:* 4,748.

*Responses per Respondent:* 1.

*Annual Responses:* 4,748.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 1,187 hours.

*Needs and Uses:* The information collection requirement is necessary to meet the DoD requirement for cashing personal checks overseas and on ship by DoD disbursing activities, as provided in 31 U.S.C. 3342. The DoD Financial Management Regulation, Volume 5, provides guidance to DoD disbursing officers in the performance of this information collection. This allows the DoD disbursing officer or authorized agent the authority to offset the pay without prior notification in cases where this form has been signed subject to conditions specified within the approved procedures.

The front of the form will be completed and signed by the authorized individual requesting check cashing privileges. By signing the form, the individual is freely and voluntarily consenting to the immediate collection from their current pay, without prior notice, for the face value of any check cashed, plus any charges assessed against the government by a financial institution, in the event the check is dishonored. In the event the check is dishonored, the disbursing office will complete and certify the reverse side of the form and forward the form to the applicable payroll office for collection from the individual's current pay.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 23, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24534 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2009–OS–0089]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title and OMB Number:* Application for Homeowners Assistance; DD Form 1607; OMB Control Number 0704–0463.

*Type of Request:* Extension.

*Number of Respondents:* 17,000.

*Responses per Respondent:* 1.

*Annual Responses:* 17,000.

*Average Burden per Response:* 1 hour.

*Annual Burden Hours:* 17,000 hours.

*Needs and Uses:* The Secretary of Defense is authorized to provide financial help to eligible homeowners serving or employed at or near military installations which were ordered closed or partially closed, realigned or were ordered to reduce the scope of operations. The Department of the Army acts as executive agent for DoD in administering the program for all military departments. Before benefits can be paid, certain conditions must be met.

Eligible homeowners use the DD Form 1607, "Application for Homeowners Assistance" to apply. The application is reviewed by a department personnel office, military or civilian, for verification of service or employment and mailed to the appropriate office of the U.S. Army Corps of Engineers which administers the program. The U.S. Army Corps of Engineers will notify the applicant.

The Department plans to expand its Homeowners Assistance Program (HAP), with $555 million in Recovery Act funds dedicated to helping military families and DoD civilians who recently sold their homes at a loss. The expanded program will assist families forced to relocate due to base closures or normal assignment rotations. But, the most important aspect is that priority access to the funds will go to survivors of those killed during deployment, and those who were wounded, ill or injured during deployment.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 23, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24527 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–OS–0130]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), National Security Education Program, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209, ATTN: Dr. Kevin Gormley or call (703) 696–1991.

*Title, associated form(s), and OMB control number:* National Security Education Program (NSEP); DD Form 2752, "National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards" and DD Form 2753, "National Security Education Program (NSEP) Service Agreement Report (SAR) for Scholarship and Fellowship Awards"; OMB Control Number 0704–0368.

*Needs and uses:* This information collection requirement is necessary to record the original award amount and service requirement of a particular award recipient (DD form 2752) and the progress an award recipient makes toward fulfilling their service requirement as signed when she/he receives the award (DD Form 2753).

*Affected public:* Individuals or households.

*Annual burden hours:* 400.

*Number of respondents:* 1,400.

*Responses per respondent:* 1.

*Average burden per response:* 17 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are undergraduate and graduate students that are agreeing to the terms of their award (DD Form 2752) and who agreed at the receipt of the award to submit the Service Agreement Report (DD Form 2753) annually until their service requirement is fulfilled. The information will be used to follow award recipients as they fulfill their service obligation with the federal government.

Dated: September 10, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24525 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2010–OS–0054]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title and OMB Number:* Trustee Report, DD Form 2826, OMB Number 0730–0012.

*Type of Request:* Extension.

*Number of Respondents:* 600.

*Responses per Respondent:* 1.

*Annual Responses:* 600.

*Average Burden per Response:* 30 minutes.

*Annual Burden Hours:* 300 hours.

*Needs and Uses:* This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services pursuant to 37 U.S.C. 602–604.

When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of Government funds and member's benefits.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 23, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24535 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2010–OS–0055]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title and OMB Number:* Application for Trusteeship, DD Form 2827, OMB Number 0730–0013.

*Type of Request:* Extension.

*Number of Respondents:* 75.

*Responses per Respondent:* 1.

*Annual Responses:* 75.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 19 hours.

*Needs and Uses:* This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services pursuant to 37 U.S.C. 602–604.

When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Individuals will complete this form to apply for appointment as a trustee on behalf of the member. The requirement to complete this form helps alleviate the

opportunity for fraud, waste and abuse of Government funds and member's benefits.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 23, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24536 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–OS–0127]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995* (44 U.S.C. 3501 *et seq.*), the Office of the Under Secretary of Defense (Personnel and Readiness) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Legal Policy), ATTN: Lt Col Thomas R. Williams II, 4000 Defense Pentagon, Washington, DC 20301–4000, or call at (703) 697–3387; facsimile (703) 693–6708.

*Title, Associated Form, and OMB Control Number:* Involuntary Allotment Application; DD Form 2653, OMB Control Number 0704–0367.

*Needs and Uses:* This information collection requirement is necessary to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party under 5 U.S.C. 5520a. 5 U.S.C. 5520a authorizes involuntary allotments if there is a final court judgment acknowledging the debt and it is determined by competent military or executive authority to be in compliance with the procedural requirements of the Servicemembers' Civil Relief Act. In order to satisfy these statutory requirements, the DD Form 2653 requires the respondent to provide identifying information on the member of the Uniformed Services; provide a certified copy of the judgment; and certify, if applicable, that the judgment complies with the Servicemembers' Civil Relief Act.

*Affected Public:* Individuals or households; businesses or other for-profit.

*Annual Burden Hours:* 3,150.

*Number of Respondents:* 6,300.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This information is used by the Department of Defense to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party as determined by the final judgment of a court.

This requirement was created by "The Hatch Act Reform Amendments of 1993," Public Law 103–94. The DD Form 2653, "Involuntary Allotment Application," requires the creditor to provide identifying information on the member of the Uniformed Services, provide a certified copy of the judgment, and certify that the members' rights under the Servicemembers' Civil Relief Act were protected.

Dated: September 10, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24524 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2009–OS–0191]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title and OMB Number:* DoD Building Pass Application; DD Form 2249; OMB Number 0704–0328.

*Type of Request:* Extension.

*Number of Respondents:* 120,000.

*Responses per Respondent:* 1.

*Annual Responses:* 120,000.

*Average Burden per Response:* 6 minutes.

*Annual Burden Hours:* 12,000 hours.

*Needs and Uses:* This information collection requirement provides for the collection of information from applicants for DoD Building Passes. The information collected from the DD Form 2249, "DoD Building Pass Application," is used to verify the need for and to issue a DoD Building Pass to DoD personnel, other authorized U.S. Government personnel, and DoD consultants and experts who regularly work in or require frequent and continuing access to DoD-owned or occupied buildings in the National Capital Region.

*Affected Public:* Individuals or households; businesses of other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 23, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24523 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2009–OS–0101]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title and OMB Number:* Appointment of Chaplains for the Military Services; DD Form 2088; OMB Control Number 0704–0190.

*Type of Request:* Reinstatement.

*Number of Respondents:* 200.

*Responses per Respondent:* 5.

*Annual Responses:* 1000.

*Average Burden per Response:* 45 minutes.

*Annual Burden Hours:* 750 hours.

*Needs and Uses:* This information collection will provide certification that a Religious Ministry Professional is professionally qualified to become a chaplain. The DD 2088 is used to verify the professional and ecclesiastical qualifications of Religious Ministry Professionals for initial appointment or chaplains change of career status appointments as chaplains in the Military Service. This form is an essential element of a chaplain's professional qualifications and will become a part of a chaplain's military personnel record. DoD listed endorsing agents utilize the form to endorse military chaplains representing their organizations.

*Affected Public:* Not-for-profit institutions.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 23, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24521 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 10–28 and 10–30]**

### 36(b)(1) Arms Sales Notifications

**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 10–28 and 10–30 with associated attachments.

Dated: September 27, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**Transmittal No. 10–28**

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–28 with attached transmittal and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

SEP 14 2010

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. 10-28, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Pakistan for defense articles and services estimated to cost $397 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. 10-28

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: Pakistan

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $397 million |
| TOTAL | $397 million |

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to thirty BELL 412EP Helicopters, spare and repair parts, support equipment, ferry services, air worthiness certification, publications and technical data, personnel training and training equipment, U.S. Government and contractor logistics, engineering, and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (WAB)

(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: SEP 14 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – BELL 412EP Helicopters

The Government of Pakistan has requested a possible sale of up to thirty BELL 412EP Helicopters, spare and repair parts, support equipment, ferry services, air worthiness certification, publications and technical data, personnel training and training equipment, U.S. Government and contractor logistics, engineering, and technical support services, and other related elements of logistics support. The estimated cost is $397 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for economic progress in South Asia and a partner in overseas contingency operations.

The proposed sale of the helicopters will increase Pakistan's air capabilities to execute counterinsurgency operations, border security, search and rescue, and support for the civilian population in Pakistan. Pakistan, which already has Bell 412EP Helicopters in its inventory, will have no difficulty absorbing these additional helicopters 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 Bell Helicopter in Fort Worth, Texas. 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 personnel in country. It is anticipated that two U.G. Government personnel will travel to Pakistan two times per year, one week per trip, for a period of up to five years to provide logistic support services.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**Transmittal No. 10–30**

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–30 with attached transmittal and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 14 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. 10-30, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $131 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,

**Richard A. Genaille, Jr.**
**Deputy Director**

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 24 million |
| Other | $ 107 million |
| TOTAL | $ 131 million |

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: refurbishment of 440 M113A2 Armored Personnel Carriers, being offered as Excess Defense Articles, including installation of 440 M2 .50 Cal Machine Guns, 607 AN/VRC-90E Single Channel Ground and Airborne Radios Systems, M259 Smoke Grenade Launchers, and Combat Vehicle Crewmember Helmets. Also included are tools and test equipment, site survey, construction, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering, technical, and logistics personnel services, and other related logistics and program support.

(iv) Military Department: Army (ZAG)

(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: 14 September 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq –Refurbishment of M113A2 Armored Personnel Carriers

The Government of Iraq has requested a possible sale for the refurbishment of 440 M113A2 Armored Personnel Carriers, being offered as Excess Defense Articles, including installation of 440 M2 .50 Cal Machine Guns, 607 AN/VRC-90E Single Channel Ground and Airborne Radios Systems, M259 Smoke Grenade Launchers, and Combat Vehicle Crewmember Helmets. Also included are tools and test equipment, site survey, construction, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering, technical, and logistics personnel services, and other related logistics and program support. The estimated cost is $131 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale to refurbish the APCs will strengthen the effectiveness and interoperability of the Iraqi military, reduce Iraq's dependence on U.S. forces in the region and enhance any coalition operations the U.S. may undertake with Iraq. The Iraqi military will have no difficulty absorbing these vehicles into its armed forces.

The proposed sale of these vehicles will not alter the basic military balance in the region.

The prime contractor will be BAE Corporation in Rosslyn, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of multiple additional U.S. Government and contractor representatives to Iraq for a period of two years with an option for additional years for the purpose of fielding and training and quality assurance during equipment delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[[FR Doc. 2010–24551 Filed 9–29–10; 8:45 am]
**[BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Federal Advisory Committee; Threat Reduction Advisory Committee

**AGENCY:** Office of the Under Secretary of Defense (Acquisition, Technology and Logistics); DoD.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces a meeting of the Threat Reduction Advisory Committee (hereafter referred to as "the Committee" or "TRAC") on October 21, 2010, in Chantilly, VA.

**DATES:** The meeting will be held on Thursday, October 21, 2010, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Heritage Conference Center, Trenton Conference Room, 4803 Stonecroft Boulevard, Chantilly, VA 20151.

**FOR FURTHER INFORMATION CONTACT:** *Designated Federal Officer or Point of Contact:* Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201, or by e-mail: *eric.wright@dtra.mil,* phone: (703) 767–4759, fax: (703) 767–5701.

**SUPPLEMENTARY INFORMATION:**

### Purpose of Meeting

To obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (WMD), chemical and biological defense, the future of the Cooperative Threat Reduction program, and other matters related to the Department of Defense's mission.

### Agenda

Beginning at 9 a.m. through the end of the meeting, the committee will receive secret level briefings on WMD threats, the Defense Threat Reduction Agency, and the status of the Cooperative Threat Reduction program. The TRAC will hold classified discussions on these and related national security matters.

### Administrative Meeting

From 8 a.m. until 9 a.m. on Thursday, October 21, 2010, the TRAC will hold an administrative meeting under 41 CFR 102–3.160(b) to swear in its members and provide them with administrative information from a Federal officer or agency.

### Meeting Accessibility

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Undersecretary of Defense (Acquisition, Technology and Logistics), in consultation with the Office of the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Title 5, United States Code, section 552b(c)(1) and are inextricably intertwined with the unclassified material that they cannot reasonably be segregated into separate discussions without disclosing secret or classified material.

**Written Statements**

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: September 27, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24553 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2010–OS–0136]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Office of the Secretary of Defense is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on November 1, 2010, unless comments are received that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket 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, Room 3C843 Pentagon, 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:** Ms. Jacqueline Scott at (813) 827–6629.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Director for Privacy, Defense Privacy and Civil Liberties Office, 1901 S. Bell Street, Ste. 920, Arlington, VA 22202–4512.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 20, 2010, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: September 27, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### DPR 41 DoD

**SYSTEM NAME:**

Combined Mild Traumatic Brain Injury Registry.

**SYSTEM LOCATION:**

Headquarters CENTCOM, CCJ2/OM Attn: CIDNE Team, 7115 South Boundary Blvd., MacDill AFB, FL 33621–5105. Additional addresses may be obtained from the Program Manager, Combined Information Data Exchange (CIDNE), Air Force Research Laboratory (AFRL), 26 Electronic Parkway, Rome, New York 13441–4514.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Army, Air Force, Navy, Marine Corps, Reserves and National Guard members assigned to any DoD Combatant Command operating in a deployed setting and are exposed to possible concussive or mild traumatic brain injury and/or related incidents in deployed settings, to include blast events, vehicle collisions/rollovers and/or direct blows to the head, or witnessed loss of consciousness in their Area of Responsibility (AOR).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number (SSN), date of incident; Injury/Evaluation/Distance from Blast (I.E.D.) Checklist, type of event, Significant Activities (SIGACT)/Joint Operations Center Report Number, Battle Roster Number, Service Branch, unit, combatant command, if the individual was physically injured; type of event individuals experienced at the time of incident (*e.g.,* headaches and/or vomiting; ears ringing; amnesia and/or altered/loss of consciousness; double vision and/or dizziness; and if something felt wrong at time of incident); if the individual was within 50 meters of blast; estimated distance from blast; rest period waived by commander; and disposition of any mandated medical evaluation (returned to duty after 24 hour rest period).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Department Regulation; 10 U.S.C. 161, Combatant commands: Establishment; 10 U.S.C. 164, Commanders of combatant commands; assignment; powers; Directive Type Memoranda 09–033, Policy Guidance for Management of Concussion/Mild Traumatic Brain Injury in the Deployed Setting; DoD Directive 5124.02, Under Secretary of Defense for Personnel and Readiness; DoD Directive 5100.3, Support of the Headquarters and Subordinate Joint Commands; DoD Directive 5400.11, Department of Defense Privacy Program; Department of Defense 5400.11–R, Department of Defense Privacy Program; Department of Defense 6025.18–R, Health Information Privacy Regulation; DoD Directive 6025–21E, Medical Research for Prevention, Mitigation and Treatment of Blast Injuries; and E.O. 9397 (SSN), as amended.

**PURPOSE(S):**

The system will document Active Duty Service member's exposure to possible concussive or mild traumatic brain injury and/or related incidents in deployed settings, including blast events, vehicle collisions/rollovers, and/or direct blows to the head or witnessed loss of consciousness. The system will be used to associate/link individual Service members with operational events and significant activities in the deployed setting that could potentially result in concussion/traumatic brain injury. Such linkage to the event will

enable commanders and their representatives, and medical personnel to ensure completion of the DoD-required screening, evaluation, tracking and reporting due to explosions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Name, Social Security Number (SSN), date of incident, type of event, Significant Activities (SIGACT)/Joint Operations Report Number, service branch and unit.

**SAFEGUARDS:**

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need to know. Access to computerized data is restricted by passwords, which are changed periodically.

**RETENTION AND DISPOSAL:**

Disposition pending (treat as permanent until the National Archives and Records Administration has approved the retention and disposition schedule).

**SYSTEM MANAGER(S) AND ADDRESS:**

Combined Information Data Exchange (CIDNE), Program Manager, AFRL, 26 Electronic Parkway, Rome, New York 13441–4514.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Combined Information Data Exchange (CIDNE), Program Manager, AFRL, 26 Electronic Parkway, Rome, New York 13441–4514.

Written requests must include individuals full name, Social Security Number (SSN), date of incident, Branch of Service, unit and must be signed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to Combined Information Data Exchange (CIDNE), Program Manager, AFRL, 26 Electronic Parkway, Rome, New York 13441–4514.

Written requests must include individuals full name, Social Security Number (SSN), date of incident, Branch of Service, unit and must be signed.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for assessing records, for contesting and appealing initial agency determinations may be obtained from Headquarters CENTCOM, CCJ6/RD Attn: Freedom of Information and Privacy, 7115 South Boundary Blvd., MacDill AFB, FL 33621–5105.

**RECORD SOURCE CATEGORIES:**

Obtained through U.S. CENTCOM Area of Operation, Significant Activities (SIGACT)/Incident Reports, individual witness reports, and I.E.D. checklist.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2010–24554 Filed 9–29–10; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DOD–2010–OS–0120]**

### Privacy Act of 1974; System of Records; Correction

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice to delete a system of records; correction.

**SUMMARY:** On September 23, 2010 (75 FR 55907), DoD published a notice that cited an incorrect Air Force system name. This notice corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Cindy Allard at (703) 588–6830.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the notice published on September 23, 2010, in FR Doc. 2010–23791, on page 57907, in the first column, under the heading "Corrections", in lines 13 and 14, remove the system name "Applications for Appointment and Extended Active Duty Files" and add in its place "Military Personnel Records System".

Dated: September 27, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24552 Filed 9–29–10; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket No. USN–2010–0035]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Naval Health Research Center (NHRC), Department of the Navy announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Commanding Officer, Naval Health Research Center, Code 163, 140 Sylvester Road, San Diego, CA 92106, or call at (619) 553–7806 (this is not a toll-free number).

*Title and OMB Number:* Evaluation of Young Marines Drug Education Program; OMB Control Number 0703–0058.

*Needs and Uses:* The information collection requirement is necessary for the Naval Health Research Center to carry out the research study it has been tasked to perform. This research study will assess the effectiveness of a Marine Corps-sponsored youth development program, the Young Marines, in reducing drug use and promoting a healthy, drug-free lifestyle among its youth participants. The information collected will be used to describe how the program is affecting drug behaviors and related measures and will allow recommendations to be made to improve youth drug education. Respondents to this study will include youth, approximately ages 11 through 18 years, in the Young Marines program and Young Marine adult leaders.

*Affected Public:* Young Marines program participants and Young Marines adult leaders.

*Annual Burden Hours:* 1,046.

*Number of Respondents:* 1,325.

*Responses per Respondent:* 1 for most youth and all of the adult leaders; 2 for a subset of 250 youth.

*Average Burden per Response:* 45 minutes for youth; 20 minutes for adults.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

## Summary of Information Collection

This information collection is necessary for the Naval Health Research Center (NHRC) to carry out the research study "Evaluation of Young Marines Drug Education Program." Naval Health Research Center has been tasked by U.S. Marine Corps Community Services Substance Abuse Program to conduct this evaluation. The Naval Health Research Center team will collect information about the youth's drug use, attitudes, and knowledge, as well as factors such as self-esteem by administering a voluntary paper-and-pencil survey to approximately 1,000 youth at regularly scheduled Young Marines meetings and by posting an online survey. Approximately 250 of these youth subjects will also complete an online, follow-up survey about three months later. Approximately 325 Young Marine adult unit leaders will be asked to complete a one-time, online survey about the drug education activities that their unit provides to their Program members. In all cases, consent will always be received prior to survey administration. The information collected will be used to describe how the Young Marines program is affecting drug behaviors and related measures and will allow recommendations to be made to improve youth drug education.

Dated: September 17, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24522 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Department of Navy

**[Docket ID: USN–2010–0033]**

### Proposed Collection; Comment Request

**AGENCY:** Marine Corps Recruiting Command, Marine Corps Base Quantico, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3502(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the U.S. Marine Corps announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, write to Marine Corps Recruiting Command (Code G3 OR), 3280 Russell Road, Quantico, VA 22134–5103, or contact Ms. Carla V. Offer at (703) 784–9450.

*Title, Associated Form, and OMB Number:* Personal Information Questionnaire; OMB Control Number 0703–0012.

*Needs and Uses:* The information collection requirement is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 4,175.

*Number of Respondents:* 16,700.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 Minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

## Summary of Information Collection

The Personal Information Questionnaire is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

Dated: September 17, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24516 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2010–0024]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3502(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Associate Director for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) The accuracy of the agency's estimate of the burden of the proposed information collection; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the HQ USAF/XOO–CA, 1480 Air Force Pentagon, Washington, DC 20330–1480, or call (703) 697–1796.

*Title, Associated Form, and OMB Number:* Civil Aircraft Certificate of Insurance, DD Form 2400; Civil Aircraft Landing Permit, DD Form 2401; Civil Aircraft Hold Harmless Agreement, DD Form 2402; OMB Control Number 0701–0050.

*Needs and Uses:* The collection of information is necessary to ensure that the security and operational integrity of military airfields are maintained; to identify the aircraft operator and the aircraft to be operated; to avoid competition with the private sector by establishing the purpose for use of military airfields; and to ensure the U.S. Government is not held liable if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions.

*Annual Burden Hours:* 1,800.

*Number of Respondents:* 3,600.

*Responses per Respondent:* 1.

*Average Burden for Respondents:* 30 minutes.

*Frequency:* Annually.

**SUPPLEMENTARY INFORMATION:**

### Summary of Information Collection

The collection of information is necessary to ensure that the security and operational integrity of military airfields are maintained; to identify the aircraft operator and the aircraft to be operated; to avoid competition with the private sector by establishing the purpose for use of military airfields; and to ensure the U.S. Government is not held liable if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services.

Dated: September 17, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24518 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket No. USN–2010–0023]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title and OMB Number:* Mental Health Issues among Separating Marines; OMB Number 0703–0056.

*Type of Request:* Extension.

*Number of Respondents:* 1,850.

*Responses per Respondent:* 1.

*Annual Responses:* 1,850.

*Average Burden per Response:* 1 hour.

*Annual Burden Hours:* 1,850 hours.

*Needs and Uses:* Tens of thousands of Marines transition from the military to civilian life each year, the majority of whom have been exposed to deployment stressors that have put them at high risk for stress-related disorders. This longitudinal study builds on a 2008 pilot study assessing the prevalence of mental health outcomes among Sailors and Marines transitioning from the Service, and identifying predictors of and changes in mental health and resilience over time. For the baseline component of the current study, a paper-and-pencil questionnaire was administered to approximately 2,700 active-duty Marines in the Transition Assistance Program (TAP) during routine mandatory separation counseling via group administration at 6 selected installations worldwide. Based on the estimated number of attendees per TAP class and the number of classes conducted during the 4-month data collection period (January–April 2010), we estimate that approximately 4,900 Marines were eligible for inclusion into the study, giving us an approximate 55 percent response rate. The baseline survey included selected items from the post-deployment health reassessment (PDHRA), along with additional questions on risk factors for poor civilian readjustment, and other biographical and psychological content. DoD regulations stipulate that all military personnel must receive pre-separation counseling no less than 90 days before leaving active duty.

NHRC proposes tracking over time the mental well-being of eligible baseline respondents for the longitudinal portion of the study through a follow-on survey 3 to 6 months after separation from military service, after they have completed the transition from military to civilian life. Data from extant historical personnel and medical files will also be combined with survey data to develop models that demonstrate the influence of combat, and a variety of covariates, on mental health symptoms, resilience, and substance abuse. We estimate that approximately 1,850 of the 2,700 baseline participants will be eligible for and consent to participate in the follow-up survey. In order to facilitate locating these respondents, the baseline questionnaire requested participants provide name, relocation

plans, names and contact information for two friends or relatives who always know where the respondent is living, and the respondent's date of birth and social security number. The follow-up survey will be sent to respondents through the mail. Respondents will also have the option of completing this survey via the Web, which will closely simulate the hardcopy version of the instrument.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 17, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24520 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID: USA–2010–0016]**

### Submission for OMB review; comment request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 1, 2010.

*Title, Form, and OMB Number:* The Contractor Manpower Reporting System; OMB Control Number 0702–0120.

*Type of Request:* Extension.

*Number of Respondents:* 12,215.

*Responses per Respondent:* 1.

*Annual Responses:* 12,215.

*Average Burden per Response:* 5 minutes.

*Annual Burden Hours:* 1,018 hours.

*Needs and Uses:* This program greatly enhances the ability of the Army to identify and track its contactor workforce. Current systems do not have contractor manpower data that is collected by the contractor Manpower Reporting System—*i.e.,* Direct Labor Hours, Direct Labor Dollars and Organization supported. Existing financial and procurement systems have obligation amounts of an unknown mix of services and supplies, and the Department of the Army is not able to trace the funding to the organization supported. Like all other Federal Government agencies, the Army's reliance on service contractor employees has increased significantly over the past few years.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD clearance officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 23, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24519 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2010–0034]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3502(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Chief of Naval Education and Training announces a proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 29, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–61160.

*Instructions:* All submissions received must include the agency name, docket

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

**FOR FURTHER INFORMATION CONTACT:** To request additional information or to obtain a copy of the proposal and associated collection instruments, write to Chief of Naval Education and Training (N79A21), 250 Dallas Street, Pensacola, FL 32508–5220, or call at (850) 452–9387.

*Title; Associated Form; and OMB Number:* Application Forms Booklet, Naval Reserve Officers Training Corps (NROTC) Scholarship Program; OMB Control Number 0703–0026.

*Needs and Uses:* This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 56,000.

*Number of Respondents:* 14,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 4 hours.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Dated: September 17, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–24517 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Grant an Exclusive Field of Use License of U.S. Government-Owned Patents

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7 (a)(1)(i) and 37 CFR 404.7 (b)(1)(i), announcement is made of the intent to grant a field of use exclusive, revocable license for the field of vaccination of ungulates to U.S. Patent No. 7,235,644 issued on June 26, 2007, U.S. Patent No. 7,025,963 issued on April 11, 2006, and U.S. Patent No. 7,018,636 issued on March 28, 2006, and related foreign patents and patent applications deriving from PCT/US95/04446, with all patents and patent applications entitled "Vaccine Against Gram-Negative Bacterial Infections," to the University of Maryland, Baltimore, with its principal place of business at 620 West Lexington Street, 4th floor, Baltimore, Maryland 21201–1508.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (*see* **ADDRESSES**).

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2010–24592 Filed 9–29–10; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Interim Change to the Military Freight Traffic Unified Rules Publication (MFTURP) No. 1

**AGENCY:** Department of the Army, DoD.

**SUMMARY:** The Military Surface Deployment and Distribution Command (SDDC) is providing notice that it is releasing an interim change to the MFTURP No. 1 on October 1, 2010. The interim change adds Item 180, Rail In-Transit Visibility (Rail ITV) Reporting, to Section C of the MFTURP No. 1.

**ADDRESSES:** Submit comments to Publication and Rules Manager, Strategic Business Directorate, Business Services, 1 Soldier Way, Building 1900W, ATTN: SDDC–OPM, Scott AFB, 62225. Request for additional information may be sent by e-mail to: *chad.t.privett@us.army.mil* or *george.alie@us.army.mil*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chad Privett, (618) 220–6901, or Mr. George Alie, (618) 220–5870.

**SUPPLEMENTARY INFORMATION:**

*Reference:* Military Freight Traffic Unified Rules Publications (MFTURP) No. 1.

*Background:* The MFTURP No. 1 governs the purchase of surface freight transportation in the Continental United States (CONUS) by DoD using Federal Acquisition Regulation (FAR) exempt transportation service contracts.

Rail ITV data is now purchased from a contractor, along with rail ITV services. Some of the data is transmitted to the Global Tracking Network (GTN), but most of it resides in the contractor's database and is accessible only using the contractor's software. When contracts are rebid, the former contractor is tasked to transfer recent data to the new contractor. Section C, Item 180, ensures this transfer takes place.

*Miscellaneous:* This publication, as well as the other SDDC publications, can be accessed via the SDDC Web site at: *http://www.sddc.army.mil/Public/Global%20Cargo%20Distribution/Domestic/Publications/*.

**Henry Brooks,**

*Chief, SDDC, G9, Business Execution.*

[FR Doc. 2010–24589 Filed 9–29–10; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Interim Change to the Military Freight Traffic Unified Rules Publication (MFTURP) No. 1

**AGENCY:** Department of the Army, DoD.

**SUMMARY:** The Military Surface Deployment and Distribution Command (SDDC) is providing notice that it is releasing an interim change to the MFTURP No. 1 on October 1, 2010. The interim change updates Section B, Item 21, Detention: Vehicles With Power Units (DEP).

**ADDRESSES:** Submit comments to Publication and Rules Manager, Strategic Business Directorate, Business Services, 1 Soldier Way, Building 1900W, ATTN: SDDC–OPM, Scott AFB 62225. Request for additional information may be sent by e-mail to: *chad.t.privett@us.army.mil* or *george.alie@us.army.mil.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Chad Privett, (618) 220–6901, or Mr. George Alie, (618) 220–5870.

**SUPPLEMENTARY INFORMATION:**

*Reference:* Military Freight Traffic Unified Rules Publications (MFTURP) No. 1.

*Background:* The MFTURP No. 1 governs the purchase of surface freight transportation in the Continental United States (CONUS) by DoD using Federal Acquisition Regulation (FAR) exempt transportation service contracts.

Section B, Item 21, has been updated in order to clearly define Tank Truck/Bulk Fuel free time and the provisions of free time in general.

*Miscellaneous:* This publication, as well as the other SDDC publications, can be accessed via the SDDC Web site at: *http://www.sddc.army.mil/Public/Global%20Cargo%20Distribution/Domestic/Publications/.*

**Henry Brooks,**

*Chief, SDDC, G9, Business Execution.*

[FR Doc. 2010–24590 Filed 9–29–10; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2010–0023]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Department of the Air Force is proposing to add 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:** The proposed action will be effective on November 1, 2010, unless comments are received that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket 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, Room 3C843 Pentagon, 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:** Mr. Charles J. Shedrick, 703–696–6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force 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 Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on September 17, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget pursuant to paragraph 4c of Appendix I to Office of Management and Budget Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996; 61 FR 6427).

Dated: September 24, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F065 AF FMP B**

**SYSTEM NAME:**

Customer Relationship Management.

**SYSTEM LOCATION:**

Equinix Elk Grove Village IBX Center, 1945 Lunt Avenue, Elk Grove Village, IL 60007–5603; and 2700 Doolittle Drive, Ellsworth Air Force Base, SD 57706–4854.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current Air Force military personnel; Active Duty, Reserve, Air National Guard, retirees, and their dependents.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information collected consists of full name, Service Number, Social Security Number (SSN), date of birth, rank, date of rank, Active Federal Service date, projected rank, duty e-mail, organization name, base name, employment information, full resident address to include city, state, and country, and phone number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 8032, The Air Staff, general duties; DoD 7000.14R, Volume 7A, Military Pay Policy and Procedures—Active Duty and Reserve Pay; 37 U.S.C. 404, Travel and transportation allowances: general; The Joint Federal Travel Regulations, Volume 1, Uniformed Service Members; The Joint Travel Regulations, Volume 2, DoD Civilian Personnel; DoD Directive 5154.29, DoD Pay and Allowances Policy and Procedures; DoD Financial Management Regulation (DoDFMR) 7000.14–R, Volume 9; Travel Policy and Procedures; Air Force Instruction 65–114, Travel–Policy and Procedures for Financial Services Offices and Finance Offices-Reserve Component; Air Force Manual 65–116 V2, Defense Joint Military Pay System (DJMS) Unit Procedures Excluding FSO; and E.O. 9397 (SSN), as amended.

**PURPOSE:**

The purpose of the Customer Relationship Management system is to support Air Force members and their dependents' queries about the status and disposition of certain pay and travel expense reimbursement transactions being processed by the U.S. Air Force Financial Services Center (AFFSC).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

By individual's name, Social Security Number (SSN), and/or Service Number.

**SAFEGUARDS:**

To safeguard against unauthorized access, technical, physical and administrative security procedures are in place. Individuals' privacy is protected throughout the information lifecycle; the information is collected in secure file transfers in an encrypted state and retained in a database located at a secure facility behind a firewall. In

addition, Customer Relationship Management incorporates business rules limiting access to privacy data in accordance with the roles and responsibilities assigned to them. These rules include the enforcement of need-to-know access controls. Further, personnel in the Air Force Financial Services Center and those who maintain the commercial facility are required to undergo background checks and have proper security clearances in place for the duration of their work with the Customer Relationship Management system.

**RETENTION AND DISPOSAL:**

Accountability records documenting the issue or receipt of accountable documents are destroyed 1 year after all entries are cleared. Records are destroyed by erasing from electronic storage media online and offline.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Information Systems and Technology, SAF/FMPSA, 1602 B–Wing Suite 327, Andrews AFB 20762–0001.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Information Systems and Technology, SAF/FMPSA, 1602 B–Wing Suite 327, Andrews AFB 20762–0001.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any detail, which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

*If executed outside the United States:* 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

*If executed within the United States, its territories, possessions, or commonwealths:* 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address requests to the Director, Information Systems and Technology, SAF/FMPSA, 1602 B-Wing Suite 327, Andrews AFB 20762–0001.

For verification purposes, individuals should provide their full name, Social Security Number (SSN), any details, which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

*If executed outside the United States:* 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for access to records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Instruction 33–332, Privacy Act Program, 32 CFR Part 806b, or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From individuals by interactive interview.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2010–24474 Filed 9–29–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Record of Decision for the Guam and Commonwealth of Northern Mariana Islands Military Relocation: Relocating Marines from Okinawa, Visiting Aircraft Carrier Berthing, and Air and Missile Defense Task Force

*Lead Agency:* Department of the Navy, DoD.

*Cooperating Agency:* Department of the Army, DoD.

**ACTION:** Notice of Record of Decision.

**SUMMARY:** The Department of the Navy (DoN) and the Department of the Army (Army), after carefully weighing the environmental consequences of the proposed action, as well as considering operational and training requirements, strategic requirements, obligations under treaties and other international agreements, and cost, announce their decision to proceed with Guam and Commonwealth of Northern Mariana Islands (CNMI) Military Relocation.

As a result of redefining the United States (U.S.) defense posture in the Pacific region and the U.S. alliance with Japan, a portion of U.S. Marine Corps (USMC) forces currently located in Okinawa, Japan will be relocated to Guam. This relocation of USMC forces will meet international agreement and treaty requirements and fulfill U.S. national security policy requirements to provide mutual defense, deter aggression, and dissuade coercion in the Western Pacific Region in response to the evolving security environment in the Pacific region, as identified through the Integrated Global Presence and Basing Strategy and the Quadrennial Defense Review (QDR). The redefining of the U.S. defense posture in the Pacific also calls for greater availability of aircraft carrier strike groups in the Pacific to support engagement, presence, and deterrence. Finally, in support of the proposed military relocation, the stationing of an Air and Missile Defense Task Force (AMDTF) is also being considered. A significant number of countries have ballistic missile capabilities which can deliver conventional, nuclear, biological, and chemical weapons. Other countries are working to establish these capabilities and missile systems. The effective strike range of defensive ballistic missile systems dictates that they must be located in the proximity of the protected assets. The need for the proposed AMDTF is to protect the territory of Guam, its citizens, U.S. and allied forces on Guam from the threat of harm from ballistic missile attacks from other countries and enemies of the U.S.

Implementing the military relocation analyzed in the Environmental Impact Statement (EIS) will be a multi-agency, multi-year effort undertaken by the DoN, Army, Department of Transportation's Federal Highway Administration (FHWA), Guam utilities, Guam agencies, and various private entities. Implementation includes several components:

(1) *Marine Corps:* (a) Development and construction of facilities and infrastructure to support approximately 8,600 Marines and their 9,000 dependents being relocated from Okinawa to Guam. (b) Development and construction of facilities and infrastructure to support training and operations on Guam and Tinian (located in the CNMI).

DoN has elected to defer selection of a specific site for the construction and operation of a live fire training range complex in the Route 15 area in Guam pending completion of the Section 106 consultation process under the National Historic Preservation Act (NHPA). Likewise, a selection regarding implementation of a roadway improvement project calling for a realignment of Route 15 is hereby deferred pending selection of a specific site for the construction.

(2) *Navy:* Construction of a new deep-draft wharf with shoreside infrastructure improvements creating the capability in Apra Harbor, Guam to support a transient nuclear powered aircraft carrier.

DoN has elected to defer selection of a specific site for the construction and operation of a transient aircraft carrier berth within Apra Harbor for the near term. However, the analysis presented in the EIS, including the marine resources impacts analysis, provides sufficient information to allow the DoN to fully consider the direct, indirect and cumulative environmental impacts of locating a transient aircraft carrier berth and make a programmatic decision to locate a transient aircraft carrier berth generally within Apra Harbor, which is the only deep draft harbor on the island of Guam that could support such a berth.

(3) *Army:* Development of facilities and infrastructure on Guam to support relocating approximately 600 military personnel and their 900 dependents to establish and operate an Air and Missile Defense Task Force (AMDTF).

As of the date of this Record of Decision (ROD), the Department of Defense (DoD) has not decided to construct and operate an AMDTF on Guam. The decision on whether to assign this mission to the Army will be made pending the results of the ongoing regional and global Ballistic Missile Defense architectural and capability studies. It will also be based in part on the EIS for this proposed action with Guam as one site that is under consideration for an AMDTF mission. The EIS was prepared noting that if the mission were assigned to Army, the alternatives presented in the EIS represent how Army could implement the action on Guam. Army has selected the preferred alternatives described in Volume 5 of the EIS as the appropriate manner to implement the proposed action if and when the mission is assigned.

(4) *Utilities:* Renovation and development of additional capacity for power, water, and wastewater systems, both on base and off base, to support the increased demand from the new Marine Corps Base and associated growth in DoD and civilian population caused by the Relocation.

(5) *Off-base Roadways:* Improvements to off base roads, bridges, and intersections to support increased traffic and offset significant impacts caused by the Relocation.

Each of the major actions noted above encompasses several construction projects to provide required facilities and infrastructure. Most of the major actions and their supporting projects have alternative sites located throughout the island of Guam. This ROD will document and demonstrate why DoD has chosen to implement the preferred alternatives for each of the actions described in the EIS, except as noted above.

Because DoN and Army are preparing this ROD as a joint effort, both concur and support the decisions expressed within it. The ROD includes descriptions and discussions of the proposed actions and their impacts. It also includes descriptions and discussions of all related actions and their impacts. Combined, these two elements—proposed and related actions, with associated impacts—provide the context for consideration of the collective and cumulative impacts associated with all actions addressed in the EIS.

While this ROD represents the decisions of DoN and Army regarding the proposed actions, Federal agencies have greatly contributed to formulating and refining the approach to implementing actions and associated mitigation measures. Led by Council on Environmental Quality (CEQ) facilitated discussions, DoD reached major agreements with various Federal regulatory agencies regarding key issues, refined action alternatives for Guam's potable water and wastewater systems, committed to the use of force flow reduction and Adaptive Program Management (APM) as mitigation measures, and established a Civil-Military Coordination Council (CMCC) to implement APM. All of these actions are discussed with greater detail within the ROD. DoN would like to recognize the efforts of CEQ, the U.S. Environmental Protection Agency (EPA), the Department of Interior (DOI), the National Oceanographic and Atmospheric Administration (NOAA), and the Government of Guam Agencies and thank them for their participation and assistance in seeking resolution to the many challenges confronting DoD in the completion of the NEPA process for this proposed action. It is also recognized that as the military construction projects necessary to implement the actions move forward, each of these agencies will have a continuing role through either a regulatory, permitting, or advisory capacity and will continue to partner in the implementation of the actions.

This ROD was prepared in accordance with CEQ Regulations for Implementing the Procedural Provisions of NEPA 40 CFR parts 1500 to 1508 and specifically, 40 CFR 1505.2—Record of decision in cases requiring environmental impact statements.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darrell Molzan, Environmental Director, Joint Guam Program Office, Office of the Assistant Secretary of the Navy (Energy, Installations and Environment), 1000 Navy Pentagon, Washington, DC 20350.

**SUPPLEMENTARY INFORMATION:** Pursuant to 42 U.S.C. 4321 *et seq.* (Section 101 *et seq.* of NEPA); the regulations of the President's Council on Environmental Quality (CEQ) that implement NEPA procedures (40 CFR Parts 1500–1508); Department of Defense (DoD) Instruction 4715.9, Environmental Planning and Analysis; and applicable DoN environmental regulations and instructions that implement these laws and regulations, the DoN announces its decision to relocate U.S. Marines Corps forces from Okinawa, Japan to Guam, construct the infrastructure to support this relocation effort, and conduct training and operations on Guam and Tinian with the relocated Marine Corps forces. Additionally, the Navy announces its decision to construct and operate a berth for a transient nuclear aircraft carrier in Guam. The Army announces its decision regarding construction and operation of AMDTF facilities on Guam if tasked in the future with the mission of providing ballistic missile defense for Guam. Additionally, DoN announces it decision regarding the preferred solutions for roadway and utility system improvements on Guam to support the military buildup.

To implement the actions necessary for relocating U.S. Marine Corps forces from Okinawa to Guam, the DoN has decided to select all of the preferred alternatives described in Volumes 2, 3 and 6 of the EIS and to implement all mitigation measures noted in this ROD, except as noted below. Relative to Volume 2 and the construction and operation of facilities on Guam, the major actions and decisions include the following: (1) For a main cantonment area DoN selects Alternative 2. Implementation of this alternative would involve utilizing DoD-owned lands at NCTS Finegayan and South Finegayan Navy Housing and acquiring non-DoD-owned land known as the former FAA parcel. (2) For access to the Naval Munitions Site (NMS) DoN selects Alternative B, which involves the use of the existing hiking trail as the access road. (3) For the location of additional ammunition storage at NMS DoN selects Alternative A, the use of Parson's Road. (4) For airfield functions DoN selects the following actions: beddown of the Marine Corps Air Combat Element (ACE) and construction

of associated facilities at Andersen AFB North Ramp, construction of air embarkation facilities at Andersen AFB South Ramp, and construction of the North Gate and access road at Andersen AFB. (5) For Marine Corps embarkation facilities DoN selects to refurbish various wharfs and upgrade utilities to support waterfront functions and operations at Naval Base Guam, associated dredging and dredge disposal management (with a priority for beneficial reuse of dredge material), relocation of military working dog kennels at Naval Base Guam, and construction of a medical/dental clinic at Naval Base Guam.

Relative to the construction and operation of a live-fire training range complex on Guam, DoN has elected to defer selection of a specific site in the Route 15 area pending completion of the Section 106 consultation process under the National Historic Preservation Act (NHPA). Alternative A remains DoN's preferred alternative. Upon completion of the Section 106 consultation process, should DoN select this alternative it would involve the acquisition of approximately 1,090 acres of non-DoD owned lands on a plateau across from Andersen AFB South along Route 15.

Relative to Volume 3 and actions on Tinian, DoN selects Alternative 1, which will involve the construction and operation of Known Distance (KD) rifle, Pistol/MP, Platoon, and Field live fire training ranges on north/northeast, north, or northeast alignments respectively.

Relative to Volume 6 and solutions to meet required utilities improvements necessary to support the military build-up on Guam: (1) For power DoN selects solutions that will include reconditioning up to five (5) existing GPA combustion turbine (CT) power generation units. Additionally, the power solution will involve power transmission and distribution line upgrades to provide the appropriate level of reliability to serve military needs at Apra Harbor, NCTS Finegayan, and Andersen AFB. (2) For potable water DoN selects solutions that will include the provision of an additional potable water capacity of 11.3 million gallons per day (MGd) through the establishment of up to 22 new DoD water wells at Andersen AFB, rehabilitation of existing wells, interconnects with the GWA water system, and construction of associated treatment, storage and transmission systems. (3) For wastewater DoN selects solutions that will include repairs and upgrades to primary treatment capabilities at the Northern District Waste Water Treatment Plant (NDWWTP), improvements to the NDWWTP to achieve secondary treatment standards and expansion of the plant beyond the current design capacity of 12 MGd, improvements to the Northern and Central wastewater collection systems, and improvements to the Hagåtña WWTP to achieve secondary treatment standards. (4) For solid waste DoN selects solutions that will continue the use of existing Navy Apra Harbor landfill until the new GovGuam public landfill at Layon is completed.

Relative to Volume 6 and roadway improvements DoN selects Alternative 2, Limited Roadway Improvements, which involves a limited number of off-base roadway and intersection improvement projects that have received DAR certification or that have been deemed DAR-eligible. These projects include roadway widening, intersection improvements, bridge replacements, pavement strengthening at specific locations island-wide, and military access points as well as the realignment of a portion of Route 15.

Based on the level of concern expressed in comments on the Draft EIS, continued discussions with cooperating agencies under NEPA, and the DoN's continuing commitment to environmental stewardship, the DoN has elected to defer selection of a specific site for the construction and operation of a transient aircraft carrier berth within Apra Harbor for the near term. However, the analysis presented in the EIS, including the marine resources impacts analysis, provides sufficient information to allow the DoN to fully consider the direct, indirect and cumulative environmental impacts of locating a transient aircraft carrier berth and make a programmatic decision to locate a transient aircraft carrier berth generally within Apra Harbor, which is the only deep draft harbor on the island of Guam that could support such a berth.

Discussions with the EPA, NOAA, and the DOI identified additional data these agencies would prefer were available for use in analyzing specific sites for placement of the transient nuclear aircraft carrier wharf. The Navy will voluntarily collect additional data on marine resources in Apra Harbor at the alternative transient aircraft carrier berth sites still under consideration by the Navy as set out in Volume 4 of the EIS. The type and scope of the additional data to be collected has been developed cooperatively with EPA, NOAA, and DOI and is described in the "Final Scope of Work Elements for Marine Surveys of the CVN Transient Berth Project Area, Potential Mitigation sites, and Habitat Equivalency Analysis" included in Volume 9, Appendix J of the EIS. The additional data collected, associated analysis, and any other data that may be required by the United States Army Corps of Engineers (USACE) during the Clean Water Act (CWA) permitting process, will be used in the future to inform the subsequent selection of a specific site for the transient aircraft carrier berth and to support any future CWA permitting decisions for the selected site, including compensatory mitigation.

As of the signatory date of this ROD, the DoD has not decided to assign this mission to the Army nor to construct and operate an AMDTF on Guam. The decision on whether to assign this mission to the Army, and subsequently construct and operate an AMDTF on Guam, will be made pending the results of the ongoing regional and global Ballistic Missile Defense architectural and capability studies. Guam is one site that is under consideration for an AMDTF mission. The EIS was prepared noting that if the mission were assigned to Army, the alternatives presented in the EIS best represent how Army will implement the action on Guam. Army has selected the preferred alternatives described within Volume 5 of the EIS as the appropriate and desired manner to implement the proposed action if and when the mission is assigned.

The full text of the ROD is available at *http://www.guambuildupeis.us.* Hard copies of the ROD will be available at the following locations: University of Guam Robert F. Kennedy Memorial Library, Government Documents Tan Siu Lin Building, UOG Station, Mangilao, GU 96923; Nieves M. Flores Memorial Library, 254 Martyr Street, Hagåtña, GU 96910; Tinian Public Library, P.O. Box 520704, Tinian, MP 96952; Joeten-Kiyu Public Library, P.O. Box 501092, Saipan, MP 96950; Olympio T. Borja Memorial Library, P.O. Box 501250, Saipan, MP 96950.

Dated: September 23, 2010.

**D.J. Werner**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2010–24478 Filed 9–29–10; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13833–000]**

### Northern Wasco People's Utility District; Notice of Preliminary Permit Application Accepted For Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 22, 2010.

On August 23, 2010, Northern Wasco People's Utility District (Northern Wasco PUD) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the White River Falls Hydroelectric project near Maupin, Wasco County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project calls for redevelopment of a hydroelectric project constructed in 1902 and decommissioned in 1963. Northern Wasco PUD proposes to reconstruct, replace, and repair some existing features, as well as build new features at the site.

The proposed project will consist of the following: (1) New head works; (2) anchors placed throughout the existing weir; (3) a new 600-foot-long, 6-foot-diameter penstock to be constructed at the site of the old structure; (4) a new powerhouse with two turbine/generator units with an installed capacity of 3.4 to 4.0-megawatts; (5) a 4.15-kilovolt, 1,800-foot-long, underground transmission line connecting to an existing substation; and (6) appurtenant facilities. The estimated annual generation of the White River Falls project is 16,000 megawatt-hours.

*Applicant Contact:* Bob Guidinger, Hydro Dept Manager, Northern Wasco PUD, 2345 River Road, The Dalles, OR 97058; *phone:* (541) 298–3325.

*FERC Contact:* Patrick Murphy (202) 502–8755.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. 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/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, 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–13833–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–24513 Filed 9–29–10; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR10–12–001]**

### Arkansas Western Gas Company; Notice of Compliance Filing

September 23, 2010.

Take notice that on September 17, 2010, Arkansas Western Gas Company (AWG) filed pursuant to an August 20, 2010, Letter Order which required AWG to file within 30 days of the issuance of the August 20 order a stand alone statement of rates that includes all currently effective maximum and minimum rates and fuel charges.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 1, 2010.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–24515 Filed 9–29–10; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP10–486–000]**

### Colorado Interstate Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Spruce Hill Air Blending Project and Request for Comments on Environmental Issues

September 21, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Spruce Hill Air Blending Project involving construction and operation of facilities by Colorado Interstate Gas Company (CIG) in Douglas County, Colorado. This EA will be used by the Commission in its decision-making process to determine whether the

project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on October 21, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice CIG provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

**Summary of the Proposed Project**

CIG proposes to construct and operate a new air blending station in Douglas County, Colorado. The Spruce Hill Air Blending Project would increase CIG's firm natural gas transportation capacity to 50,000 dekatherms per day (Dth/day) to meet contractual agreements with Black Hills Utility Holdings, Inc. (Black Hill) as a result of Black Hill's anticipated demand growth. According to CIG, its project would reduce the input factor of the gas to a level that conforms to the gas quality specifications in CIG's Tariff for its existing Valley Line, to which the blended gas would be discharged.

*The Spruce Hill Air Blending Project would consist of the following:*

- An air blending compressor station (the Spruce Hill Air Blending Station) containing a 215-, a 390-, and a 500-horsepower air compressor;
- A back-pressure regulator;
- Air blending controls and instrumentation;
- A gas heater;
- Auxiliary facilities and piping;
- Modifications to the existing Spruce Hill Meter Station;
- An interconnection at the air blending station between the existing Spruce Hill Meter Station and CIG's existing Line No. 212A; and
- A powerline connection within CIG's 35-acre parcel.

The general location of the project facilities is shown in Appendix 1.[1]

**Land Requirements for Construction**

Construction of the proposed facilities would disturb about 5.5 acres of land for the air blending station and its auxiliary facilities. Following construction, about 3.3 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses. All construction would occur within a 35-acre land parcel owned by CIG.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Consultations Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Colorado State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way,

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before **October 21, 2010**.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP10–486–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP10–486). 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, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–24514 Filed 9–29–10; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC10–67–001]**

### BHE Holdings, Inc., Maine & Maritimes Corporation; Notice of Filing

September 22, 2010.

Take notice that, on September 15, 2010, BHE Holdings, Inc. and Maine & Maritimes Corporation (Merger Applicants) submitted an amendment to an earlier application that was filed on May 11, 2010, in the above-referenced proceeding pursuant to section 203 of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 online 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:* October 5, 2010.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–24512 Filed 9–29–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER10–2774–000]**

### Arizona Solar One LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 23, 2010.

This is a supplemental notice in the above-referenced proceeding of Arizona Solar One LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is October 13, 2010.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–24511 Filed 9–29–10; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2010–0825 FRL–8849–4]**

### Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TMEs), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 1, 2010, to September 17, 2010, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TMEs number, must be received on or before November 1, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0825, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–0825. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0825. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is

not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact*: Bernice Mudd, Information Management Division 7407M, Office of Chemical Safety Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; e-mail address: *mudd.bernice@epa.gov*.

*For general information contact*: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.,* a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TMEs and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 1, 2010, to September 17, 2010, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 9/01/10 TO 9/17/10

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–10–0536 | 09/01/10 | 11/29/10 | CBI | (G) Additive, open, non-dispersive use | (G) Styrene-maleic anhydride copolymer, reaction product with amino compounds. |
| P–10–0537 | 09/01/10 | 11/29/10 | CBI | (G) Additive, open, non-dispersive use | (G) Styrene-maleic anhydride copolymer, reaction product with amino compounds. |

I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 9/01/10 TO 9/17/10—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–10–0541 | 09/02/10 | 11/30/10 | Cytec Industries Inc. | (G) Coating resin | (G) Epoxy modified alkyd resin, partially neutralized. |
| P–10–0542 | 09/07/10 | 12/05/10 | CBI | (G) Used as an ingredient in manufacture of a polymer (binder) meant to adhere glass fibers together. | (G) Amide, polyprotic acid. |
| P–10–0543 | 09/07/10 | 12/05/10 | CBI | (G) Material for electronic parts | (G) Substituted polyhydro-oxo-naphthalene sulfonate with alkylidyne polycarbomonocycle. |
| P–10–0544 | 09/08/10 | 12/06/10 | Henkel Corporation | (S) Catalyst for thermoset resins used for electronics encapsulation | (S) 2,6-cyclohexadiene-1,4-dione, compound with triphenylphosphine (1:1). |
| P–10–0545 | 09/09/10 | 12/07/10 | CBI | (G) Battery electrode component, contained use | (G) Modified lithium iron phosphate. |
| P–10–0546 | 09/09/10 | 12/07/10 | CBI | (G) Battery electrode component, contained use | (G) Modified lithium iron phosphate. |
| P–10–0547 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Vegetable oil, modified products. |
| P–10–0548 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Vegetable oil, modified products. |
| P–10–0549 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Vegetable oil, modified products. |
| P–10–0550 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Vegetable oil, modified products, esters. |
| P–10–0551 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Olefins. |
| P–10–0552 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Olefins. |
| P–10–0553 | 09/09/10 | 12/07/10 | CBI | (G) Lubricant additive, dispersive use | (G) Olefins. |
| P–10–0554 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Esters. |
| P–10–0555 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Esters. |
| P–10–0556 | 09/13/10 | 12/11/10 | CBI | (G) Latent curing agent in polyurethane adhesives | (S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-[2-[[2,2-dimethyl-3-[(1-oxododecyl)oxy]propylidene] amino]methylethyl]-.omega.-[2-[[2,2-dimethyl-3-[(1-oxododecyl)oxy] propylidene]amino]methylethoxy]-. |
| P–10–0557 | 09/09/10 | 12/07/10 | CBI | (G) Chemical intermediate | (G) Aromatic polyester. |
| P–10–0558 | 09/09/10 | 12/07/10 | Dow Chemical Company | (S) Component for construction sealants; component for transportation adhesive | (G) Silyl-modified polymer. |
| P–10–0559 | 09/09/10 | 12/07/10 | Dow Chemical Company | (S) Component for construction sealants; component for transportation adhesive | (G) Silyl-modified polymer. |
| P–10–0560 | 09/09/10 | 12/07/10 | Dow Chemical Company | (S) Component for construction sealants; component for transportation adhesive | (G) Silyl-modified polymer. |
| P–10–0561 | 09/09/10 | 12/07/10 | Dow Chemical Company | (S) Component for construction sealants; component for transportation adhesive | (G) Silyl-modified polymer. |
| P–10–0562 | 09/14/10 | 12/12/10 | CBI | (G) Coating hardner | (G) Alkyl methacrylates, polymer with alkyl acrylates, styrene, hydroxyalkyl methacrylates, epoxypropyl acrylates and polyalkene glycol hydrogen sulfate, alkyloxyalkyl alkenyloxy alkyl, ammonium salt. |
| P–10–0563 | 09/14/10 | 12/12/10 | CBI | (G) Curing agent | (G) Cycloalkylamine. |
| P–10–0564 | 09/14/10 | 12/12/10 | Cytec Industries Inc. | (G) Wood stain | (G) Maleated fatty oil, substituted alkanoic acid ester, ester with polyethylene glycol, compounds with alkyl alkanol amine. |
| P–10–0565 | 09/15/10 | 12/13/10 | CBI | (G) Adhesive and sealant | (G) Oxirane polymer with isocyanate. |
| P–10–0566 | 09/16/10 | 12/14/10 | CBI | (S) Hardener for epoxy resin adhesive system | (S) Benzoic acid, 2-hydroxy-, reaction products with triethylenetetramine. |
| P–10–0567 | 09/16/10 | 12/14/10 | CBI | (G) Solvent | (G) Alkanamide, 2-hydroxy-*N,N*-dimethyl. |
| P–10–0568 | 09/17/10 | 12/15/10 | CBI | (G) Filler-paste resin component | (G) Unsaturated polyester resin. |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 09/01/10 TO 09/17/10

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| T–10–0007 | 09/02/10 | 10/16/10 | Cytec Industries Inc. | (G) Coating resin | (G) Epoxy modified alkyd resin, partially neutralized. |
| T–10–0008 | 09/14/10 | 10/28/10 | Cytec Industries Inc. | (G) Wood stain | (G) Maleated fatty oil, substituted alkanoic acid ester, ester with polyethylene glycol, compounds with alkyl alkanol amine. |

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 15 NOTICES OF COMMENCEMENT FROM: 09/01/10 TO 09/17/10

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|---|---|---|---|
| P–05–0122 | 09/08/10 | 08/16/10 | (G) Alkylpolyoxyalkylenesulfosuccinimate. |
| P–05–0123 | 09/08/10 | 08/13/10 | (G) Alkylpolyoxyalkyleneamide. |
| P–07–0387 | 09/09/10 | 08/06/10 | (G) Polydimethylsiloxane hydroxyalkyl terminated, polymers with diisocyanate and aminoalkyl groups aliphatic amine blocked. |
| P–08–0507 | 09/03/10 | 08/13/10 | (G) Aromatic polyester polyether polyurethane. |
| P–08–0706 | 09/03/10 | 08/30/10 | (G) Amides, from $C_{18}$-unsaturated fatty acid dimers, aliphatic polyamines, aliphatic polyamine *N*-benzyl derivatives and tall-oil fatty acids. |
| P–10–0180 | 09/14/10 | 09/08/10 | (G) Alkanediamines polymer with 1,6-diisocyanatohexane, 1h-imidazole-1-propanamine -blocked. |
| P–10–0222 | 09/01/10 | 08/27/10 | (G) Alkyltin halide. |
| P–10–0248 | 09/02/10 | 08/10/10 | (G) Alcohol ammonium sulfate. |
| P–10–0253 | 09/14/10 | 08/31/10 | (G) Methacrylate ester capped aromatic ether polymer. |
| P–10–0318 | 09/14/10 | 08/16/10 | (G) Propylene oxide ligand. |
| P–10–0341 | 09/15/10 | 08/19/10 | (G) Polyether polycarbodiimide. |
| P–10–0357 | 09/09/10 | 08/30/10 | (G) Zinc alkyl dithiophosphate. |
| P–10–0365 | 09/17/10 | 08/19/10 | (S) Extractives and their physically modified derivatives *Santalum austrocaledonicum*. Oils, *Santalum austrocaledonicum*. |
| P–10–0377 | 09/02/10 | 08/31/10 | (S) Phenol, 4,4′-(1-methylethylidene)bis[2-(2-propen-1-yl)-, 1,1′-diacetate. |
| P–10–0392 | 09/14/10 | 08/23/10 | (G) Dispersion copolymer of styrene-butadiene-isobornyl acrylate. |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: September 23, 2010.

**Chandler Sirmons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2010–24570 Filed 9–29–10; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2010–0823; FRL–8849–5]**

## Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 21, 2010 to June 30, 2010, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TME number, must be received on or before November 1, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0823, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–0823. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0823. EPA's policy is that all

comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact*: Bernice Mudd, Information Management Division (7407M), Office of Chemical Safety Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; e-mail address: *mudd.bernice@epa.gov*.

*For general information contact*: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 21, 2010 to June 30, 2010, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs and TME

This status report identifies the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential

uses identified by the manufacturer in the PMN; and the chemical identity.

## I. 51 PREMANUFACTURE NOTICES RECEIVED FROM: 6/21/10 TO 6/30/10

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–10–0426 | 06/23/10 | 09/20/10 | CBI | (G) Intermediate | (G) Halo substituted sulfamidylbenzyluraciil. |
| P–10–0427 | 06/21/10 | 09/18/10 | Ivanhoe Industries, Inc. | (G) Open non-dispersive use | (G) Polglycerol ester. |
| P–10–0428 | 06/22/10 | 09/19/10 | CBI | (G) Open, non-dispersive use as a paint additive. | (S) 1-hexane, polymer with 1-propene, maleated. |
| P–10–0429 | 06/24/10 | 09/21/10 | CBI | (G) Lithographic inks | (G) Polyester acrylate. |
| P–10–0430 | 06/24/10 | 09/21/10 | CBI | (G) Coatings | (G) Urethane acrylate. |
| P–10–0431 | 06/25/10 | 09/22/10 | CBI | (G) Polyol monomer | (G) Soybean oil polyol. |
| P–10–0432 | 06/24/10 | 09/21/10 | Cytec Industries Inc. | (G) Coating resin | (G) Acrylated aliphatic polyurethane. |
| P–10–0433 | 06/29/10 | 09/26/10 | CBI | (G) Chemical intermediate for manufacturing polyurethane rubber elastomer for tires, wheels, rolls, screen, belts and other specialty urethane articles. | (G) Sodium bromide mda complex. |
| P–10–0434 | 06/30/10 | 09/27/10 | CBI | (G) Open-non dispersive (sizing agent) | (G) Polyurethane dispersion. |
| P–10–0435 | 07/01/10 | 09/28/10 | CBI | (G) Dyestuff | (G) Substituted anthraquionone derivative. |
| P–10–0436 | 07/02/10 | 09/29/10 | Scott Bader, Inc. | (G) Resin additive | (G) Unsaturated polyester resin. |
| P–10–0437 | 07/07/10 | 10/04/10 | CBI | (S) Coatings for leather; water borne industrial coatings like wood | (G) Hexamethylenediisocyanate homopolymer, alkoxy-terminated. |
| P–10–0438 | 07/07/10 | 10/04/10 | CBI | (G) Filler dispersant | (G) Polyacrylic polyether graft. |
| P–10–0439 | 06/30/10 | 09/27/10 | Sudarshan North America Inc. | (S) Use as organic colorant for colora coloration of plastics as per norms of United States Food and Drug Administration (FDA) 21 CFR 178.3297 for use at levels not to exceed 1.0% by weight of the finished polymers. The finished articles are to contact food only under conditions of use b through h as described in table 2 of 176.170(c) | (S) Benzenesulfonic acid, 4-chloro-2-([4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1*H*-pyrazole-4-yl)azo]-5-methyl, calcium salt (1:1). |
| P–10–0440 | 07/09/10 | 10/06/10 | CBI | (G) Open, non dispersive coating | (G) Polyester. |
| P–10–0441 | 07/09/10 | 10/06/10 | CBI | (G) Urethane component | (G) Oil, epoxidized, reaction product with oleic acid. |
| P–10–0442 | 07/12/10 | 10/09/10 | CBI | (G) Synthetic leather manufacture | (G) MDI modified resin. |
| P–10–0443 | 07/12/10 | 10/09/10 | CBI | (G) Printing additive | (G) Carbomonocyclic dicarboxylic acid, polymer with 1,2-ethanediol, 2-ethyl-2-(hydrooxymethyl)-1,3-propane derivatives, 4,4′-(1-methylethylidene)bis[cyclohexanol] and 1,2,3-propanetriol. |
| P–10–0444 | 07/13/10 | 10/10/10 | CBI | (S) Binder additive for specialty coatings | (G) Siloxane ester. |
| P–10–0445 | 07/13/10 | 10/10/10 | CBI | (G) Resin will be used in coatings sold to industrial customers who will apply the coatings to can and closures | (G) Solvent-based acrylic resin. |
| P–10–0446 | 07/13/10 | 10/10/10 | Robertet, Inc. | (S) As an odoriferous component of fragrance compounds | (S) Terpenes and terpenoids, mint, metha arvensis-oil, acetylated. |
| P–10–0447 | 07/13/10 | 10/10/10 | Kemira Chemicals, Inc. | (S) Scale inhibitor | (G) Carboxylic acid / sulfonate copolymer, ammonium salt. |
| P–10–0448 | 07/06/10 | 10/03/10 | Eastman Chemical Company | (G) Chemical intermediate | (S) 1,4-benzenedicarboxylic acid, 1,4-dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 2,2,4,4-tetramethyl-1,3-cyclobutanediol, manufacture of, by-products from, reaction products with ethylene glycol. |
| P–10–0449 | 07/14/10 | 10/11/10 | Newchem Incorporated | (G) Resin base for filler-paste | (G) Polyester resin. |
| P–10–0450 | 07/19/10 | 10/16/10 | CBI | (G) Open, non-dispersive use | (G) Acrylic silane polymer. |
| P–10–0451 | 07/19/10 | 10/16/10 | CBI | (G) Open, non-dispersive use | (G) Acrylic silane polymer. |

I. 51 PREMANUFACTURE NOTICES RECEIVED FROM: 6/21/10 TO 6/30/10—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–10–0452 | 07/19/10 | 10/16/10 | Huntsman Corporation | (S) Epoxy curing agent | (S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.,.alpha.′-[1,4-cyclohexanediylbis(methylene)]bis[.omega.-(2-aminoethylethoxy)-. |
| P–10–0453 | 07/19/10 | 10/16/10 | Huntsman Corporation | (S) Epoxy curing agent | (S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.,.alpha.′-(2,2-dimethyl-1,3-propanediyl)bis[.omega.-(2-aminoethylethoxy)-. |
| P–10–0454 | 07/19/10 | 10/16/10 | International Specialty Products | (G) Destructive use, chemical intermediate | (S) 1,3-divinyl imidazolidin-2-one. |
| P–10–0455 | 07/20/10 | 10/17/10 | Honeywell | (S) Intermediate | (G) Hexahalosubstituted alkane. |
| P–10–0456 | 07/21/10 | 10/18/10 | CBI | (S) Fuel additive | (G) Alkenes, polymer with anhydride esters. |
| P–10–0457 | 07/20/10 | 10/17/10 | Honeywell | (S) Intermediate | (G) Pentahalosubstituted alkane. |
| P–10–0458 | 07/20/10 | 10/17/10 | Cognis Corporation | (G) The pmn substance will be used as an adjuvant in the production of paper. | (S) Fatty acids, $C_{14–18}$ and $C_{16–18}$-unsaturated, polymers with adipic acid and triethanolamine, di-me sulfate-quaternized. |
| P–10–0459 | 07/22/10 | 10/19/10 | Instrumental Polymer Technologies, LLC | (S) Base polymer for coatings | (S) Carbonic acid, dimethyl ester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 1,3-propanediol. |
| P–10–0460 | 07/26/10 | 10/23/10 | CBI | (S) Lubricant | (G) Fatty acids, reaction product with adipic and trifunctional alcohol. |
| P–10–0461 | 07/26/10 | 10/23/10 | CBI | (G) Ingredient for coatings | (G) Polyalkylene carbonatediol. |
| P–10–0462 | 07/22/10 | 10/19/10 | Forbo Adhesives, LLC | (G) Hot melt adhesive | (G) Isocyanate functional polyester urethane polymer. |
| P–10–0463 | 07/23/10 | 10/20/10 | Lubrigreen | (G) Biobased lubricant base oil | (S) 9-octadecenoic acid (9*Z*)-, 2-ethylhexyl ester. |
| P–10–0464 | 07/23/10 | 10/20/10 | Lubrigreen | (G) Biobased lubricant base oil | (S) 9-octadecenoic acid, 2-ethylhexyl ester, (9*E*). |
| P–10–0465 | 07/23/10 | 10/20/10 | Lubrigreen | (G) Biobased lubricant base oil | (S) 9-octadecenoic acid (9*Z*)-, dimer, 2-ethylhexyl ester, isomerized. |
| P–10–0466 | 07/23/10 | 10/20/10 | Lubrigreen | (G) Biobased lubricant base oil | (S) 9-octadecenoic acid (9*Z*)-, homopolymer, 2-ethylhexyl ester, isomerized. |
| P–10–0467 | 07/26/10 | 10/23/10 | CBI | (G) Two component polyurethane coatings and paints | (G) Aliphatic polyisocyanate. |
| P–10–0468 | 07/26/10 | 10/23/10 | CBI | (G) Two component polyurethane coatings and paints | (G) Aliphatic polyisocyanate. |
| P–10–0469 | 07/27/10 | 10/24/10 | Evonik Degussa | (G) Monomer for polymer applications | (G) Alkenoyloxy arylphenone. |
| P–10–0470 | 07/28/10 | 10/25/10 | CBI | (G) Additive, open, non-dispersive use | (G) Fluoro modified, polyether modified and alkyl modified polymethylsiloxane. |
| P–10–0471 | 07/28/10 | 10/25/10 | CBI | (G) Additive, open, non-dispersive use | (G) Fluoro modified polyether modified polyacrylate. |
| P–10–0472 | 07/28/10 | 10/25/10 | CBI | (G) Additive, open, non-dispersive use | (G) Fluoro modified polyether modified polyacrylate. |
| P–10–0473 | 07/28/10 | 10/25/10 | CBI | (G) An open, non-dispersive use in coating formulation | (G) Polycarbonate and polyester-type polyurethane. |
| P–10–0474 | 07/28/10 | 10/25/10 | Cardolite Corporation | (S) Amine based epoxy curing agent for 2-part epoxy surface coating | (G) Pentadecynl phenol polyamide. |
| P–10–0475 | 07/28/10 | 10/25/10 | Cardolite Corporation | (S) Amine based epoxy curing agent for 2-part epoxy surface coating | (G) Pentadecynl phenol polyamide. |
| P–10–0476 | 07/28/10 | 10/25/10 | CBI | (G) Polymer additive | (G) Brominated styrene butadiene polymer. |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICE RECEIVED FROM: 06/21/10 TO 06/30/10

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| T–10–0005 | 07/01/10 | 08/14/10 | Cytec industries Inc. | (G) Coatings resin | (G) Acrylated aliphatic polyurethane. |

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 44 NOTICES OF COMMENCEMENT FROM: 6/21/10 TO 6/30/10

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|---|---|---|---|
| P–03–0534 | 06/28/10 | 05/11/10 | (G) Propoxylated tallow polypropylene polyamine. |
| P–05–0281 | 06/23/10 | 06/07/10 | (G) Aliphatic cyclocarbonate. |
| P–08–0117 | 07/09/10 | 06/30/10 | (G) Bisphenol A / epichlorohydrin epoxy polymer reaction product with amines, neutralized with methane sulfonic acid. |
| P–08–0187 | 07/07/10 | 06/24/10 | (S) D-glucopyranose, oligomeric, $C_{10-16}$-alkyl glycosides, 3-(dodecyldimethylammonio)-2-hydroxypropyl ethers, chlorides. |
| P–08–0188 | 07/07/10 | 06/22/10 | (S) D-glucopyranose, oligomeric, decyl octyl glycosides, 3-(dimethyloctadecylammonio)-2-hydroxypropyl ethers, chlorides. |
| P–08–0435 | 07/13/10 | 06/27/10 | (G) Aminosilane ester. |
| P–08–0436 | 07/13/10 | 07/10/10 | (G) Alkoxysilane-modified polyalkyleneoxide polymer. |
| P–08–0491 | 07/20/10 | 07/02/10 | (G) Reaction product of substituted naphthalenesulfonic acid triazin amino compound and substituted naphthalenesulfonic acid substitued triazin phenyl alkyl sulfonyl compound. |
| P–09–0188 | 06/24/10 | 05/24/10 | (G) Carbon nanomaterial. |
| P–09–0202 | 07/07/10 | 07/06/10 | (G) *N*-alkyl pyrrolidinedione derivative. |
| P–09–0304 | 06/24/10 | 06/02/10 | (G) Propanamine blocked polymeric isocyanate. |
| P–09–0309 | 06/30/10 | 06/25/10 | (G) Unsaturated polyester polymer. |
| P–09–0311 | 06/30/10 | 06/25/10 | (G) Unsaturated polyester polymer. |
| P–09–0370 | 07/30/10 | 06/29/10 | (G) Polyester modified MDI prepolymer. |
| P–09–0417 | 07/12/10 | 07/04/10 | (S) Short tangled multi-wall carbon nanotubes obtained by catalytical chemical vapour deposition. |
| P–09–0648 | 07/28/10 | 07/10/10 | (G) Dimer fatty acid based polyester polyether polyurethane. |
| P–10–0033 | 07/27/10 | 06/22/10 | (G) Aromatic hydrogenated poly alkyldiene containing poly alkyl methacrylate. |
| P–10–0048 | 07/19/10 | 06/17/10 | (G) Sulfonated SMA. |
| P–10–0065 | 07/06/10 | 06/26/10 | (G) Polyether modified polyurea. |
| P–10–0069 | 07/09/10 | 06/11/10 | (G) Alkyl acrylate, polymer with aliphatic acid vinyl ester, vinyl monomer, acrylate and hydroxyalkyl acrylate. |
| P–10–0070 | 07/19/10 | 06/27/10 | (G) Acrylate, polymer with aliphatic acid vinyl ester, vinyl monomer and hydroxyalkyl acrylate. |
| P–10–0088 | 07/28/10 | 07/21/10 | (G) Polyphosphonate-co-polycarbonate. |
| P–10–0137 | 07/26/10 | 07/06/10 | (G) Substituted polyethyleneimine. |
| P–10–0138 | 07/30/10 | 07/15/10 | (G) Long chain alkylacrylate, homopolymers. |
| P–10–0139 | 07/30/10 | 07/15/10 | (G) Long chain alkylacrylate, homopolymers. |
| P–10–0153 | 06/29/10 | 06/17/10 | (S) 1*H*-imidazole, 1-(1-methylethyl)-. |
| P–10–0154 | 06/30/10 | 06/03/10 | (S) Quinoline, 1-butyl-1,2,3,4-tetrahydro-. |
| P–10–0171 | 06/29/10 | 06/24/10 | (S) 1*H*-imidazolium, 1,3-bis(1-methylethyl)-, bromide. |
| P–10–0172 | 07/27/10 | 07/13/10 | (S) 1*H*-imidazolin, 1,3-bis(1-methylethyl)-, hydroxide. |
| P–10–0203 | 07/12/10 | 07/01/10 | (G) Aqueous, aliphatic polyurethane dispersion. |
| P–10–0204 | 07/19/10 | 06/29/10 | (G) Acrylate capped polyurethane oligomer. |
| P–10–0220 | 07/01/10 | 06/19/10 | (S) 3-buten-2-one, 4-ethoxy-1,1,1-trifluoro-, (3*E*)-. |
| P–10–0233 | 06/22/10 | 06/03/10 | (G) Monoalkylaryl alkoxylate. |
| P–10–0235 | 07/20/10 | 07/12/10 | (S) Pyridine, 4-decyl-. |
| P–10–0238 | 07/20/10 | 07/13/10 | (S) Benzoic acid, 3-[[(methylamino)thioxomethyl]amino]-. |
| P–10–0244 | 06/29/10 | 06/18/10 | (G) Epoxy modified polyurethane prepolymer. |
| P–10–0264 | 07/12/10 | 06/17/10 | (G) Methacrylate ester of fatty alcohol alkoxylate. |
| P–10–0272 | 07/09/10 | 06/30/10 | (S) Oils, *Macrocystic pyrifera*. Definition: Extracts and their physically modified derivatives. *Macrocystic pyrifera*. |
| P–10–0274 | 07/23/10 | 06/23/10 | (G) 1,1′-methylenebis[isocyanatobenzene], polymer with polyester polyols and a polyether polyol. |
| P–10–0284 | 07/19/10 | 06/20/10 | (G) Aromatic boron ester. |
| P–10–0301 | 07/13/10 | 07/09/10 | (S) Oil, *Laminaria digitata*. Definition: Extractives and their physically modified derivatives. *Laminaria digitata*. |
| P–10–0319 | 07/26/10 | 07/19/10 | (G) Aromatic halogenated acid, polymer with a halogenated aromatic diamine and an aromatic phenolic amine. |
| P–10–0320 | 07/26/10 | 07/09/10 | (G) Aromatic dianhydride, polymer with an aromatic diamine and an aliphatic unsaturated ester. |
| P–10–0330 | 07/27/10 | 07/13/10 | (G) Trimethylpentene oxymethylpropyl ester of cyclopropanecarboxylic acid. |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: September 23, 2010.

**Chandler Sirmons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2010–24558 Filed 9–29–10; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9208–9]**

## Clean Water Act; Contractor Access to Confidential Business Information

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency's (EPA) Office of Water intends to transfer information collected from the construction and development industry and claimed as confidential business information (CBI) to The Cadmus Group (Cadmus) and its subcontractor. In addition, EPA plans to transfer CBI collected from the steam electric industry to a new subcontractor of a contractor, Eastern Research Group (ERG). EPA previously announced a CBI transfer to ERG (70 FR 9070, February 24, 2005). The information being transferred will be collected under the authority of section 308 of the CWA. Transfer of the information will allow the contractors and subcontractors to access information necessary to support EPA in the planning, development, and review of effluent limitations guidelines and standards under the Clean Water Act (CWA). Interested persons may submit comments on this intended transfer of information to the address noted below.

**DATES:** Comments on the transfer of data are due October 7, 2010.

**ADDRESSES:** Comments may be sent to Mr. M. Ahmar Siddiqui, Document Control Officer, Engineering and Analysis Division (4303T), Room 6231S EPA West, U.S. EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. M. Ahmar Siddiqui, Document Control Officer, at (202) 566–1044, or via e-mail at *siddiqui.ahmar@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has transferred CBI to various contractors and subcontractors over the history of the effluent guidelines program. EPA determined that this transfer was necessary to enable the contractors and subcontractors to perform their work in supporting EPA in planning, developing, and reviewing effluent guidelines and standards for certain industries.

Today, EPA is giving notice that it has awarded a task order, Task Order 21, under a multiple award contract, contract number EP–C–08–002, to Cadmus located in Watertown, Massachusetts. The purpose of this contract is to secure technical analysis support for EPA in its development, review, implementation, and defense of controls for stormwater discharges, including those from municipal separate storm sewer systems (MS4s). To obtain assistance in responding to this contract, Cadmus has entered into a contract with a subcontractor, Geosyntec Consultants, located in Brookline, Massachusetts.

In addition, EPA is giving notice today that one of its contractors, ERG, contract number 68–C–02–095, has entered into a contract with a new subcontractor, Avanti Corporation, located in Alexandria, Virginia. The purpose of this new subcontractual relationship is to provide technical support for EPA in its development, review, implementation, and defense of controls for discharges from the steam electric industry.

All EPA contractor, subcontractor, and consultant personnel are bound by the requirements and sanctions contained in their contracts with EPA and in EPA's confidentiality regulations found at 40 CFR Part 2, Subpart B. Information submitted under a claim of business confidentiality is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B and in accordance with EPA procedures, including comprehensive system security plans (SSPs), that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to contractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the contractor and the contractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

Cadmus will adhere to EPA-approved security plans which describe procedures to protect CBI. Cadmus will apply the procedures in these plans to CBI previously gathered by EPA and to CBI that may be gathered in the future. The security plans specify that contractor personnel are required to sign non-disclosure agreements and are briefed on appropriate security procedures before they are permitted access to CBI. No person is automatically granted access to CBI: a need to know must exist.

Dated: September 27, 2010.

**Ephraim S. King,**

*Director, Office of Science and Technology.*

[FR Doc. 2010–24569 Filed 9–29–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2010–0111; FRL–8837–2]**

## Notice of Filing of Several Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before November 1, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided,

unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is

publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

**New Tolerance Exemptions**

*PP* 9F7668. Docket number: EPA–HQ–OPP–2010–0144. W. Neudorff GmbH KG, An der Mühle 3, Postfach 1209, 31860 Emmerthal, Germany (represented by Walter G. Talarek, P.C., 1008 Riva Ridge Drive Great Falls, VA 22066–1620), proposes to establish an exemption from the requirement of a tolerance for residues of the molluscicide sodium ferric ethylenediaminetetraacetate (EDTA), in or an all agricultural commodities. The petitioner believes no analytical method is needed because an exemption from the requirement is being sought. Contact: Leonard Cole, (703) 526–2649; *cole.leonard@epa.gov*.

*PP* 0F7698. Docket number: EPA–HQ–OPP–2010–0536. Premier Horticulture, 1, Avenue Premier, Riviére-du-Loup, Quebec, Canada G5R 6C1 represented by Gary Libman, GNL Consultation Services, 25 Casa Hermosa, Albuquerque, NM 87112), proposes to establish an exemption from the requirement of a tolerance for residues of the fungicide *Bacillus pumilus* GHA180 in or on all agricultural commodities and water systems when applied as described in the draft label. The petitioner believes no analytical method is needed because no residues of toxicological concern are expected. Susanne Cerrelli, (703) 308–8077; *cerrelli.susanne@epa.gov*.

**Amended Tolerance Exemption**

*PP* 0G7716. Docket number: EPA HQ–OPP–2010–0547. Circle One Global, Inc., P.O. Box 18300; Greensboro, NC 27409 proposes to amend an exemption from the requirement of a tolerance at 40 CFR 180.1254 to include a temporary tolerance exemption as part (c) for residues of the antifungal agent *Aspergillus flavus* NRRL 21882 in or on cotton. The petitioner believes no analytical method is needed because no residues of toxicological concern are expected and this pesticide occurs naturally and would be present irrespective of treatment. Shanaz Bacchus, (703) 308–8097; *bacchus.shanaz@epa.gov.*

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 23, 2010.

**W. Michael McDavit,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 2010–24577 Filed 9–29–10; 8:45 a.m.]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9208–8; Docket ID No. EPA–HQ–ORD–2010–0540]**

## Draft Toxicological Review of Hexavalent Chromium: In Support of Summary Information on the Integrated Risk Information System (IRIS)

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

**ACTION:** Notice of Public Comment Period and Listening Session.

**SUMMARY:** EPA is announcing a 60-day public comment period and a public listening session for the external review draft human health assessment titled, "Toxicological Review of Hexavalent Chromium: In Support of Summary Information on the Integrated Risk Information System (IRIS)" EPA/635/R–10/004C. The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD). EPA is releasing this draft assessment solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft assessment has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. After public review and comment, an EPA contractor will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The external peer review meeting will be scheduled at a later date and announced in the **Federal Register**. Public comments submitted during the public comment period will be provided to the external peer reviewers before the panel meeting and considered by EPA in the disposition of public comments. Public comments received after the public comment period closes will not be submitted to the external peer reviewers and will only be considered by EPA if time permits.

The listening session will be held on November 18, 2010, during the public comment period for this draft assessment. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties attending the listening session. EPA welcomes the comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment after the independent external peer review. If listening session participants want EPA to share their comments with the external peer reviewers, they should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** The public comment period begins September 30, 2010, and ends November 29, 2010. Comments should be in writing and must be received by EPA by November 29, 2010.

The listening session on the draft assessment for hexavalent chromium will be held on November 18, 2010, beginning at 9 a.m. and ending at 4 p.m., Eastern Standard Time. To attend the listening session, interested parties should register no later than November 11, 2010. To present at the listening session, indicate in your registration that you want to make oral comments at the session and provide the length of your presentation. The following are instructions for registering: To attend or present comments at the listening session, register by November 11, 2010, via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-hexavalent.htm.* You may also register via e-mail at: *meetings@erg.com* (subject line: "Hexavalent Chromium Listening Session," please indicate whether you would like to make oral comments, and include your name, title, affiliation, full address and contact information), by phone: 781–674–7374 or toll free at 800–803–2833, or by faxing a registration request to 781–674–2906 (please reference the "Hexavalent Chromium Listening Session" and include your name, title, affiliation, full address and contact information). When you register, please indicate if you will need audio-visual equipment (*e.g.,* laptop computer and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than

the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by November 11, 2010, the listening session will be cancelled, and EPA will notify those registered of the cancellation.

**ADDRESSES:** The draft "Toxicological Review of Hexavalent Chromium: In Support of Summary Information on the Integrated Risk Information System (IRIS)" is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

Comments may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft hexavalent chromium assessment will be held at the EPA offices at Potomac Yard (North Building), Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. Please note that to gain entrance to this EPA building to attend the meeting, you must have photo identification and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, you should provide the name Christine Ross and the telephone number 703–347–8592 to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188, and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

*Information on Services for Individuals with Disabilities:* EPA welcomes public attendance at the hexavalent chromium listening session and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross by phone at 703–347–8592 or by e-mail at *IRISListeningSession@epa.gov.* To request accommodation for a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

*Additional Information:* For information on the docket, *http://www.regulations.gov,* or the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For information on the public listening session, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *IRISListeningSession@epa.gov.*

For information on the draft assessment, please contact Ted Berner, National Center for Environmental Assessment (8601–P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (703) 347–8583; facsimile: (703) 347–8689; or e-mail: *FRN_Questions@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

## II. How To Submit Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0540, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0540. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including

any personal information provided, unless comments include 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 that EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: September 20, 2010.

**Lynn Flowers,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 2010–24580 Filed 9–29–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2010–0817; FRL–9208–5]**

## Board of Scientific Counselors, Executive Committee Meeting—October 2010

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

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

**DATES:** The meeting will be held on Monday, October 18, 2010, from 8:30 a.m. to 5 p.m., and will continue on Tuesday, October 19, 2010, from 8:30 a.m. until 1 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

**ADDRESSES:** The meeting will be held at the Hilton Garden Inn, 815 14th Street, NW., Washington, DC 20005. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0817, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2010–0817.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2010–0817.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—February 2010 Docket, Mailcode: 2822T, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–ORD–2010–0817.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2010–0817. 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–ORD–2010–0817. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

*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 Board of Scientific Counselors, Executive Committee Meeting—October 2010 Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at: Greg Susanke, Mail Code 8104–R, Office

of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–9945; via fax at: (202) 565–2911; or via e-mail at: *susanke.greg@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**General Information**

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Greg Susanke, the Designated Federal Officer, via any of the contact methods listed in the "**FOR FURTHER INFORMATION CONTACT**" section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: an Informatics/Data Mining/Knowledgebase session; a Research Program Performance Evaluation session; an ORD update; and future business. The meeting is open to the public.

*Information on Services for Individuals with Disabilities:* For information on access or services for individuals with disabilities, please contact Greg Susanke (202) 564–9945 or *susanke.greg@epa.gov.* To request accommodation of a disability, please contact Greg Susanke, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 23, 2010.

**M. Dannel,**

*Acting Director, Office of Science Policy.*

[FR Doc. 2010–24564 Filed 9–29–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9208–4]**

## Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Dow Chemical Company (DOW), Magnolia, AR

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of a Final Decision on a No Migration Petition.

**SUMMARY:** Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act have been granted to Dow Chemical Company (DOW) for a Class I injection well located at Magnolia, Arkansas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by DOW, of the specific restricted hazardous wastes identified in this exemption, into Class I hazardous waste injection well DWD No. 1 at the Magnolia, Arkansas facility, until October 1, 2020, unless EPA moves to terminate this exemption under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued July 29, 2010. The public comment period closed on September 13, 2010. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

**DATES:** This action is effective as of September 22, 2010.

**ADDRESSES:** Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7150.

Dated: September 22, 2010.

**William K. Honker,**

*Acting Division Director, Water Quality Protection Division.*

[FR Doc. 2010–24562 Filed 9–29–10; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

## Sunshine Act Meeting

**ACTION:** Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

**TIME AND PLACE:** Wednesday, September 29, 2010 at 9:30 a.m. The meeting will be held at Ex-Im Bank, Room 1141, 811 Vermont Avenue, NW., Washington, DC 20571.

**OPEN AGENDA ITEM:** PEFCO Secured Note Issues Resolutions.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation for Item No. 1 only.

**FURTHER INFORMATION:** For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Number 202–565–3336).

**Jonathan J. Cordone,**

*Senior Vice President and General Counsel.*

[FR Doc. 2010–24444 Filed 9–29–10; 8:45 am]

**BILLING CODE 6690–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

## Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 27, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be

submitted on or before November 29, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060–1112.

Title: Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal–State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism, et al., WC Docket No. 05–195 et al.; FCC 07–150.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents and Responses: 1 respondent; 1 response.

Estimated Time Per Response: 1 hour.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. section 254.

Total Annual Burden: 1 hour.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The only respondent in this information collection is the Universal Service Administrative Company (USAC). We note that the Administrator of USAC must preserve the confidentiality of all data obtained from respondents and contributors to the Universal Service Fund.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance requirement. There is no change in the recordkeeping requirement. There is no change to the Commission's burden estimates.

In August 2007, the Commission adopted new information collection requirements for he four universal service fund (USF) programs that include timely filing for Telecommunications Reporting Worksheets, a reminder that USF contributors must file FCC Forms 499–A and 499–Q on a periodic basis, document retention and recordkeeping requirements, and administrative limitation periods. The FCC also adopted performance measures for the four universal service fund programs and the Universal Service Administrative Company (USAC).

This recordkeeping requirement is part of the FCC's continuing process to deter misconduct and inappropriate uses of the universal service funds. It is the FCC's intention that this requirement will both safeguard the USF from waste, fraud, and abuse and improve the management, administration, and oversight of the USF.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–24658 Filed 9–29–10 8:45 am]

**BILLING CODE 6712–01–S**

## FEDERAL COMMUNICATIONS COMMISSION

### Federal Advisory Committee Act; Advisory Committee on Diversity for Communications in the Digital Age

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Advisory Committee on Diversity for Communications in the Digital Age ("Diversity Committee") will hold a meeting on Thursday, October 14, 2010 at 2 p.m. at the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**DATES:** October 14, 2010.

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

**FOR FURTHER INFORMATION CONTACT:** Barbara Kreisman, 202–418–1605; *Barbara.Kreisman@FCC.gov.*

**SUPPLEMENTARY INFORMATION:** At this meeting the Constitutional Issues working group will present best practices recommendations.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The public may submit written comments before the meeting to: Barbara Kreisman, the FCC's Designated Federal Officer for the Diversity Committee by e-mail: *Barbara.Kreisman@fcc.gov* or U.S. Postal Service Mail (Barbara Kreisman, Federal Communications Commission, Room 2–A665, 445 12th Street, SW., Washington, DC 20554).

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the Diversity Committee can be found at *http://www.fcc.gov/DiversityFAC.*

**Hossein Hashemzadeh,**

*Associate Chief, Video Division, Media Bureau, Federal Communications Commission.*

[FR Doc. 2010–24708 Filed 9–29–10; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:37 a.m. on Monday, September 27, 2010, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director John E. Bowman (Acting Director, Office of Thrift Supervision), concurred in by Director John G. Walsh (Acting Comptroller of the Currency), Director Thomas J. Curry (Appointive), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on

less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: September 27, 2010.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2010–24621 Filed 9–28–10; 11:15 am]

BILLING CODE P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission

**DATE AND TIME:** Thursday, September 23, 2010, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

*Draft Advisory Opinion 2010–16:* EmblemHealth Services Company LLC and Health Insurance Plan of Greater New York by its counsel, Jerry H. Goldfeder, of Stroock & Stroock & Lavan, LLP.

*Draft Advisory Opinion 2010–17:* Stutzman for Congress by Christopher M. Marston.

*Draft Advisory Opinion 2010–18:* Minnesota Democratic–Farmer–Labor Party by its counsel, Marc E. Elias, Esq. and Jonathan S. Berkon, Esq. of Perkins Coie, LLP.

*Draft Advisory Opinion 2010–19:* Google by its counsel, Marc E. Elias, Esq. and Jonathan S. Berkon, Esq. of Perkins Coie, LLP.

*Draft Advisory Opinion 2010–20:* National Defense PAC by its counsel, Dan Backer, Esq.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Lisa Chapman, Recording Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

**Lisa Chapman,**

*Acting Secretary and Clerk of the Commission.*

[FR Doc. 2010–24329 Filed 9–29–10; 8:45 am]

BILLING CODE 6715–01–M

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 2010.

**A. Federal Reserve Bank of Chicago** (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Taylor Capital Group, Inc.*, Rosemont, Illinois; to engage *de novo* in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 27, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–24546 Filed 9–29–10; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics; Nominations

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice of nominations.

**SUMMARY:** The purpose of this notice is to solicit nominations for membership on the National Committee on Vital and Health Statistics (NCVHS). The NCVHS is the statutory public advisory body to the U.S. Department of Health and Human Services (HHS) in the areas of health data policy, data standards, health information privacy, population-based data and HIPAA Administrative Simplification. The Committee has also been assigned additional advisory responsibilities in health data standards and health information privacy as a result of the Administrative Simplification Compliance Act, the Medicare Modernization Act and the Affordable Care Act.

Several vacancies are expected to occur on the Committee as of December 2010. Accordingly, the Secretary of Health and Human Services will appoint new members of the Committee to terms of up to four years from among persons who have distinguished themselves in the following fields: Health statistics, electronic interchange of health care information, privacy and security of electronic information, population-based public health, purchasing or financing health care services, integrated computerized health information systems, health services research, consumer interests in health information, health data standards, epidemiology, and the provision of health services.

In appointing members, the Department will give close attention to equitable geographic distribution and to minority and female representation. Appointments will be made without discrimination on the basis of age, race, gender, sexual orientation, HIV status, cultural, religious or socioeconomic status.

**DATES:** Nominations for new members should include a letter describing the qualifications of the nominee and the nominee's current resume or vitae. The information submitted must include complete name, title, and current address and telephone number. The closing date for nominations is close of business, October 22, 2010.

Nominations should be sent to the person named below.

James Scanlon, Executive Staff Director, National Committee on Vital and Health Statistics, U.S. Department

of Health and Human Services, Room 442–E, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7100.

**FOR FURTHER INFORMATION CONTACT:** James Scanlon (202) 690–7100 or Marjorie Greenberg (301) 458–4245. Additional information about the NCVHS, including the charter, current roster, current activities and organization, and previous recommendations and reports is available on the NCVHS Web site: *http://www.ncvhs.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

The National Committee on Vital and Health Statistics serves as the statutory public advisory body to the Department of Health and Human Services in the area of health data policy. In that capacity, the Committee, which celebrated its 60th anniversary this year, provides advice and assistance to the Department on a variety of key health data issues, including health data standards, privacy, population-based-data, and national health information infrastructure issues.

The Committee also provides advice to HHS on the implementation of the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996. The Committee consists of 18 members: Of the 18 members, one is appointed by the Speaker of the House of Representatives after consultation with the minority leader of the House of Representatives; one is appointed by the President pro tempore of the Senate after consultation with the minority leader of the Senate, and 16 are appointed by the Secretary of Health and Human Services.

Dated: September 21, 2010.

**Sherry Glied,**

*Assistant Secretary for Planning and Evaluation.*

[FR Doc. 2010–24597 Filed 9–29–10; 8:45 am]

**BILLING CODE 4151–05–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60 Day–10–0765]**

### 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, Ph.D., CDC 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**

Fellowship Management System (OMB No. 0920–0765 exp. 2/28/2011)—Revision—Scientific Education and Professional Development Program Office (SEPDPO), Office of Surveillance, Epidemiology and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

SEPDPO requests an additional three years to continue CDC's use of the online Fellowship Management System (FMS), and a revision to include two additional CDC fellowship applications and ten additional CDC fellowship directories. FMS allows applicants to apply to fellowships online and tracks fellowship applicants and alumni in one integrated database.

The mission of the SEPDPO is to prepare an applied public health workforce through training and service. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy, and other related professions seek opportunities to broaden their knowledge and skills to improve the science and practice of public health. Each year, CDC's professional training programs accept applications from potential candidates for review and selection.

FMS provides an efficient and effective way for processing application data, selecting qualified candidates, maintaining a current alumni database, documenting the impact of the fellowships on alumni's careers, and generating reports. FMS reduces duplicate applicant records as well as agency resources to administer and process paper records. The application process includes the following: Submission of responses to the questions in the online application; submission of academic transcripts and letters of recommendation; a review by selected programmatic staff and panel member experts; selection of qualified candidates for interview; interview of candidates; and selection of trainees for the fellowship programs.

The online application questions ask for academic history, professional experience, names of references, and description of professional goals. The application questions and data collected are necessary to the application process to determine programmatic eligibility and to ensure that the most highly qualified candidates are chosen for the training programs. The alumni directory will allow CDC to maintain a current, centralized electronic database. Questions such as updates to e-mail addresses and other contact information, professional responsibilities, medical certifications, qualifications, and scientific skills are asked of alumni. This information is collected in the event it becomes necessary to contact alumni possessing mission-critical skills to meet a national public health emergency or an urgent public health need. Alumni data will also be used by CDC to document the impact of the fellowships on the career paths of participants, and thus, on the science and practice of public health, and by the alumni for maintaining their professional networks for finding jobs, staffing jobs, collaborating, and interacting with their fellow alumni.

Alumni will have two options for the level of information they wish to be visible to other alumni of their fellowship. They will have the option of displaying only their name, fellowship year, and professional information or all of their information. The default is to display only their name, fellowship year, and professional information. This information is already in the public domain.

The annual burden table has been updated to reflect an increase in the number of fellowships participating in FMS. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Number of respondents | Number of responses per respondent | Average burden response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Fellowship applicants | 1122 | 1 | 40/60 | 748 |
| Fellowship alumni | 454 | 1 | 15/60 | 114 |
| Total | 1576 | | | 862 |

Dated: September 23, 2010.

**Maryam I. Daneshvar,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2010–24479 Filed 9–29–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Reduction of Clostridium difficile Infections in a Regional Collaborative of Inpatient Healthcare Settings through Implementation of Antimicrobial Stewardship." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on July 23, 2010 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by November 1, 2010.

**ADDRESSES:** Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Proposed Project

*Reduction of Clostridium Difficile Infections in a Regional Collaborative of Inpatient Healthcare Settings Through Implementation of Antimicrobial Stewardship*

Healthcare Acquired Infections (HAIs) caused almost 100,000 deaths among the 2.1 million people who acquired infections while hospitalized in 2000, and HAI rates have risen relentlessly since then. Alarmingly, 70% of HAIs are due to bacteria that are resistant to commonly used antibiotics (Huang 2007). This project is designed to evaluate the implementation of a program to reduce Clostridium difficile Infection (CDI) in acute care facilities via Antimicrobial Stewardship Programs (ASPs). Working with an already existing collaborative network of acute care facilities in New York that currently collect and report mandatory data on CDI rates and practice strict environmental controls, this project will go beyond environmental strategies in order to attempt to reduce rates of CDI. ASPs seek to promote the appropriate use of antimicrobials via several methods including selecting the appropriate dose, duration and route of administration of antibiotics. Using antibiotics appropriately can potentially improve efficacy, reduce costs, and keep drug-related adverse events to a minimum. The project is a partnership with Boston University School of Public Health (BUSPH), Montefiore Medical Center (MMC), and Greater New York Hospital Association (GNYHA).

The overall aims of the research are to evaluate the implementation of ASPs specific to CDI at 11 participating hospitals (6 intervention sites and 5 control sites) and to create a draft ASP Toolkit. More specifically, the pilot study has been designed to provide information to meet the following objectives:

1. Identify the antimicrobial stewardship activities, both currently in place and those yet to be identified, specific to each site's individual needs, to optimize antimicrobial prescribing practices to reduce CDI.
2. Assess prescriber perceptions related to ASP.
3. Assess barriers and facilitators to ASP implementation.
4. Develop a draft ASP Toolkit to help hospitals optimize their antimicrobial prescribing practices to reduce CDI.

New York (NY) State currently requires ongoing reporting of C-difficile data for both clinical and surveillance purposes. As part of an arrangement with NY State, the Greater New York Hospital Association (GNYHA) also collects and analyzes these data through their CDI collaborative. These data include tracking baseline rates of CDI, including pharmacy data, data related to rates of CDI, patient outcomes, and data about infection control practices (such as hand-washing and other environmental controls to prevent spread of infection). The data are collected on standardized forms that are required by both the state and the Centers for Disease Control and Prevention (CDC). The data collected at these participating hospitals are also collected at multiple hospitals nationwide as part of routine patient care and quality. In addition to new data collections initiated specifically for this project, this routine and ongoing mandatory data collection will serve as the project's knowledge base to allow the assessment of ASP programs.

From the GNYHA data, a three-month sample from the participating hospitals will be analyzed by Montefiore Medical Center (MMC) and GNYHA to obtain baseline information. This data will enable a comparison of the rates of CDI before and after the implementation of an ASP. The ASP will be implemented at 6 hospitals (intervention sites), while 5 other hospitals will serve as control sites and continue with their current practices, including conducting general

infection and environmental controls. The specific elements of the ASPs will vary by hospital based on priorities and what is possible at each facility as well as by the antibiotic(s) targeted and will likely include some of the following:

- Formulary review/changes, restrictions and preauthorization of implicated antimicrobials.
- Feedback to providers of implicated antimicrobials.
- Processes and algorithms for empiric and streamlined regimens for Specific diagnoses/pathogens.
- Antibiotic order form with automatic stop orders.
- Novel combinations of approaches to the use of stewardship staff or technology for stewardship (*e.g.,* software, text paging, pyxis pharmacy machines for tracking and promoting proper antibiotic prescribing), and
- Educational efforts for clinicians and patients upon diagnosis.

While the ongoing mandatory reporting will allow the measurement of change over time in CDI rates, it does not provide the necessary information that hospitals need about the challenges of implementing an ASP.

**Method of Collection**

*The following data collection activities will be implemented to achieve the objectives of this project:*

1. Focus Groups with no more than 6 staff members at the intervention and control hospitals. The focus groups will be conducted one time only, by telephone and approximately 12 months after the implementation begins. The focus group guides will differ for the intervention and control sites, although there will be a common core of questions. The common core of the focus group protocol will address the following: Issues related to experience with the GNYI–L& environmental and infection control practices they have already been utilizing, strategies they have already used to reduce CDI and perceptions of those strategies, barriers to the environmental practices, particular areas of challenge, facilitators, and factors they think have contributed most to their institution's CDI rates. For the intervention sites, the goal of the focus group will be to understand in a more in-depth and qualitative manner, the experience of actually implementing the ASP. For the control sites, the goal will be to understand what they have learned in being a control site and their plans moving forward. In addition to the core questions, questions will be asked about their interest in starting an ASP program, goals and priorities, expectations of facilitators and barriers and if and when they plan to implement an ASP.

2. ASP Questionnaire will be administered twice, pre and post implementation, to a sample of about 70 hospital staff at both the intervention and control hospitals. Intervention and control facilities will receive the same questionnaire. The purpose of this survey is to measure the staff's perception of the scope of CDI at their facility, current antibiotic prescribing practices, the perceived need for ASPs and how these change over time. The questionnaire also collects some background information such as the staff members' primary work area, time worked in their profession and time worked in this hospital.

While the reporting/surveillance data required by the State of NY and the CDC can measure rates of CDI and compare how hospitals are doing, these data do not capture many important issues. A major reason that most hospitals do not have active, robust ASPs is because they can be incredibly challenging to develop, administer and manage. They require changes in prescribing practices and the active agreement and participation of physicians, pharmacists and administrators. Physicians and pharmacists may challenge restrictions in formularies and determine that a patient may not be given a specific antibiotic. But the severity of CDI makes it very important for hospitals to determine optimal methods for implementing successful ASPs. This pilot study will collect data to allow the comparison of perceptions and experiences between hospitals that do and do not attempt to implement an ASP. Reflections and feedback directly from prescribers and the ASP team using qualitative data collection procedures are needed to fully understand what it means or would mean to implement an ASP. The lessons learned from this project will be useful to health care facilities considering implementing an ASP, and will inform the development of a draft ASP Toolkit; this Toolkit will be evaluated in a separate project before being disseminated.

This study is being conducted by AHRQ through its contractor, BUSPH and their partners Montefiore Medical Center (MMC), and Greater New York Hospital Association (GNYHA), pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this pilot study. Focus Groups will be conducted post-intervention with approximately 6 staff members at each of the 11 study sites (5 control sites and 6 intervention sites) for a total of 66 individuals, approximately 36 at the intervention sites and approximately 30 at the control sites. The control site focus groups will last approximately 45 minutes. The intervention site focus groups will last approximately 60 minutes.

The ASP questionnaire will be administered twice, pre and post-intervention, to about 70 staff members at each of the 11 participating sites and takes about 7 minutes to complete. The total annualized burden is estimated to be 239 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this study. The total cost burden is estimated to be $15,037.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of hospitals | Number of responses per hospital | Hours per response | Total burden hours |
|---|---|---|---|---|
| Focus groups at intervention sites | 6 | 6 | 1 | 36 |
| Focus groups at control sites | 5 | 6 | 45/60 | 23 |
| ASP Questionnaire | 11 | 140 | 7/60 | 180 |
| Total | 22 | n/a | n/a | 239 |

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of hospitals | Total burden hours | Average hourly wage rate* | Total cost burden |
|---|---|---|---|---|
| Focus groups at intervention sites | 6 | 36 | $57.38 | $2,066 |
| Focus groups at control sites | 5 | 23 | 57.38 | 1,320 |
| ASP Questionnaire | 11 | 180 | 64.73 | 11,651 |
| Total | 22 | 239 | n/a | 15,037 |

* The hourly wage for the focus groups is based upon the mean of the average wages for physicians ($79.33), pharmacists ($50.13), and medical and health services managers ($42.67). The hourly wage for the surveys is based upon the average wages for physicians ($79.33) and pharmacists ($50.13). These data come from the May 2008 National Occupational Employment and Wage Estimates, United States,—U.S. Bureau of Labor Statistics Division of Occupational Employment Statistics, May 2008, National Occupational Employment and Wage Estimates, *http://www.bls.gov/oes/2008/may/oes_nat.htmb#11-0000.*

**Estimated Annual Costs to the Federal Government**

Exhibit 3 shows the annualized and total cost to the federal government for this two year research project. Project Management includes activities related to coordination between BUSPH staff, contracted staff at MMC and GNYIIA, and monthly phone calls with the task order officer. Project development covers steps taken to revise the research plan and begin implementation. The total cost is estimated to be $999,995.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST TO THE GOVERNMENT

| Cost component | Annualized cost | Total cost |
|---|---|---|
| Project Management | $28,315 | $56,629 |
| Project Development | 84,944 | 169,400 |
| Data Collection and Analysis | 169,888 | 339,776 |
| Technical Assistance and Consultation | 60,750 | 121,500 |
| Confirmatory lab testing | 20,000 | 40,000 |
| Travel | 7,500 | 15,000 |
| Project Supplies and materials | 2,450 | 4,900 |
| Overhead | 126,395 | 252,790 |
| Total | 499,998 | 999,995 |

**Request for Comments**

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 17, 2010.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2010–24423 Filed 9–29–10; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0374]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Petition to Request an Exemption From 100 Percent Identity Testing of Dietary Ingredients: Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 1, 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 emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0608. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

**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.

**Petition to Request an Exemption From 100 Percent Identity Testing of Dietary Ingredients: Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements—(OMB Control Number 0910–0608)—Extension**

On October 25, 1994, the Dietary Supplement Health and Education Act (DSHEA) (Public Law 103–417) was signed into law. DSHEA, among other things, amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 402(g) of the FD&C Act (21 U.S.C. 342(g)). Section 402(g)(2) of the FD&C Act provides, in part, that the Secretary of Health and Human Services (the Secretary) may, by regulation, prescribe good manufacturing practices for dietary supplements. Section 402(g)(1) of the FD&C Act states that a dietary supplement is adulterated if "it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations." Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), FDA may issue regulations necessary for the efficient enforcement of the FD&C Act.

FDA published a final rule on June 25, 2007 (72 FR 34752) (the final rule) that established, in part 111 (21 CFR part 111), the minimum Current Good Manufacturing Practice (CGMP) necessary for activities related to manufacturing, packaging, labeling, or holding dietary supplements to ensure the quality of the dietary supplement. On June 25, 2007 (72 FR 34959), FDA also published an Interim Final Rule (the IFR) establishing a procedure for a petition to request an exemption from 100 percent identity testing of dietary ingredients. The IFR redesignated § 111.75(a)(1) of the CGMP final rule as § 111.75(a)(1)(i) and set forth a procedure for submission of a petition to FDA in a new § 111.75(a)(1)(ii), under which manufacturers may request an exemption from the requirements set forth in § 111.75(a)(1)(i) when the dietary ingredient is obtained from one or more suppliers identified in the petition. The regulation clarifies that FDA is willing to consider, on a case-by-case basis, a manufacturer's conclusion, supported by appropriate data and information in the petition submission, that it has developed a system that it would implement as a sound, consistent means of establishing, with no material diminution of assurance compared to the assurance provided by 100 percent identity testing, the identity of the dietary ingredient before use.

Section 111.75(a)(1) of the CGMP final rule reflects FDA's determination that manufacturers that test or examine 100 percent of the incoming dietary ingredients for identity can be assured of the identity of the ingredient. However, FDA recognizes that it may be possible for a manufacturer to demonstrate, through various methods and processes in use over time for its particular operation, that a system of less than 100 percent identity testing would result in no material diminution of assurance of the identity of the dietary ingredient as compared to the assurance provided by 100 percent identity testing. To provide an opportunity for a manufacturer to make such a showing and reduce the frequency of identity testing of components that are dietary ingredients from 100 percent to some lower frequency, FDA added to § 111.75(a)(1), an exemption from the requirement of 100 percent identity testing when a manufacturer petitions the agency for such an exemption to 100 percent identity testing under § 10.30 and the agency grants such exemption. Such a procedure would be consistent with FDA's stated goal, as described in the CGMP final rule, of providing flexibility in the CGMP requirements. Section 111.75(a)(1)(ii) sets forth the information a manufacturer is required to submit in such a petition. The regulation also contains a requirement to ensure that the manufacturer keeps the FDA's response to a petition submitted under § 111.75(a)(1)(ii) as a record under § 111.95. The collection of information in § 111.95 has been approved under OMB control number 0910–0606.

*Description of Respondents*: The respondents to this collection of information are firms in the dietary supplement industry, including dietary supplement manufacturers, packagers and re-packagers, holders, labelers and re-labelers, distributors, warehouses, exporters, importers, large businesses, and small businesses.

In the **Federal Register** of July 20, 2010 (75 FR 42095) 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 | Number of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 111.75(a)(1)(ii) | 1 | 1 | 1 | 8 | 8 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the last 3 years, FDA has not received any new petitions to request an exemption from 100 percent identity testing of dietary ingredients; therefore, the agency estimates that one or fewer petitions will be submitted annually. Although FDA has not received any new petitions to request an exemption from 100 percent identity testing of dietary ingredients in the last 3 years, it believes that these information collection provisions should be extended to provide for the potential future need of a firm in the dietary supplement industry to petition for an exemption from 100 percent identity testing of dietary ingredients. Based on our experience with petition processes, we estimate that the assembly of information in support of the petition required by § 111.75(a)(1)(ii) will take 8 hours.

Dated: September 27, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–24642 Filed 9–29–10; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care

research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Advancing Patient Safety with Simulation Research Mechanism (R18) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

*SEP Meeting on:* Advancing Patient Safety with Simulation Research Mechanism (R18).

*Date:* November 18–19, 2010 (Open on November 18 from 8:30 a.m. to 8:45 a.m. and closed for the remainder of the meeting).

*Place:* Hilton Washington DC/ Rockville Hotel &; Executive Meeting Center, 1750 Rockville Pike, Conference Room TBD, Rockville, MD 20852.

*Contact Person:* Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: September 17, 2010.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2010–24443 Filed 9–29–10; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Council of Councils.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Council of Councils.

*Date:* November 8, 2010.

*Time:* 9 a.m. to 3 p.m.

*Agenda:* Among the topics proposed for discussion are current and completed Common Fund programs and the role of the Council of Councils in concept review.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Robin Kawazoe, Executive Secretary, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, Building 1, Room 260B, Bethesda, MD 20892. *kawazoer@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/,* where an agenda and proposals to be discussed will be posted before the meeting date.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 23, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–24548 Filed 9–29–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PA10–067: Psychological and Brain Sciences.

*Date:* October 12, 2010.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Anna L. Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892. 301–435–2889. *rileyann@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Language and Communication.

*Date:* October 20–21, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

*Contact Person:* Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892. 301–594–3163. *champoum@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Vascular and Hematology Member Conflict.

*Date:* October 26–27, 2010.
*Time:* 11 a.m. to 11:59 p.m.
*Agenda:* To review and evaluate grant applications.
*Agenda:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
*Contact Person:* Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210. *chaudhaa@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts-DKUS IRG.
*Date:* October 27, 2010.
*Time:* 2:30 p.m. to 5:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
*Contact Person:* Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892. 301–435–1169. *greenwep@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Cell and Molecular Regulation and Metabolism.
*Date:* November 2–3, 2010.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
*Contact Person:* Gary Hunnicutt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. 301–435–0229. *gary.hunnicutt@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, RFA Panel: Biology of Uterine Fibroids.
*Date:* November 3, 2010.
*Time:* 1 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
*Contact Person:* Gary Hunnicutt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. 301–435–0229. *gary.hunnicutt@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Asthma, Acute Lung Injury and Cystic Fibrosis Applications.
*Date:* November 10–11, 2010.
*Time:* 9 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
*Contact Person:* Everett E Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892. 301–435–1016. *sinnett@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Infectious Diseases and Microbiology.
*Date:* November 19, 2010.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
*Contact Person:* Alexander D Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892. (301) 435–1150. *politisa@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: September 24, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–24549 Filed 9–29–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Business Applications Urology.
*Date:* October 25, 2010.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
*Contact Person* Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892. 301–435–1501. *morrisr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neuropsychology, Aging and Neuroimaging Markers Review Panel.
*Date:* October 25–26, 2010.
*Time:* 12 p.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:* Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 237–9838. *bhagavas@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Adult Psychopathology and Disorders of Aging.
*Date:* October 27–28, 2010.
*Time:* 9 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:* Jane A Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. (301) 435–4445. *doussarj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Cancer Diagnostic and Treatment.
*Date:* November 2–3, 2010.
*Time:* 10 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
*Contact Person:* Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892. (301) 806–2515. *chatterm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Cognition and Perception.
*Date:* November 4, 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:* Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892. (301) 435–1507, *niw@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Pilot and Feasibility Clinical Studies in Digestive Diseases and Nutrition.
*Date:* November 16, 2010.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. (301) 435–0682. *perrinp@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: September 24, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–24556 Filed 9–29–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Human Genome Research Institute.

*Date:* November 14–16, 2010.

*Open:* November 14, 2010, 5:45 p.m. to 7 p.m.

*Agenda:* To discuss matters of program relevance.

*Place:* Hyatt Regency Chesapeake Bay Resort, 100 Heron Blvd at Route 50, Cambridge, MD 21613.

*Closed:* November 15, 2010, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Hyatt Regency Chesapeake Bay Resort, 100 Heron Blvd at Route 50, Cambridge, MD 21613.

*Closed:* November 16, 2010, 8 a.m., to 5 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Hyatt Regency Chesapeake Bay Resort, 100 Heron Blvd at Route 50, Cambridge, MD 21613.

*Contact Person:* Claire Kelso, Intramural Program Specialist, Division of Intramural Research, Office of the Scientific Director, National Human Genome Research Institute, 50 South Drive, Building 50, Room 5222, Bethesda, MD 20892–8002, 301 435–5802, *claire@nhgri.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 24, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–24555 Filed 9–29–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Active Aging, Supporting Individuals and Enhancing Community-Based Care through Health Information Technology (P50) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

*SEP Meeting on:* Active Aging, Supporting Individuals and Enhancing Community-Based Care through Health Information Technology (P50).

*Date:* November 2, 2010 (Open on November 2 from 8:30 a.m. to 8:45 a.m. and closed for the remainder of the meeting).

*Place:* Hilton Washington DC/ Rockville Hotel &; Executive Meeting Center, 1750 Rockville Pike, Conference Room TBD, Rockville, MD 20852.

*Contact Person:* Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: September 17, 2010.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2010–24451 Filed 9–29–10; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Metastasis.

*Date:* October 4, 2010.

*Time:* 12:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.

*Contact Person:* Syed M Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892. 301–435–1211. *quadris@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–24550 Filed 9–29–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Privacy Act of 1974; Report of an Altered System of Records

**AGENCY:** Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA).

**ACTION:** Notice of an altered system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration (HRSA) is proposing to alter the system of records for the National Vaccine Injury Compensation Program, 09–15–0056. In accordance with the National Childhood Vaccine Injury Act of 1986, as amended (42 U.S.C. 300aa–10, *et seq.*) (the Vaccine Act), the National Vaccine Injury Compensation Program receives records from individuals or representatives of individuals alleged to be injured by vaccines.

The purposes of these alterations are to update the system name, authority, and location; make a minor change to the purposes, add new routine uses (numbers 10, 11, 12, 13, and 14); update the safeguards; update retention and disposal; and update the system manager contact information.

**DATES:** HRSA filed an altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 6/9/2010. To ensure all parties have adequate time in which to comment, the altered systems, including the routine uses, will become effective 30 days from the publication of the notice or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless HRSA receives comments that require alterations to this notice.

**ADDRESSES:** Please address comments to the Director, Division of Vaccine Injury Compensation, HRSA/HSB, 5600 Fishers Lane, Room 11C–26, Rockville, Maryland 20857. Comments received will be available for review and inspection, by appointment, at this same address from 9 a.m. to 3 p.m., Eastern Standard Time, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Dr. Geoffrey Evans, Director, Division of Vaccine Injury Compensation, HRSA/HSB, 5600 Fishers Lane, Room 11C–26, Rockville, Maryland 20857; Telephone 301–443–6593. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Health Resources and Services Administration proposes to alter this system of records by updating the name of the system from the National Vaccine Injury Compensation Program, HHS/HRSA/BHPr to the National Vaccine Injury Compensation Program; updating the location from the Bureau of Health Professions (BHPr) to the Healthcare Systems Bureau (HSB); add an additional authority (the Vaccine Act, 42 U.S.C. 300aa–10, *et seq.,* which established the National Vaccine Injury Compensation Program; make a minor change to the second purpose (extending the purpose beyond the amount of compensation to the manner of compensation), add new routine uses 10, 11, 12, 13, and 14 (described below), modifying the safeguards by replacing the words "can be locked and secured" to "are kept in a locked and secured room" under physical safeguards; and updating the system manager contact information to "Associate Administrator, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857. The new routine uses are as follows: Routine use 10 (disclosures to ensure that a Government Reversionary Trust established in connection with a Program award is being properly administered); routine use 11 (disclosures regarding specific medical services provided to an unemancipated minor to the minor's parent or legal guardian); routine use 12 (disclosures concerning compensation awarded on behalf of an unemancipated minor or an incompetent adult in the Program to the guardian or conservator of the estate of the minor or incompetent adult, as determined by a court of competent jurisdiction); routine use 13 (disclosures in the event a violation or potential violation of law is indicated); and routine use 14 (disclosures of information for the purpose of assisting the Department of Health and Human Services in efforts to respond to breaches of security or confidentiality maintained in the system); updating the retention and disposal by noting that the closed case files are transferred to the Washington National Records Center periodically and that written approval by the Program is needed before records are disposed of by shredding twenty-five years after the termination of all administrative and judicial proceedings, determined by a final adjudication; and updating the system manager contact information from BHPR to the Associate Administrator, Healthcare Systems Bureau, Health Resources and Administration, 5600 Fishers Lane, Room 12–105, Rockville, MD 20857. All other aspects of the system remain the same. Accordingly, the notice is being published below in its entirety, as amended.

Dated: September 13, 2010.

**Mary K. Wakefield,**

*Administrator.*

**SYSTEM NUMBER:**

09–15–0056

**SYSTEM NAME:**

National Vaccine Injury Compensation Program.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 11C–26, Rockville, Maryland 20857.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons filing claims (petitioners) under the National Vaccine Injury Compensation Program (NVICP).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Petition for compensation, including petitioner's name and name of person vaccinated if different from petitioner, and all relevant medical records, (including autopsy reports and slides, radiological films, and home videos, if any), appropriate assessments, evaluations, prognoses, and such other records and documents as are reasonably necessary for the determination of eligibility for and the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The authority for maintaining this system of records is the National Childhood Vaccine Injury Act of 1986, as amended (42 U.S.C. 300aa–10, et seq.) (the Vaccine Act). The Vaccine Act established the National Vaccine Injury Compensation Program and authorized the Department to track, review, and defend the Secretary, HHS in vaccine injury and death related cases brought before the United States Court of Federal Claims.

**PURPOSE(S) FOR RECORDS IN THIS SYSTEM:**

1. To determine eligibility of petitioners to receive compensation under the National Vaccine Injury Compensation Program.
2. To compensate successful petitioners in the amount and in the manner determined by the court.
3. To evaluate vaccine safety through research programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosures may be made to a Congressional office from the record of an individual, in response to an inquiry from the Congressional office made at the written request of the individual.

2. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice (DOJ) has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the DOJ to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. HRSA will contract with expert medical consultants for the purpose of obtaining advice on petitioner's eligibility for compensation. To the extent necessary, relevant records may be disclosed to such consultants. The consultants shall be required to maintain Privacy Act safeguards with respect to such records and return all records to HRSA.

4. HRSA will release the petitioner's complete medical file and may release consultants' report to the DOJ and the Special Master of the U.S. Court of Federal Claims for adjudication of the compensation claim.

5. HRSA will disclose for publication in the **Federal Register** the name of the petitioner, the name of the person vaccinated, if not the petitioner, the city and State where the vaccine was administered and the U.S. Court of Federal Claims' Docket Number as required by the National Childhood Vaccine Injury Act.

6. Records may be disclosed to organizations deemed qualified by the Secretary for the purpose of evaluating the administration, process, or outcomes of the National Vaccine Injury Compensation Program (as required by Congress). The purpose of the disclosure is to document the extent to which the National Vaccine Compensation Program is satisfying the goals and objectives of its authorizing legislation, i.e., maintaining a system for compensating those who have been injured by a vaccine that is fair and expeditious. Organizations to which information is disclosed for this use shall be required to maintain Privacy Act safeguards with respect to such records.

7. To the extent necessary, a record may be disclosed to annuity brokers and to employees of life insurance companies for the purposes of obtaining financial advice and for the purchase of contracts to provide benefits to recipients of benefits under the Program. Organizations to which information is disclosed for this use will be required to maintain Privacy Act safeguards with respect to such records.

8. To the extent necessary, a record may be disclosed to contractors for the purpose of providing medical review, analysis and determination as to whether petitions meet the medical requirements for compensation. Contractors will be required to maintain Privacy Act safeguards with respect to such records.

9. A record may be disclosed for a research purpose when the Department: (A) Has determined that the disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) Has determined that the research purpose: (1) Is consistent with the purpose for which the Program was formed, which includes, but is not limited to, evaluating the safety of vaccines covered under the Program, (2) Cannot be reasonably accomplished with information in statistical form, and must be provided in an identifiable form to accomplish the research purpose, and (3) Warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) Has required the recipient to: (1) Establish reasonable administrative, technical and physical safeguards to prevent unauthorized use or disclosure of the record, (2) Remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) Make no further use of the record except: (a) In emergency circumstances affecting the health or safety of any individual, (b) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (c) When required by law; and (D) Has secured a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

10. To the extent necessary, a record may be disclosed for the purpose of ensuring that a Government Reversionary Trust established in connection with a Program award is being properly administered. Such disclosures may be made to institutions serving as trustees and medical administrators with respect to such trusts, to individuals serving as guardians of the estate of individuals compensated by the Program, and to attorneys representing such parties (or representing the Government).

Organizations or individuals to which information is disclosed for this use will be required to maintain Privacy Act safeguards with respect to such records. Records may also be disclosed for the same purpose to courts of competent jurisdiction in which trust administration issues arising out of Program claims are raised.

11. Records regarding specific medical services provided to an unemancipated minor or an incompetent adult may be disclosed to the unemancipated minor's parent or legal guardian who previously consented to those specific medical services or a person who is now legally authorized to make medical decisions on behalf of the minor or the incompetent adult.

12. Records concerning compensation awarded on behalf of an unemancipated minor (or an incompetent adult) in the Program may be disclosed to the guardian or conservator of the estate of the minor or incompetent adult, as determined by a court of competent jurisdiction.

13. In the event that a record maintained in this system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, provided that such disclosure is compatible with the purpose for which records were collected.

14. To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM**

- *Storage:* File folders and disks.
- *Retrievability:* Retrieval is by: (1) Docket number assigned by the U.S. Court of Federal Claims, and (2) the petitioner and/or name of person vaccinated.
- *Safeguards:*

1. *Authorized users:* Access is limited to the System Manager and authorized HRSA/HSB personnel responsible for administering the program. HRSA/HSB will maintain a current list of authorized users.

2. *Physical safeguards:* All files are stored in an electronic carriage filing system which are kept in a locked and secured room during non-work hours; disk packs and computer equipment are retained in areas where fire and safety codes are strictly enforced. All automated and non-automated documents are protected on a 24-hour basis in security areas. Security guards perform random checks of the physical security of the record storage area.

3. *Procedural safeguards:* HRSA/HSB has established stringent safeguards in line with the sensitivity of the records. These include: Transmitting records to consultants by Federal Express, United Parcel Service, or other courier service to ensure that a signature is required upon receipt of the records; escorting visitors into areas where records are maintained; utilizing passwords for computer access; and securing areas where records are stored. A password is required to access the terminal and the data set name controls the release of data only to authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office.

**RETENTION AND DISPOSAL:**

HRSA is working with NARA to obtain the appropriate retention value.

**NOTIFICATION PROCEDURE:**

Requests must be made to the System Manager at the above address.

**REQUEST IN PERSON:**

A subject individual who appears in person seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as a driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the records and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

**REQUESTS BY MAIL:**

To determine if a record exist about you, write to the System Manager. The request must contain the name and address of the individual, assigned court docket number (if known), and a written statement that the requester is the person he/she claims to be and that he/she understands that the request or acquisition of records pertaining to another individual, under false pretenses, is a criminal offense subject to a $5000 fine.

**REQUESTS BY TELEPHONE:**

Since positive identification of the caller cannot be established, telephone requests are not honored.

**RECORDS ACCESS PROCEDURES:**

Same as notification procedures. Individuals may also request an accounting of disclosures that have been made of their records, if any.

**CONTESTING RECORDS PROCEDURES:**

Contact the appropriate official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Petitioner, petitioner's legal representative, health care providers, and other interested persons.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 2010–24576 Filed 9–29–10; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Request for Nominations for AHRQ Study Section Members—Notice of Correction

On page 55334, Volume 75, Number 175, **Federal Register** notice publication dated September 10, 2010, under "**ADDRESSES**" section, the correct e-mail address is: *Kishena.Wadhwani@AHRQ.hhs.gov.*

Dated: September 17, 2010.

**Carolyn M. Clancy,**

*Director, AHRQ.*

[FR Doc. 2010–24425 Filed 9–29–10; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter K, Administration for Children and Families, as last amended at 71 FR 59117–59123, dated October 6, 2006; Chapter KA, Office of the Assistant Secretary for Children and Families, as last amended at 72 FR 31072–31073, dated June 5, 2007; and Chapter KH, the Office of Family Assistance (OFA), as last amended at 71 FR 59117–59123, dated October 6, 2006. This reorganization will transfer the Child Care Bureau (KHJ) in its entirety, from the Office of Family Assistance (KH), and retitle it as the Office of Child Care (KV) reporting directly to the Assistant Secretary for Children and Families. It also establishes the Office of the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development. The changes are as follows:

I. Amend Chapter K, Administration for Children and Families, as follows:

A. Delete Section K.10 Organization, in its entirety and replace with the following:

K.10 Organization. The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services (HHS). The Administration is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition to the Assistant Secretary, the Administration consists of the Principal Deputy Assistant Secretary, the Deputy Assistant Secretary for Administration, the Deputy Assistant Secretary for Policy and External Affairs, the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development, and Staff and Program Offices. ACF is organized as follows:

Office of the Assistant Secretary for Children and Families (KA)
Office of the Deputy Assistant Secretary for Policy and External Affairs (KL)
Office of the Deputy Assistant Secretary for Administration (KP)
Administration on Children, Youth and Families (KB)
Administration on Developmental Disabilities (KC)
Administration for Native Americans (KE)
Office of Child Support Enforcement (KF)
Office of Community Services (KG)
Office of Family Assistance (KH)
Office of Regional Operations (KJ)
Office of Planning, Research and Evaluation (KM)
Office of Public Affairs (KN)
Office of Refugee Resettlement (KR)
Office of Legislative Affairs and Budget (KT)
Office of Head Start (KU)
Office of Child Care (KV)

II. Amend Chapter KA, Office of the Assistant Secretary, as follows:

A. Delete KA.10 Organization, in its entirety and replace with the following:

KA.10 Organization: The Office of the Assistant Secretary for Children and Families is headed by the Assistant Secretary for Children and Families who reports directly to the Secretary and consists of:

Office of the Assistant Secretary for Children and Families (KA)
President's Committee for People with Intellectual Disabilities Staff (KAD)
Executive Secretariat Office (KAF)
Office of Human Services Emergency Preparedness and Response (KAG)
Office of the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development (KAH)

B. Amend KA.20 Functions, add the following new paragraph:

KA.20 Functions E. Office of the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development (KAH): The Office of the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development is responsible for handling a variety of assignments requiring knowledge and expertise in advising the Assistant Secretary, ACF, in the formulation of policy views, positions, and implementation strategies related to early childhood programs and services under the purview of ACF. The incumbent will also serve as a key liaison and representative to the Department for early childhood development on behalf of the Assistant Secretary, ACF, and to other agencies across the government on behalf of the Department.

III. Amend Chapter KH, Office of Family Assistance, as follows:

A. Delete KH.00 Mission, in its entirety and replace with the following:

KH.00 Mission: The Office of Family Assistance (OFA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to the Temporary Assistance for Needy Families (TANF) program under title IV–A of the Social Security Act. This program provides temporary assistance and promotes economic self-sufficiency for families with children. The Office provides leadership direction and technical guidance, with ACF Regional Offices, to the States, Tribes, and Territories on the TANF program, the Native Employment Works program, and the Aid to the Aged, Blind and Disabled program in Guam, Puerto Rico and the Virgin Islands. The Office focuses efforts to increase economic independence and productivity for families. It develops legislative, regulatory and budgetary proposals; and identifies and implements operational planning objectives and initiatives related to the TANF program. It provides direction and guidance in the collection and dissemination of performance and other valuable data for these programs; reviews State and Tribal planning for administrative and operational improvement; assesses program performance, and recommends actions to improve effectiveness. It provides guidance, direction, and technical assistance to its discretionary grantees and monitors their progress.

B. Delete KH.10 Organization, in its entirety and replace with the following:

KH.10 Organization. The Office of Family Assistance is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Office of the Director (KHA)
TANF Bureau (KHB)
Division of State Policy (KHB1)
Division of State and Territory TANF Management and Technical Assistance (KHB2)
Division of Data Collection and Analysis (KHB3)
Division of Tribal TANF Management (KHB4)
TANF Bureau Regional Program Units (KHBDI–X)

C. KH.20 Functions, delete Paragraph A in its entirety and replace with the following:

A. Office of the Director (KHA): The Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out OFA's mission and providing direction, leadership, guidance, and general supervision to the principal components of OFA. The Deputy Director assists the director in carrying out the responsibilities for the Office. The Associate Director for the TANF Bureau reports to the OFA Director. The Office: (1) Provides public information services by responding to inquiries from the public and private sectors from both domestic and international entities via written and electronic communication; (2) coordinates and organizes the printing and distribution of policy and guidance documents and responds to Freedom of Information Act requests; (3) manages the formulation and execution of the budgets for OFA programs and for Federal administration; (4) serves as the focal point for operational and long-range planning; (5) functions as Executive Secretariat for OFA, including managing correspondence, correspondence systems, and electronic mail requests; and (6) provides management and administrative services and advice, by

coordinating human resources activities, developing policy and procedures relating to these activities.

D. KH.20 Functions, delete Paragraph C. Child Care Bureau and subsequent paragraphs 1 through 4 in its entirety.

IV. Add Chapter KV, Office of Child Care.

A. Create KV.00 Mission, in its entirety:

KV.00 Mission. The Office of Child Care (OCC) advises the Assistant Secretary for Children and Families on matters relating to child care, early education programs, and school-age care programs, focusing on the twin goals of providing support for working families and improving the quality of child care to promote healthy development, school readiness, and school success for children. It has primary responsibility for the operation of child care programs authorized under the Child Care and Development Block Grant (CCDBG) Act and section 418 of the Social Security Act. It develops legislative, regulatory and budgetary proposals; identifies and implements operational planning objectives and initiatives related to child care; provides technical assistance and guidance to States, Territories, and Tribes regarding implementation of child care programs; and directs, manages, and oversees the progress of the Office's mission and activities. The OCC supports State, Tribal, and Territorial grantees to provide child care financial assistance to low-income families so that their children can access high quality care while they are at work or attending training and education. The OCC also works with grantees to develop comprehensive, cross-sector systems of quality improvement so that child care programs can improve overall quality and individual educators achieve higher levels of education and training. It provides leadership and coordination for child care issues within ACF, within HHS, and with relevant agencies across the Federal, State, local and Tribal governments, and non-governmental organizations at the Federal, State and local levels.

B. Create KV.10 Organization, in its entirety.

KV.10 Organization. The Office of Child Care is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Office of the Director (KVA)
Division of Technical Assistance (KVA1)
Division of Program Operations (KVA2)
Division of Policy (KVA3)
Office of Child Care Regional Program Units (KVADI–X)

C. Create KV.20 Function, in its entirety.

KV.20 Functions A. Office of the Director (KVA): The Office of Child Care has responsibility for: (1) Overseeing the operation of child care programs authorized under the Child Care and Development Block Grant (CCDBG) Act and section 418 of the Social Security Act; (2) developing legislative, regulatory, and budgetary proposals; (3) presenting operational planning objectives and initiatives related to child care, and overseeing the progress of approved activities; (4) providing leadership and coordination for child care within ACF and linkages with other agencies on child care issues, including agencies within HHS, relevant agencies across the Federal, State, local, and Tribal governments, and non-governmental organizations at the Federal, State, and local levels; and (5) overseeing the leadership, planning, and management of the Office's mission and activities.

The Office of the Director serves as the principal advisor to the Assistant Secretary for Children and Families on the administration of child care programs. The Office is directly responsible for carrying out OCC's mission and providing direction, leadership, guidance, and general supervision to the principal components of OCC. The Deputy Director assists the Director in carrying out the responsibilities for the Office. The Office of the Director: (1) Provides public information services by responding to inquiries from the public and private sectors; (2) identifies areas for research, demonstration, and developmental activities; (3) conducts outreach and maintains relationships with Department officials, other Federal departments, State and Tribal and local officials, and private organizations and individuals; (4) coordinates and plans child care activities to maximize program effectiveness; and (5) manages large-scale or high profile activities involving multiple OCC areas of responsibility.

Management Operation Staff is responsible for: (1) Managing the execution of the budgets for OCC operated programs and for Federal administration of the OCC program; (2) serving as the central control point for operational and long-range planning of the needs of the OCC; (3) planning for and coordinating the provision of staff development and training; (4) providing support for OCC's personnel administration, including staffing, employee and labor relations, performance management, and employee recognition; (5) managing procurement planning and providing technical assistance regarding procurement; (6) managing OCC-controlled space, facilities, and equipment, including providing for health and safety; (7) planning for, acquiring, distributing, and controlling OCC supplies; (8) functioning as Executive Secretariat for OCC, including managing correspondence, correspondence systems, and electronic mail requests; and (9) overseeing processes related to approval and payment of travel.

B. Division of Technical Assistance (KVA1): The Division of Technical Assistance supports State, Tribal, and Territorial grantees in providing child care subsidy systems that are responsive to the needs of low-income families and support a variety of high quality child care settings that promote child development and learning. The Division of Technical Assistance: (1) Provides technical assistance to States, Territories, and Tribes concerning the administration of the Child Care and Development Fund (CCDF); (2) provides strategic leadership, coordination, and grant and contract oversight for technical assistance projects that comprise the Child Care Technical Assistance Network; (3) oversees technical assistance events, such as peer learning roundtables, forums, conferences, and webinars; (4) uses publications, multimedia tools, and comprehensive Internet resources to communicate with CCDF grantees, national, State, regional and local child care organizations, and the general public about the latest developments in the child care field; (5) works closely with State, Tribal and Territorial CCDF Lead Agencies to assess their technical assistance needs and tailor approaches that reflect State, Tribal, and Territorial flexibility; (6) supports the ability of grantees to find innovative solutions and uses its contracts, events, and publications to identify and promote replication of effective practices; (7) supports the use of research in CCDF implementation; (8) forges partnerships with public and private organizations to improve the ability of child care systems to respond effectively to the needs of low-income working families; and (9) works in partnerships across programs to improve outcomes for children by furthering the quality and coordination of early childhood services across the Federal government in order to build a diversified system that promotes school readiness across all early childhood settings and school success for school-age children. Key partners include State, Territorial and Tribal CCDF programs, Office of Head Start, the Maternal and Child Health Bureau, and the U.S. Department of Education.

C. Division of Program Operations (KVA2): The Division of Program Operations is responsible for: (1) Regional liaison activities, including communicating on a regular basis with Regional Program Unit staff, including oversight of the review and approval process for the Biennial CCDF Plans of States, Territories, and Tribes, responding to questions on policy and other issues by consulting or referring to other staff; (2) tracking progress of grantee programs in coordination with the regions; (3) collecting and maintaining information related to grantee program implementation, management and accountability measures, and technical assistance efforts; (4) tracking program achievements, problems, and gaps; (5) identifying latest trends and activities of major significance; (6) preparing background material, fact sheets, and reports to provide information to the Director and other ACF and HHS officials, grantees, and the general public; (7) tracking and supporting special initiatives; (8) establishing partnerships with public and private entities to improve access to quality child care; (9) coordinating program activities with other government and non-governmental agencies; and (10) managing and overseeing cooperative ventures with other entities.

D. Division of Policy (KVA3): The Division of Policy: (1) Develops, interprets, and issues national policies and regulations governing CCDF programs and other OCC-operated programs; (2) provides clarification of the statutes, regulations, and policies; (3) issues

program instructions and information memoranda; (4) recommends and drafts legislative and budgetary proposals and materials; (5) prepares Congressional reports and briefing materials for hearings and testimony; (6) develops and tracks performance measures to ensure the responsiveness of the program to children and families; (7) manages processes related to administrative data reporting by grantees, including providing direction and guidance; (8) compiles, analyzes, and disseminates program data; (9) reviews and gives guidance to the Regional Program Units on CCDF plans and applications (10) researches child care policy issues; (11) coordinates policies and procedures with the Division of Program Operations (including updates of the Biennial Child Care Plan Preprint) and other Federal agencies; (12) provides policy training, guidance, and clarification to the Regional Program Units in carrying out policy functions; (13) coordinates with the grants office on financial management issues, including grantee allocations and expenditure reporting.

E. Office of Child Care Regional Program Units (KVADI–X): Each OCC Regional Program Unit is headed by an OCC Regional Program Manager who reports to the Deputy Director, OCC. The Regional Program Manager, through subordinate regional staff, in collaboration with program components, is responsible for: (1) Providing program and technical administration of OCC block and discretionary programs; (2) collaborating with the OCC Central Office, States, and other grantees on all significant policy matters; (3) providing technical assistance to entities responsible for administering OCC programs to resolve identified problems; (4) ensuring that appropriate procedures and practices are adopted; (5) working with appropriate State, Tribal, and local officials to develop and implement outcome-based performance goals that further the OCC mission of supporting children and families by increasing access to affordable, high quality child care; and (6) monitoring the programs to ensure their efficiency and effectiveness, and ensuring that these entities conform to Federal laws, regulations, policies, and procedures governing the programs.

V. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to organizational components affected by this Notice within the Administration for Children and Families, heretofore issued and in effect on this date of this reorganization are continued in full force and effect.

VI. *Delegation of Authority:* All delegations and redelegations of authority made to the officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

VII. *Funds, Personnel and Equipment:* Transfer of organizations and functions affected by the reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

This reorganization will be effective upon date of signature.

Dated: September 24, 2010.

**David A. Hansell,**

*Acting Assistant Secretary for Children and Families.*

[FR Doc. 2010–24587 Filed 9–29–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1928–DR; Docket ID FEMA–2010–0002]**

### Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1928–DR), dated July, 27, 2010, and related determinations.

**DATES:** *Effective Date:* September 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael R. Scott as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–24497 Filed 9–29–10; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1932–DR; Docket ID FEMA–2010–0002]**

### Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Kansas (FEMA–1932–DR), dated August 10, 2010, and related determinations.

**DATES:** *Effective Date:* September 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of William J. Doran III as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–24498 Filed 9–29–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]**

### Iowa; Amendment No. 9 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

**DATES:** *Effective Date:* September 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael R. Scott as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–24499 Filed 9–29–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–35]**

### Notice of Proposed Information Collection: Comment Request; Mortgage Record Change

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* November 29, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Program Contact, Silas C. Vaughn, Jr., Branch Chief, Disbursements and Customer Service Branch, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–3545 (this is not a toll free number) for program information (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Mortgage Record Change.

*OMB Control Number, if applicable:* 2502–0422.

*Description of the need for the information and proposed use:* Servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. The Mortgage Record Change information is used by FHA-approved mortgagees to comply with HUD requirements for reporting the sale of a mortgage between investors and/or the transfer of the mortgage servicing responsibility, as appropriate. The information is collected electronically through Electronic Data Interchange and via FHA Connection. The information required is used to update HUD's Single Family Insurance System and other related systems. Current data is necessary to establish mortgage premium liability, forward annual premium mortgage data to the appropriate mortgagee/servicer, and maintain premium receivables and program data regarding investors/servicer activity. Without the required data, the premium collection/monitoring function would be severely impeded and program data would be unreliable. This information is essential because HUD does case level accounting in recording premium payments by mortgagees.

*Agency form numbers, if applicable:* Not applicable. Form HUD–92080 is now obsolete. There are no copies of blank forms available to the public. This information is collected 100% electronically.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 250,000. The number of respondents is 6,500, the number of responses is 2,500,000, the frequency of response is on occasion, and the burden hour per response is 0.1.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 23, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–24468 Filed 9–29–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–32]**

### Notice of Proposed Information Collection: Comment Request; Inspection and Assurance of Completion of Property Repairs Conditional to HUD's Providing Mortgage Insurance

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* November 29, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Karin Hill, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Compliance Inspection Report/Mortgagee's Assurance of Completion.

*OMB Control Number, if applicable:* 2502–0189.

*Description of the need for the information and proposed use:* Lenders are required to provide form 92051 to the borrower if there are health and safety items that need to be repaired before the property can be insured by FHA. Most repair items are repaired before the loan closes. Form 92051 is only used when there are items that need repair after closing or for an inspection of new construction in a jurisdiction that does not issue building permits. Form 92300 is used by the lender to notify FHA that funds have been retained in escrow for payment of the repairs.

*Agency form numbers, if applicable:* 92051, 92300.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 1,984. The number of respondents is 5668, the number of responses is 11,336, the frequency of response is on occasion, and the burden hour per response is .10 to .25 hours.

*Status of the proposed information collection:* This is a revision of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 23, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–24472 Filed 9–29–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–34]**

### Notice of Proposed Information Collection: Comment Request; Application for Mortgage Insurance for Cooperative and Condominium Housing

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* November 29, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. or telephone (202) 402–5564.

**FOR FURTHER INFORMATION CONTACT:** Joyce Allen, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated

collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. This Notice also lists the following information:

*Title of Proposal:* Application for Mortgage Insurance for Cooperative and Condominium Housing.

*OMB Control Number, if applicable:* 2502–0141.

*Description of the need for the information and proposed use:* The information collected on the "Application for Mortgage Insurance for Cooperative and Condominium Housing" form provides HUD with information to evaluate and determine the general eligibility of the proposed project. HUD technical specialists in appraisal, cost, architecture, and mortgage credit analyze this information to determine if a project is eligible for mortgage insurance.

*Agency form numbers, if applicable:* HUD–93201.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 80. The number of respondents is 20, the number of responses is 20, the frequency of response is annually, and the burden hour per response is 4.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 23, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–24470 Filed 9–29–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–33]**

### Notice of Proposed Information Collection: Comment Request; HUD Multifamily Energy Assessment

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* November 29, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Harry Messner, Program Manager, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2626 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* HUD Multifamily Energy Assessment.

*OMB Control Number, if applicable:* 2502–0568.

*Description of the need for the information and proposed use:* The purpose of this information collection is to assist owners of multifamily housing projects with assessing energy needs in an effort to reduce energy costs and improve energy conservation.

*Agency form numbers, if applicable:* HUD–9614.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of burden hours is 83,647. The number of respondents is 10,295, the number of responses is 15,443, the frequency of response is on occasion, and the burden hour per response is 8.

*Status of the proposed information collection:* This is an extension of a current collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 23, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–24471 Filed 9–29–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5380–N–31]**

### Notice of Proposed Information Collection: Comment Request; HUD Conditional Commitment/Statement of Appraised Value

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* November 29, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Karin Hill, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* HUD Conditional Commitment.

*OMB Control Number, if applicable:* 2502–0494.

*Description of the need for the information and proposed use:* Lenders are required to provide the borrower with HUD Form 92800.5B which informs the borrower what the appraised value of the property is and explains all property conditions that are required to be met before the loan can be insured. If there are no conditions, the lender may provide the appraisal report in lieu of Form 92800.5B.

*Agency form numbers, if applicable:* HUD–92800.5B.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 680. The number of respondents is 5,668, the number of responses is 5,668, the frequency of response is on occasion, and the burden hour per response is .12 hours.

*Status of the proposed information collection:* This is a revision of a current collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 23, 2010.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2010–24473 Filed 9–29–10; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLIDT000000.L11200000.DD0000.241A.00]**

### Notice of Public Meetings, Twin Falls District Resource Advisory Council, Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Public Meetings.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) subcommittee for the Jarbidge Draft Resource Management Plan (RMP) will meet as indicated below.

**DATES:** October 13 and 27, 2010; November 3 and 17, 2010; and December 1, 2010. The Twin Falls District RAC subcommittee members will meet at the Loong Hing Restaurant, 1719 Kimberly Road, Twin Falls, ID. On each date, the meeting will begin at 6 p.m., and the public comment period will take place from 6:15 to 6:45 p.m.

**FOR FURTHER INFORMATION CONTACT:** Heather Tiel-Nelson, BLM Twin Falls District Office, 2536 Kimberly Road, Twin Falls, Idaho 83301; (208) 736–2352.

**SUPPLEMENTARY INFORMATION:** The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The Jarbidge Draft RMP subcommittee will meet several times this fall to more thoroughly discuss different sections of the Jarbidge Draft RMP and bring the information back to the full RAC in January 2011. During the October 13th meeting, RAC subcommittee members will discuss the transportation and recreation sections of the Jarbidge Draft RMP; during the October 27th meeting, they will discuss grazing issues. On November 3rd they will discuss special designations; on November 17th they will discuss rights of way and land use authorizations. On December 1st they will prepare the information collected to submit to the full RAC in January. More information about the RAC is available at *http://www.blm.gov/id/st/en/res/resource_advisory.3.html.* The Jarbidge Draft RMP is available at *http://www.blm.gov/id/st/en/prog/planning/jarbidge_resource/Documents.html.* RAC meetings are open to the public. For further information about the meeting, please contact Heather Tiel-Nelson, Public Affairs Specialist for the BLM Twin Falls District at (208) 736–2352.

Dated: September 21, 2010.

**Bill Baker,**

*District Manager.*

[FR Doc. 2010–24481 Filed 9–29–10; 8:45 am]

BILLING CODE 4310–GG–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW146099]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW146099, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from U.S. Ore Corp. for the renewal of oil and gas lease WYW146099 for land in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW146099 effective June 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Julie L. Weaver,**

*Chief, Fluid Minerals Adjudication.*

[FR Doc. 2010–24574 Filed 9–29–10; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNMA01000.L14300000.FR0000; NMNM 109078]**

### Notice of Realty Action: Direct Sale of Public Lands in Santa Fe County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) has determined that 2.96 acres located in Santa Fe County, New Mexico, is suitable for direct sale to Edward Black pursuant to the Act of December 22, 1928, as amended, and an Interior Board of Land Appeals Settlement Agreement for the amount of $10,000. The sale is to resolve a class 1 Color-of-Title claim and will not be offered for sale until 60 days after the publication of this Notice. This parcel is identified for disposal in the BLM Taos Resource Management Plan, dated October 1988, as amended.

**DATES:** Interested parties may submit written comments to the BLM at the address stated below. To ensure consideration in the environmental analysis of the proposed sale, comments must be received by the BLM no later than November 15, 2010.

**ADDRESSES:** Written comments regarding the proposed sale should be addressed to the BLM Field Manager, Rio Puerco Field Office, 435 Montaño Road, NE., Albuquerque, New Mexico 87107.

**FOR FURTHER INFORMATION CONTACT:** Arlene Salazar, Realty Specialist, at the address above or by telephone at (505) 761–8772.

**SUPPLEMENTARY INFORMATION:**

**New Mexico Principal Meridian**

T. 12 N., R. 7 E.,
Fractional sec. 29, lot 10.

The area described contains 2.96 acres, more or less, in Santa Fe County.

Conveying title to the affected public land is consistent with BLM land-use planning. The land is not needed for other Federal purposes.

The patent, if and when issued, would be subject to the following terms, conditions, and reservations:

1. All minerals, including coal, will be reserved to the United States with the right to prospect for, mine, and remove the minerals;

2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

3. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law.

4. All geothermal steam and associated geothermal resources as to the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such resources, upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1970, as amended (30 U.S.C. 1002);

5. Subject to those rights for a road easement granted to the United States of America for the full use as a road by the United States of America and its assigns, licenses, and permittees including the right of access and use for and by the people of the United States of America generally to lands owned, administered, or controlled by the United States of America, by right-of-way to the BLM, No. NMNM–121904, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761), as defined in the BLM Plat entitled "Dependent Resurvey and Survey," approved on April 24, 2008, by Jay M. Innes, Acting Chief, Cadastral Surveyor for New Mexico; and

6. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands. Additional detailed information concerning this Notice of Realty Action, including environmental documents, is available for review at the address above.

On September 30, 2010, the land described above will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except for conveyance under the Federal Land and Policy Management Act and leasing under the mineral leasing laws. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously filed rights-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will end upon issuance of a patent or other document of conveyance, publication in the **Federal Register** of a termination of the segregation, or 2 years from the date of publication of this Notice, whichever occurs first, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public comments regarding the proposed sale may be submitted in writing to the attention of the BLM Rio Puerco—Manager (*see* **ADDRESSES** above) on or before November 15, 2010. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Authority:** 43 CFR 2711.1–2(a) and (c).

**Thomas E. Gow,**
*Field Manager, Rio Puerco Field Office.*

[FR Doc. 2010–24600 Filed 9–29–10; 8:45 am]

**BILLING CODE 4310–AG–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–680]**

### In the Matter of Certain Machine Vision Software, Machine Vision Systems, and Products Containing Same; Notice of Commission Decision To Review-In-Part A Final Initial Determination Finding No Violation of Section 337; Request for Written Submissions

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on July 16, 2009 based on a complaint filed on May 28, 2009, by Cognex Corporation of Natick, Massachusetts and Cognex Technology & Investment Corporation of Mountain View, California (collectively "complainants"). 74 FR 34589–90 (July 16, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain machine vision software, machine vision systems, or products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,016,539 ("the '539 patent); 7,065,262 ("the '262 patent"); and 6,959,112 ("the '112 patent"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

*The complaint named numerous respondents including the following:* Multitest Elektronische Systems GmbH of Germany and Multitest Electronic Systems, Inc. of Santa Clara, California (collectively, "Multitest respondents"); Yxlon International GmbH of Germany and Yxlon International, Inc. of Mogadore, Ohio (collectively, "Yxlon respondents"); Amistar Automation, Inc. ("Amistar") of San Marcos, California; Techno Soft Systemnics, Inc. ("Techno Soft") of Japan; Fuji Machine Manufacturing Co., Ltd. of Japan and Fuji America Corporation of Vernon Hills, Illinois (collectively, "Fuji respondents"); E. Zoller GmbH & Co. KG of Germany and Zoller, Inc. of Ann Arbor, Michigan (collectively, "Zoller respondents"); IDS Imaging Development Systems GmbH of Germany and IDS Development Systems, Inc. of Woburn, Massachusetts (collectively, "IDS respondents"); Delta Design, Inc. ("Delta") of Poway, California; Subtechnique, Inc. ("Subtechnique") of Alexandria, Virginia; Rasco GmbH ("Rasco") of Germany; MVTec Software GmbH of Germany and MVTec LLC of Cambridge, Massachusetts (collectively, "MVTech respondents"); Omron Corporation ("Omron") of Japan, Resolution Technology, Inc. ("Resolution") of Dublin, Ohio; Visics Corp. ("Visics") of Wellesley, Massachusetts; Daiichi Jitsugyo Viswill Co., Ltd. of Japan; and Daiichi Jitsugyo (America), Inc. of Wood Dale, Illinois (collectively, "Daiichi respondents").

On November 19, 2009, the Commission issued notice of its decisions not to review IDs terminating the investigation as to the Multitest respondents and the Yxlon respondents based on a consent order and settlement agreement. On February 16, 2010, the Commission issued notice of its decisions not to review IDs terminating the investigation as to Amistar based on a consent order and settlement agreement, and as to Techno Soft based on partial withdrawal of the complaint. On April 20, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to the Fuji respondents based on a settlement agreement. On May 5, 2010, the Commission issued notice of its decisions not to review IDs terminating the investigation as to the Multitest respondents based on a consent order and settlement agreement, and as to the Zoller respondents, the IDS respondents, and Delta based on partial withdrawal of the complaint. On June 11, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to Subtechnique based on a consent order. On June 18, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to Rasco based on a consent order and settlement agreement (notice of rescission and issuance of revised order on July 6, 2010).

The respondents remaining in the investigation include: MVTec respondents, Omron, Resolution, Visics, and the Daiichi respondents.

On April 9, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to the '112 patent on the basis of partial withdrawal of the complaint. On April 20, 2010, the Commission issued notice of its decision not to review an ID granting complainants' motion for summary determination on the economic prong of the domestic industry requirement with respect to the remaining asserted patents, the '539 and '262 patents. On May 18, 2010, the Commission issued notice of its decision not to review an ID granting complainants' motion for summary determination that the importation element under Section 337(a)(1)(B) has been satisfied as to the MVTech respondents, Omron, and the Daiichi respondents.

On July 16, 2010, the ALJ issued his final ID finding no violation of section 337 by the remaining respondents. He concluded that each accused product did not infringe any asserted claim of the '539 or '262 patents. Also, he found that claims 1, 12, 13, 28, and 29 of the '262 patent are anticipated under 35 U.S.C. 102. Further, he found that all asserted claims of both patents are invalid, pursuant to 35 U.S.C. 101, for failure to claim patent-eligible subject matter. On August 2, 2010, complainants, respondents, and the Commission investigative attorney each filed a petition for review of the final ID. Each party filed responses to the other parties' petitions on August 10, 2010.

Upon considering the parties' filings and the record, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the following: (1) Relating to the '539 patent, the ALJ's construction of the claim terms "test," "match score surface," and "gradient direction," all of his infringement findings except for the claim steps containing the limitations "locating local maxima" and "comparing the magnitude of each local maxima," and his invalidity and domestic industry findings; (2) the ALJ's finding that the '539 and '262 patents are invalid, pursuant to section 101, for failure to claim patent-eligible subject matter; and (3) the ALJ's findings concerning anticipation of claims 1, 12, 13, 28, and 29 of the '262 patent. The Commission has determined not to review the remainder of the ID.

On review, the parties are requested to submit briefing limited to the following issue:

How would adopting complainants' proposed construction for the claim terms "test," "match score surface," and "gradient direction" relating to the '539 patent affect the ID's infringement, domestic industry, and invalidity findings.

In addressing the issue, the parties are requested to make specific reference to the evidentiary record and to cite relevant authority. The written submissions must be filed no later than close of business on October 8, 2010. Reply submissions must be filed no later than the close of business on October 15. No further submissions on this issue will be permitted unless otherwise ordered by the Commission.

The authority for the Commission's determination is contained in section

337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42(h) and 210.43 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42(h), 210.43.

By order of the Commission.

Issued: September 24, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–24565 Filed 9–29–10; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–686]**

### In the Matter of Certain Bulk Welding Wire Containers and Components Thereof and Welding Wire; Notice of Commission Determination To Review-In-Part a Final Initial Determination and To Affirm the Finding of No Violation of Section 337; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review a portion of the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on July 29, 2010 finding no violation of section 337 in the above-captioned investigation, but to affirm his finding of no violation.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on September 8, 2009, based on a complaint filed by the Lincoln Electric Company of Cleveland, Ohio and Lincoln Global, Inc. of City of Industry, California (collectively, "Lincoln"). 74 FR 46223 (Sept. 8, 2009). The complaint alleged violations of Section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain bulk welding wire containers, components thereof, and welding wire by reason of infringement of certain claims of United States Patent Nos. 6,260,781; 6,648,141; 6,708,864 ("the '864 patent"); 6,913,145; 7,309,038; 7,398,881; and 7,410,111. *Id.* The amended complaint named the following respondents: Atlantic China Welding Consumables, Inc. of Sichuan, China ("Atlantic"); The ESAB Group, Inc. of Florence, South Carolina ("ESAB"); Hyundai Welding Co., Ltd. of Seoul, Korea ("Hyundai"); Kiswel Co., Ltd. of Seoul, Korea ("Kiswel"); and Sidergas SpA of Ambrogio (Verona), Italy ("Sidergas"). 74 FR 61706 (Nov. 25, 2009). Respondents Hyundai, Kiswel, and Atlantic were subsequently terminated from the investigation, leaving ESAB and Sidergas as the only respondents remaining. In addition, all but the '864 patent were terminated from this investigation.

On July 29, 2010, the ALJ issued a final ID finding no violation of Section 337 by respondents ESAB or Sidergas. The ALJ concluded that none of the accused ESAB and Sidergas products infringe asserted claims 3, 4, 6, 12, or 13 of the '864 patent. The ALJ further concluded that claim 3 of the '864 patent is invalid under 35 U.S.C. 102(b) and that claims 4, 6, 12, and 13 of the '864 patent are valid and enforceable. The ALJ did find that complainant satisfied both the technical and the economic prong of the domestic industry requirement with respect to the '864 patent. On August 11, 2010, Lincoln filed a petition for review. On the same day, respondents ESAB and Sidergas filed a consolidated petition for review. The IA did not file a petition for review.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to affirm the ALJ's determination that there is no violation of Section 337. Specifically, the Commission has determined to affirm the ALJ's determination that there is no literal infringement of the asserted claims. The Commission has also determined to affirm the ALJ's determination that there is no infringement of the asserted claims under the doctrine of equivalents based on (1) the ALJ's finding that substantial differences exist between the accused products and the asserted claims, and (2) the ALJ's application of *Johnson & Johnston Assoc. Inc.* v. *R.E. Services Co.,* 285 F.3d 1036 (Fed. Cir. 2002) (*en banc*). The Commission has determined to review the following four issues and to take no position on them: (1) The claim construction of the terms "substantially lying in a single plane" recited in independent claim 3 and "substantially in one plane" recited in independent claims 6 and 12; (2) the priority date of the asserted claims; (3) invalidity of claim 3 under 35 U.S.C. 102(b); and (4) validity of claims 4, 6, 12, and 13 under 35 U.S.C. 102(b). No other issues are being reviewed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42–46 and 210.50).

By order of the Commission.

Issued: September 24, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–24566 Filed 9–29–10; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2010–0040]**

### Concrete and Masonry Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Concrete and Masonry Construction (29 CFR part 1926, subpart Q).

**DATES:** Comments must be submitted (postmarked, sent, or received) by November 29, 2010.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0040, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number (OSHA–2010–0040) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The warning signs/barriers required by paragraph 1926.701(c)(2) reduce exposure of non-essential workers to the hazards of post-tensioning operations, principally a failed rope or wire striking a worker and causing serious injury. The requirements to lockout and tag ejection systems and other hazardous equipment (*e.g.,* compressors, mixers, screens or pumps used for concrete and masonry construction) specified by paragraphs 1926.702(a)(2), (j)(1), and (j)(2) warn equipment operators not to activate their equipment if another worker enters the equipment to perform a task (*e.g.,* cleaning, inspecting, maintenance, repairing); thereby preventing serious injury or death.

Construction contractors and workers use the drawings, plans, and designs required by paragraph 1926.703(a)(2), to provide specific instructions on how to construct, erect, brace, maintain, and remove shores and formwork if they pour concrete at the jobsite. Paragraph 1926.705(b) requires employers to mark the rated capacity of jacks and lifting units. This requirement prevents overloading and subsequent collapse of jacks and lifting units, as well as their loads, thereby sparing exposed workers from serious injury and death.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting an adjustment decrease of 3,485 burden hours (from 15,088 hours to 11,603 hours). The decrease is a result of the decreased number of construction worksites from 2.43 million to 725,199.

*Type of Review:* Extension of a currently approved collection.

*Title:* Concrete and Masonry Construction (29 CFR part 1926, subpart Q).

*OMB Number:* 1218–0095.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 145,040.

*Frequency:* On occasion.

*Average Time per Response:* Five minutes (.08 hour) to post or place warning signs, locks, or tags.

*Estimated Total Burden Hours:* 11,603.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0040). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office

at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

### V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC on September 27, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–24560 Filed 9–29–10; 8:45 am]

**BILLING CODE 4510–26–P**

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Proposed Extension of Information Collection Request Submitted for Public Comment; Affordable Care Act Enrollment Opportunity Notice Relating to Dependent Coverage; Affordable Care Act Grandfathered Health Plan Disclosure and Recordkeeping Requirement; Affordable Care Act Rescission Notice; Affordable Care Act Patient Protections Notice; Affordable Care Act Enrollment Opportunity Notice—Prohibition on Lifetime Limits

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection provisions of the regulations under the Patient Protection and Affordable Care Act (Affordable Care Act) that are discussed below. A copy of the information collection requests (ICRs) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

**DATES:** Written comments must be submitted to the office shown in the Addresses section on or before November 29, 2010.

**ADDRESSES:** G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of the information collection requests (ICRs) contained in the rules described below that relate to the Affordable Care Act. OMB approved the ICRs under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Enrollment Opportunity Notice Relating to Dependent Coverage.

*Type of Review:* Extension without change of a currently approved collection of information.

*OMB Number:* 1210–0139.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 2,800,000.

*Responses:* 79,573,000.

*Estimated Total Burden Hours:* 411,000.

*Estimated Total Burden Cost (Operating and Maintenance):* $1,233,500.

*Description:* Section 2714 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, and the Department's interim final regulation (29 CFR 2590.715–2714) require group health plans and health insurance insurers offering group or individual health insurance coverage that makes dependent coverage available for children to continue to make coverage available to such children until the attainment of age 26. Coverage does not have to be extended to children of a child receiving dependent coverage. For plan years beginning on or after September 23, 2010 and before January 1, 2014, a grandfathered group health plan is not required to offer coverage to a dependent child under 26 who is otherwise eligible for employer-sponsored insurance. For plans with initial years on or after January 1, 2014, the plan must offer coverage regardless of whether the dependent child is otherwise eligible for coverage through employer sponsored insurance.

Before the applicability date of PHS Act section 2714, an individual who was covered under a group health plan (or group health insurance coverage) as a dependent may have lost eligibility for coverage under the plan due to age before attaining age 26. Moreover, if a child was under age 26 when a parent first became eligible for coverage, but older than the age at which the plan stopped covering children, the child would not have become eligible for coverage. When the provisions of PHS Act section 2714 become applicable to the plan (or coverage), the plan or coverage can no longer exclude coverage for the individual until age 26.

Accordingly, the interim final regulation (29 CFR 2590.715–2714(f)) requires plans to provide a notice of an enrollment opportunity to individuals whose coverage ended, or who was denied coverage (or was not eligible for coverage) under a group health plan or group health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26. The Affordable Care Act dependent coverage enrollment opportunity notice is an

information collection request (ICR) subject to the PRA.

The enrollment opportunity must continue for at least 30 days, regardless of whether the plan or coverage offers an open enrollment period and regardless of when any open enrollment period might otherwise occur. This enrollment opportunity must be presented not later than the first day of the first plan year (or, in the individual market, policy year) beginning on or after September 23, 2010 (which is the applicability date of PHS Act sections 2714). Coverage must begin not later than the first day of the first plan year (or policy year in the individual market) beginning on or after September 23, 2010. The ICR currently is scheduled to expire on November 30, 2010.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Grandfathered Health Plan Disclosure and Recordkeeping Requirement.

*Type of Review:* Extension without change of a currently approved collection of information.

*OMB Number:* 1210–0140.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 2,200,000.

*Responses:* 56,347,000.

*Estimated Total Burden Hours:* 323,000.

*Estimated Total Burden Cost (Operating and Maintenance):* $437,000.

*Description:* Section 1251 of the Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. To maintain its status as a grandfathered health plan, the interim final regulations (29 CFR 2590.715–1251(a)(3)) require the plan to maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

The interim final regulations (29 CFR 2590.715–1251(a)(2)) also require a grandfathered health plan to include a statement in any plan material provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act, that being a grandfathered health plan means that the plan does not include certain consumer protections of the Affordable Care Act, and providing contact information for participants to direct questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status and to file complaints.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Advanced Notice of Rescission.

*Type of Review:* Extension without change of a currently approved collection of information.

*OMB Number:* 1210–0141.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 100.

*Responses:* 1,600.

*Estimated Total Burden Hours:* 26.

*Estimated Total Burden Cost (Operating and Maintenance):* $400.

*Description:* Section 2712 of the PHS Act, as added by the Affordable Care Act, and the Department's interim final regulation (26 CFR 54.9815–2712, 29 CFR 2590.715–2712, 45 CFR 147.2712) provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and these interim final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group or individual insurance market, or self-insured coverage. These rules also apply regardless of any contestability period of the plan or issuer.

PHS Act section 2712 adds a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under the interim final regulations, even if prior notice is provided, rescission is only permitted in cases of fraud or an intentional misrepresentation of a material fact as permitted under the cited provisions.

The interim final regulations provide that a group health plan, or a health insurance issuer offering group health insurance coverage, must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group. The ICR is schedule to expire on December 31, 2010.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Patient Protection Notice.

*Type of Review:* Extension without change of a currently approved collection of information.

*OMB Number:* 1210–0142.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 261,680.

*Responses:* 6,186,404.

*Estimated Total Burden Hours:* 33,000.

*Estimated Total Burden Cost (Operating and Maintenance):* $48,000.

*Description:* Section 2719A of the PHS Act, as added by the Affordable Care Act, and the Department's interim final regulation (29 CFR 2590.715–2719A) that if a group health plan, or a health insurance issuer offering group or individual health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer must permit each participant, beneficiary, or enrollee to designate any participating primary care provider who is available to accept the participant, beneficiary, or enrollee.

The statute and the interim final regulations impose a requirement for the designation of a pediatrician similar to the requirement for the designation of a primary care physician. Specifically, if a plan or issuer requires or provides for the designation of a participating primary care provider for a child by a participant, beneficiary, or enrollee, the plan or issuer must permit the designation of a physician (allopathic or osteopathic) who specializes in pediatrics as the child's primary care provider if the provider participates in the network of the plan or issuer.

The statute and the interim final regulations also provide that a group health plan, or a health insurance issuer may not require authorization or referral by the plan, issuer, or any person (including a primary care provider) for a female participant, beneficiary, or enrollee who seeks obstetrical or gynecological care provided by an in-network health care professional who specializes in obstetrics or gynecology.

When applicable, it is important that individuals enrolled in a plan or health insurance coverage know of their rights to (1) choose a primary care provider or a pediatrician when a plan or issuer requires participants or subscribers to designate a primary care physician; or (2) obtain obstetrical or gynecological care without prior authorization. Accordingly, paragraph (a)(4) of the interim final regulations requires such plans and issuers to provide a notice to participants (in the individual market, primary subscribers) of these rights when applicable. Model language is provided in the interim final regulations. The notice must be provided whenever the plan or issuer provides a participant with a summary plan description or other similar description of benefits under the plan or health insurance coverage, or in the individual market, provides a primary subscriber with a policy, certificate, or contract of health insurance. The ICR currently is scheduled to expire on December 31, 2010.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Enrollment Opportunity Notice—Prohibition on Lifetime Limits.

*Type of Review:* Extension without change of a currently approved collection of information.

*OMB Number:* 1210–0143.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 315.

*Responses:* 29,000.

*Estimated Total Burden Hours:* 1,300.

*Estimated Total Burden Cost (Operating and Maintenance):* $7,000.

*Description:* Section 2711 of the PHS Act, as added by the Affordable Care Act and the Department's interim final regulation (29 CFR 2590.715–2711) The Affordable Care Act dependent coverage enrollment opportunity notice is an information collection request (ICR) subject to the PRA. Before the applicability date of PHS Act section 2711, an individual may have met a lifetime limit under a group health plan or health insurance coverage and therefore lost coverage under the plan or coverage. When the provisions of PHS Act section 2711 become applicable to the plan (or coverage), the plan (or coverage) can no longer exclude coverage for the individual by operation of the lifetime limit.

Accordingly, the interim final regulations (29 CFR 2590.715–2800) require plans to provide a notice of an enrollment opportunity to an individual whose coverage ended due to reaching a lifetime limit on the dollar value of all benefits for any individual.

The enrollment opportunity must continue for at least 30 days, regardless of whether the plan or coverage offers an open enrollment period and regardless of when any open enrollment period might otherwise occur. This enrollment opportunity must be presented not later than the first day of the first plan year (or, in the individual market, policy year) beginning on or after September 23, 2010 (which is the applicability date of PHS Act sections 2714). Coverage must begin not later than the first day of the first plan year (or policy year in the individual market) beginning on or after September 23, 2010. The ICR currently is scheduled to expire on December 31, 2010.

### III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections 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 collections 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.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: September 28, 2010.

**Joseph S. Piacentini,**

*Director, Office of Policy and Research, Employee Benefits Security Administration.*

[FR Doc. 2010–24674 Filed 9–29–10; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (10–115)]**

## NASA Advisory Council; Science Committee; Earth Science Subcommittee; Applied Sciences Advisory Group Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Applied Science Advisory Group. This Subcommittee reports to the Earth Science Subcommittee Committee of the NASA Advisory Council. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

**DATES:** Thursday October 21, 2010, 8:30 a.m. to 5 p.m., and Friday, October 22, 2010, 8:30 a.m. to 1 p.m. Local Time.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW., Room 7H45–A and 3H46–A, respectively, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Meister, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–1557, fax (202) 358–4118, or *peter.g.meister@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Applied Sciences Program Update.
—Performance Measures Discussion.
—Report from Earth Science Subcommittee Meeting.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date);

employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Peter Meister via e-mail at *peter.g.meister@nasa.gov* or by telephone at (202) 358–1557.

Dated: September 24, 2010.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2010–24485 Filed 9–29–10; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2008–0497]**

## NRC Enforcement Policy Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement.

**SUMMARY:** The Nuclear Regulatory Commission (NRC or Commission) is publishing a major revision to its Enforcement Policy (Enforcement Policy or Policy) to clarify the use of terms and update the Policy, removing outdated information and adding information addressing enforcement issues in areas that are not currently directly addressed in the Policy.

**DATES:** This revision is effective on September 30, 2010. The NRC intends to solicit comments on this revised Policy approximately 18 months after the effective date.

**ADDRESSES:** *NRC's Agencywide Document 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.*

The NRC maintains the Enforcement Policy on its Web site at *http://www.nrc.gov;* select Public Meetings and Involvement, then Enforcement, and then Enforcement Policy. The Enforcement Policy is also accessible via ADAMS accession number ML093480037.

**FOR FURTHER INFORMATION CONTACT:** Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; *Doug.Starkey@nrc.gov,* 301–415–3456.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 25, 2007 (72 FR 3429), the NRC published a notice announcing that the NRC was undertaking a major revision of its Enforcement Policy. On September 15, 2008 (73 FR 53286), the NRC published a notice of availability of draft and request for comments on its proposed revised Policy. A corrected proposed revised Policy was published (73 FR 61442) on October 16, 2008. The public comment period for the revised Policy ended on November 14, 2008. On June 8, 2009 (74 FR 27191), the NRC published a notice of availability and request for comments on additional proposed revisions to Section 6.0, Supplements—Violation Examples, of the proposed revised Policy. The June 8, 2009, Notice of Availability and request for comments applied only to additional proposed revisions to Section 6.0 of the proposed revised Policy. The public comment period for the proposed revised Supplements ended on July 8, 2009.

As discussed in the Supplementary Information of the September 15, 2008 (73 FR 53286) document, the NRC, in developing the revised Policy, in many instances proposed to reword, delete, or move (*i.e.,* move to the NRC Enforcement Manual, an NRC staff guidance document) some of the information in the current Policy. In addition, the NRC had also planned to add detailed violation examples to the Enforcement Manual to serve as further guidance to NRC inspectors. However, based on public comments received in response to the September and October 2008 publications of the proposed revised Enforcement Policy, the NRC reconsidered its original plan to have abbreviated violation examples in the revised Policy and detailed violation examples in the Enforcement Manual. The NRC will continue its past practice of providing violation examples in the Enforcement Policy. These revised violation examples cover a broad range of circumstances in each of the four severity levels in each of 14 activity areas. Also, much of the material that the NRC had originally planned to remove from the revised Policy was subsequently retained based in part on comments received during the 2008 and 2009 public comment periods.

A summary of the comments and the NRC's responses associated with the 2008 and 2009 Notices are available at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Numbers ML091830260 and ML092650309, respectively).

### Summary of Major Revisions to the Enforcement Policy

*1. Revisions to Table of Base Civil Penalties*

Regulatory requirements have varying degrees of safety, security, or environmental significance. For that reason, the NRC imposes various base civil penalties depending on the specific circumstances. Section 8.0, Tables A and B, of the revised Enforcement Policy set forth the base civil penalties for various reactor, fuel cycle, material, and vendor programs. The NRC uses a graded approach in assessing civil penalties based on the severity level of the violation and on the class of licensee, vendor, or other person. Base civil penalties generally take into account the significance of a violation as the primary consideration, whereas the licensee's ability to pay is a secondary consideration. The NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties in Table A for Severity Level I, II, and III violations as reflected in Table B of the Enforcement Policy (*i.e.,* 100 percent for Severity Level I violations, 80 percent for Severity Level II violations, and 50 percent for Severity Level III violations). However, in no instance would a civil penalty for any one violation exceed the current statutory limit, which is presently capped at $140,000 per day per violation. In consideration of the above, the following revisions have been made to the Table of Base Civil Penalties:

a. Geologic Repository for Spent Fuel and/or High-Level Waste Repository

The Table of Base Civil Penalties in the current Enforcement Policy has no provisions that address a geologic repository. Therefore, the NRC is revising the civil penalty table in the revised Policy to include geologic repositories to ensure that, if the need arises, the NRC has the appropriate tools to take enforcement actions.

Based on the potential nuclear material inventory involved at a geologic repository and the corresponding safety consequences that could arise at the site (specifically to employees), the NRC determined that the statutorily allowed maximum base civil penalty for a Severity Level I violation is appropriate. In determining the base civil penalty that should be

applied to a geologic repository, the NRC also considered that the licensing criteria used in developing 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," and 10 CFR Part 63, "Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada," were comparable to the criteria applied to reactors and spent fuel facilities. The NRC has included this information in Table A of the revised Policy under the generic heading "High-Level Waste Repository" to address the possibility of any future engineered underground disposal facilities used for the storage of HLW.

b. Uranium Enrichment Facilities

The current Enforcement Policy only provides a base civil penalty for gaseous diffusion plants (GDPs) and does not address other enrichment facilities such as gas centrifuge or laser enrichment facilities. The NRC has issued licenses for two gas centrifuge uranium enrichment facilities with enrichment levels of up to 5 weight percent uranium-235 (U–235) and 10 weight percent U–235 and licensed a pilot laser enrichment facility. Currently, NRC is performing the licensing review for a third uranium enrichment facility with an enrichment level of 5 weight percent uranium-235. Therefore, the NRC believes that it is appropriate to provide a base civil penalty for these types of facilities at this time.

In developing a base civil penalty for uranium enrichment facilities, the staff compared the radiological, chemical hazards of licensed materials, criticality and security hazards of these facilities with both gaseous diffusion plants (GDPs) and Category III fuel fabricators and, through an overall comparison, provided an appropriate base civil penalty. Both enrichment facilities and Category III fuel fabricators have Category III special nuclear material (*i.e.,* these facilities are limited to enrichments of less than 20 percent of U–235 (special nuclear material of low strategic significance)). In addition, the radiological and chemical risks of gas centrifuge uranium enrichment facilities are considered very similar to Category III fuel fabricators. Therefore, the necessary physical protection and material control and accounting requirement (based on the category of facility) for uranium enrichment facilities are similar to those required for Category III fuel fabricators. For these reasons, the staff believes that the base civil penalty for Severity Level I violations at uranium enrichment facilities in Table A should be established at $35,000, the same as the amount already established for Category III fuel fabricators. For these reasons, the staff believes that the base civil penalty for Severity Level I violations at uranium enrichment facilities in Table A should be established at $35,000, the same as the amount already established for Category III fuel fabricators.

c. Uranium Conversion Facilities

The staff proposes to increase the base civil penalty for enforcement activities associated with uranium conversion facilities to $70,000 from the current amount of $14,000. Presently, the only operating uranium conversion plant in the United States is the Honeywell facility located in Metropolis, IL.

Currently, uranium conversion facilities are in the same base civil penalty category as test reactors and industrial radiographers with a base civil penalty amount of $14,000. The staff compared the radiological, chemical hazards of licensed materials, criticality hazards of a conversion facility to similar hazards at GDPs and Category III fuel fabricators and concluded that the radiological and chemical hazards at uranium conversion facilities are similar in comparison to those of GDPs. However, the criticality risk present at a GDP and Category III fuel fabricators is not a major risk factor at a uranium conversion facility.

The staff also considered the security implications associated with the operation of uranium conversion facilities as compared to the operation of GDPs and to Category III fuel fabricators. That comparison indicates that the security and safeguards measures necessary at a uranium conversion facility are similar to or less than those of Category III fuel fabricators and GDPs. However, because of the large number of potential chemical hazards associated with licensed materials and certain radiological hazards, protection against potential criminal activities is required to protect worker and public health and safety.

In comparison, the overall radiological hazards and chemical hazards associated with licensed materials for uranium conversion facilities are much more significant than those of test reactors and industrial radiographers and Category III fuel fabricators but less than those of GDPs. For these reasons, the staff believes that the base civil penalty for violations at uranium conversion facilities in Table A should be established at $70,000, which is the same amount established for fuel fabricators authorized to possess Category I or II quantities of special nuclear material.

*2. Other Major Revisions to the Enforcement Policy*

a. Interim Enforcement Policy Regarding the Use of Alternative Dispute Resolution

The Interim Enforcement Policy on the Use of Alternative Dispute Resolution (ADR) was established to set forth an interim Policy that the NRC would follow while undertaking a pilot program to test the use of ADR. Because the ADR pilot program has been successfully completed and the ADR program has since been fully implemented, the staff has revised the Policy statement on ADR to reflect this change.

b. Violation Examples

The violation examples have been reorganized and expanded from the 8 activity areas contained in the current Enforcement Policy to 14 activity areas in the revised Policy. These changes were made for clarification and ease of use; in other cases, the activity areas reflect changes made to NRC regulations. For example, the NRC rewrote the facility construction violation examples to include licensees under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," and fuel cycle facilities. Fuel cycle and materials operations were reorganized into separate activity areas. New activity areas were added for reactor and fuel facility security, materials security, information security, and fitness for duty.

c. Addition of a Glossary

A Glossary, containing many of the terms commonly used throughout the NRC enforcement process, has been added to the revised Policy.

d. Terminology Change

The revised Enforcement Policy includes a change to previous Policy Statement terminology that was published in the **Federal Register** on December 18, 2000 (65 FR 79139). Specifically, the NRC has replaced the term "sealed source or device" with the term "regulated material" both in the body of the revised Policy, Section 2.3.4, and in the Table of Base Civil Penalties, Table A, category f. The term "sealed" was deleted from this section since the same enforcement approach is used for both sealed and unsealed sources. The term "regulated material" captures all present and future NRC regulated material.

**Procedural Requirements**

**Paperwork Reduction Act**

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0136.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

**Congressional Review Act**

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs.

Dated at Rockville, MD, this 24th day of September 2010.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2010–24561 Filed 9–29–10; 8:45 am]

**BILLING CODE 7590–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62981; File No. SR–CBOE–2010–086]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Fees Schedule for the CBOE Stock Exchange

September 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2010, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify the Fees Schedule for its CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

CBSX proposes to adopt the Trading Permit Holder Application Fees that apply to CBOE. The purpose of the proposed rule change is to offset some of the expenses incurred by the Exchange in connection with CBSX Trading Permit Holder applicants and existing CBSX Trading Permit Holders. A description of the application fees is provided below.

The Individual Applicant Fee (Trading Permit Holder) is payable by a new individual applicant for Trading Permit Holder status on the Exchange. The applicant's Fingerprint Processing Fee is included as part of this fee. The New Trading Permit Holder Orientation & Exam Fee is payable by each applicant seeking Trading Permit Holder status, which requires a trading function.

The TPH Organization Application Fee (Corporation/Partnership/LLC) is payable by an applicant that desires to be a TPH organization on the Exchange. This fee encompasses the TPH Organization Application and related documentation, one Responsible Person's Orientation & Exam Fee and Fingerprint Fee associated with the TPH Organization Application, and Associated Person(s) Fees that are part of this TPH Organization Application.

The TPH Organization Renewal Fee (Corporation/Partnership/LLC) is payable by a former trading firm member or TPH organization that reapplies for Trading Permit Holder status within nine months of its Trading Permit Status termination date and becomes an effective TPH organization within one year of its Trading Permit Status termination date. This fee encompasses the TPH Organization Application and related documentation and one Responsible Person who is a former Responsible Person who reapplies within nine months of his termination date and becomes an effective Responsible Person within one year of his termination date.

The Associated Person Fee is payable for the addition of certain individuals on a TPH organization's Form BD. This fee includes the related Fingerprint Processing Fee. This fee is payable by each executive officer, general partner, or LLC Manager. Additionally, this fee is payable by each principal shareholder that has 5% or more direct ownership of a class of a voting security of a TPH organization corporation, limited partner who has the right to receive upon dissolution, or has contributed, 5% or more of the partnership's capital, and LLC member who has the right to receive upon dissolution, or has contributed, 5% or more of the LLC's capital. This fee is also payable by any person classified as a "Control Person" of the TPH organization.

The Fingerprint Processing Fee will be assessed for employees of Trading Permit Holders and any other individual requesting the Exchange to process a fingerprint, electronically or otherwise, excluding fingerprint requirements for Individual Applicants, individuals applying for Renewal/Change of Status, and Associated Persons.

The Renewal/Change of Status Fee is payable by a former individual Trading Permit Holder who reapplies for Trading Permit Holder status within nine months of his Trading Permit Holder status termination date and becomes an effective Trading Permit Holder within one year of his Trading Permit Holder status termination date. A former individual Trading Permit Holder or former individual member who reapplies for Trading Permit Holder status within nine months of termination from Trading Permit Holder status will be assessed the Renewal/Change of Status fee at the time of submission of the application. If that person becomes an effective Trading Permit Holder more than one year after his Trading Permit Holder status termination date, the person will then be charged an additional fee equal to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

difference between the Individual Application Fee and the Renewal/Change of Status fee. This Fee includes the related Fingerprint Processing Fee, if applicable.

The Trading Permit Transfer Fee is assessed to a Trading Permit Holder for each Trading Permit for which the Registration Services Department has received a request for transfer.

The Joint Account Application Fee is payable for each application to establish a new joint account. The Non-Trading Permit Holder Customer Business Fee is payable by applicant TPH organizations that plan to conduct a public customer business.

The Applicant/Trading Permit Holder/Associated Person Subject to Statutory Disqualification Fee is payable whenever a person or entity is subject to a statutory disqualification under the Securities Exchange Act of 1934 and: (i) Is an applicant for Trading Permit Holder status, (ii) is seeking to be an associated person of a Trading Permit Holder (except where the Exchange is merely asked to concur in an SEC Rule 19h–1 filing by another self regulatory organization), or (iii) is an existing Trading Permit Holder or associated person who makes an application in accordance with Rule 3.18(b) or with respect to whom a proceeding is initiated pursuant to Rule 3.18. This fee is in addition to any other Trading Permit-related fees that might be applicable.

The Fee for Change in Status that, if Approved, Would Require Amended or Additional SEC Rule 19h–1(c) Filing is payable whenever a person or entity, on whose behalf the Exchange has filed a Rule 19h–1(c) filing that has been approved by the SEC, applies for a change in status that requires the Exchange to file an amended or additional Rule 19h–1(c) filing, if the Exchange approves the requested change in status. This fee is in addition to any other Trading Permit-related fees that might be applicable.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[3] in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE and CBSX Trading Permit Holders and other persons using CBOE, CBSX and their facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–086 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–086. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–086 and should be submitted on or before October 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–24509 Filed 9–29–10; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62993, File No. SR–MSRB–2010–06]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish a Subscription To the Information Collected by the MSRB's Short-Term Obligation Rate Transparency ("SHORT") System

September 24, 2010.

**I. Introduction**

On August 10, 2010, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a subscription to the information collected by the MSRB's Short-term Obligation Rate Transparency ("SHORT") System. The proposed rule change was published for comment in the **Federal Register** on August 23, 2010.[3] The Commission received no comment letters about the proposed rule change. On September 16, 2010, the MSRB filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act[4] and Rule 19b–4 thereunder,[5] Amendment No. 1 to the proposed rule change.[6] This order approves the proposed rule change as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change, As Modified by Amendment No. 1 to the Proposed Rule Change

The SHORT System is a facility of the MSRB for the collection and dissemination of information about securities bearing interest at short-term rates. Currently, these securities consist of Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). The proposed rule change consists of a proposal to establish a subscription to the information collected by the SHORT System. The data stream subscription would be provided through a Web service and would be made available for an annual fee of $10,000.[7]

Information disseminated from the SHORT System also is posted to the MSRB's Electronic Municipal Market Access (EMMA) Web portal pursuant to the EMMA short-term obligation rate transparency service. Such information would be made available to subscribers simultaneously with the availability of such information to the EMMA Web portal. The subscription service would make the information collected by the SHORT System available to market participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining the information collected by the SHORT System and would make additional tools available for making well-informed investment decisions.

Data elements with respect to the SHORT subscription service that would be provided through the data stream would be set forth in the SHORT System Subscriber Manual posted on the MSRB Web site. The SHORT System Subscriber Manual would provide a complete, up-to-date listing of all data elements made available through the SHORT subscription service, including any additions, deletions or modifications to disseminated data elements, detailed definitions of each data element, specific data format information, and information about technical data elements to support transmission and data-integrity processes between the SHORT System and subscribers.

Subscriptions would be provided through computer-to-computer data streams utilizing XML files for data. Appropriate schemas and other technical specifications for accessing the Web services through which the data stream will be provided would be set forth in the SHORT System Subscriber Manual posted on the MSRB Web site.

The MSRB would make the SHORT subscription service available on an equal and non-discriminatory basis. Subscribers would be subject to all of the terms of the subscription agreement to be entered into between the MSRB and each subscriber, including proprietary rights of third parties in information provided by such third parties that is made available through the subscription. The MSRB would not be responsible for the content of the information submitted by submitters that is distributed to subscribers of the SHORT subscription service.

The MSRB has requested that the proposed rule change be made effective on September 30, 2010.

## III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB[8] and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act[9] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange Act requires, among other things, that the MSRB's rules be 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[10] In particular, the Commission believes that the SHORT subscription service would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The subscription service would make the information collected by the SHORT System available to market participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining the information collected by the SHORT System and would make additional tools available for making well-informed investment decisions. Broad access to the information collected by the SHORT System, in addition to the public access through the EMMA Web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about Auction Rate Securities and Variable Rate Demand Obligations.

Furthermore, broader re-dissemination and third-party use of the information collected by the SHORT System should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities (including any changes thereto).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62734 (August 17, 2010), 75 FR 51864 (the "original proposed rule change").

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] In Amendment No. 1, the MSRB partially amends the text of the original proposed rule change to correct a typographical error in the definition of the data element Liquidity Facility Type. In all other respects, the original proposed rule change remains as originally filed. This is a technical amendment and is not subject to notice and comment.

[7] The proposed subscription price would cover a portion of the administrative, technical and operating costs of the SHORT subscription service but would not cover all costs of such subscription service or of the SHORT System. The MSRB has proposed establishing the subscription price at a commercially reasonable level.

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o 4(b)(2)(C).

[10] *Id.*

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Exchange Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act [11] and the rules and regulations thereunder. The proposal will become effective on September 30, 2010, as requested by the MSRB.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[12] that the proposed rule change (SR–MSRB–2010–06), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–24510 Filed 9–29–10; 8:45 am]

**BILLING CODE 8010–01–P**

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 7190]**

### 60-Day Notice of Proposed Information Collection: Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division Survey Question Bank, OMB Control Number 1405–0158

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division Survey Question Bank.
- *OMB Control Number:* 1405–0158.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* New surveys with a 'SV-yyyy-####' tag will be created on an as needed basis.
- *Respondents:* Active exchange program participants or alumni of exchange programs conducted by ECA that are included in either performance measurement or evaluations studies.
- *Estimated Number of Respondents:* 6,000 annually.
- *Estimated Number of Responses:* 6,000 annually.
- *Average Hours Per Response:* 25 minutes.
- *Total Estimated Burden:* 2,500 hours annually.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

**DATES:** The Department will accept comments from the public up to 60 days from September 30, 2010.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail: SilverRS@state.gov* or *HaleMJ2@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* ECA/P/V, SA–5, 5th Floor, Department of State, Washington, DC 20522–0505.
- *Fax:* 202–632–6320.
- *Hand Delivery or Courier:* ECA/P/V, SA–5, 5th Floor, Department of State, 2200 C Street, NW., Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Michelle Hale, ECA/P/V, SA–5, C2 Floor, Department of State, Washington, DC 20522–0582, who may be reached on 202–632–6312 or at *HaleMJ2@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of Proposed Collection*

To meet OMB and Congressional reporting requirements, this request for a revised information collection clearance will allow ECA/P/V to continue to conduct surveys of exchange participants from various ECA exchange programs. Collecting this data will help ECA/P/V assess and measure programs' effectiveness and impact, as well as provide valuable feedback on the program from the participants' perspective. ECA/P/V will most frequently conduct data collections efforts via electronic surveys, but when necessary may also utilize paper surveys. The majority of respondents will include either active exchange program participants or alumni of exchange programs conducted by ECA that are included in either performance measurement or evaluations studies.

*Methodology*

Performance measurement and evaluation data will be collected primarily through electronic surveys, but may also be done via paper surveys when access to computers is not possible.

*Additional Information*

This revised clearance request is based on the previous ECA/P/V information collection which submitted a question bank of possible questions ECA/P/V might use in surveys. This is necessary since large portions of these surveys will share the same questions, and this collection will avoid duplicating work load. For this submission, the question bank has been further refined and edited based on anticipated collection of evaluation or performance measurement data during the next clearance period.

Dated: September 2, 2010.

**Rick Ruth,**

*Acting Chief of Staff, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2010–24591 Filed 9–29–10; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice: 7191]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Haremhab, The General Who Became King"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of

Authority No. 236–3 of August 28, 2000, I hereby determine that an object to be included in the exhibition "Haremhab, The General Who Became King," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about November 16, 2010, until on or about July 4, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including the object list, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 24, 2010.

**Ann Stock,**

*Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2010–24588 Filed 9–29–10; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 18, 2010

The following Applications for:

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2010–0235.

*Date Filed:* September 17, 2010.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 8, 2010.

*Description:* Application of Star Marianas Air, Inc. requesting authority to operate scheduled passenger service as a commuter air carrier.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 2010–24547 Filed 9–29–10; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

**[DOT Docket No. DOT–OST–2010–0074]**

### The Future of Aviation Advisory Committee (FAAC) Subcommittee on Financing; Notice of Meeting

**AGENCY:** U.S. Department of Transportation, Office of the Secretary of Transportation.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Transportation, Office of the Secretary of Transportation, announces a meeting of the FAAC Subcommittee on Financing, which will be held in the New Press Room, Denver International Airport, 8500 Peña Boulevard, Main Terminal, Level 6, Denver, Colorado 80249. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Subcommittee on Financing will address the need for a stable, secure, and sufficient level of funding for our aviation system and make recommendations to the Secretary for action. This is the fourth meeting of this subcommittee.

**DATES:** The meeting will be held on October 14, 2010, from 9 a.m. to 4 p.m. Mountain Daylight Time.

**ADDRESSES:** The meeting will be held in the New Press Room, Denver International Airport, 8500 Peña Boulevard, Main Terminal, Level 6, Denver, Colorado 80249.

*Public Access:* The meeting is open to the public. (*See* below for registration instructions.)

*Public Comments:* Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or Subcommittee on Financing should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.Regulations.Gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Subcommittee on Financing, the term "Finance" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its October 14, 2010, meeting, public comments must be filed by 5 p.m. Eastern Daylight Time on Thursday, October 7, 2010.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of an FAAC Subcommittee on Financing meeting taking place on October 14, 2010, from 9 a.m. to 4 p.m. Mountain Daylight Time, in the New Press Room, Denver International Airport, 8500 Peña Boulevard, Main Terminal, Level 6, Denver, Colorado 80249. The agenda includes continued discussion and analysis of areas of interest for making recommendations to the Secretary of Transportation.

#### Registration

The meeting room and teleconference can each accommodate up to 20 members of the public. Persons desiring to attend in person or via telephone must pre-register by October 7, 2010, through e-mail to *FAAC@dot.gov.* The term "Registration: Financing" should be listed in the subject line of the message, and in-person and teleconference admission will be limited to the first 20 persons to pre-register and receive a confirmation of their pre-registration. Call-in information will be provided to members of the public who register to participate in the teleconference. Minutes of the meeting will be taken and will be made available to the public.

#### Request for Special Accommodations

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on October 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** John Hennigan, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue, SW., Room 409, Washington, DC 20591; (202) 631–6644.

Issued in Washington, DC, on September 24, 2010.

**Pamela Hamilton-Powell,**

*Designated Federal Official, Future of Aviation Advisory Committee.*

[FR Doc. 2010–24539 Filed 9–29–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

**[DOT Docket No. DOT–OST–2010–0074]**

### The Future of Aviation Advisory Committee (FAAC) Subcommittee on Competitiveness and Viability; Notice of Meeting

**AGENCY:** U.S. Department of Transportation, Office of the Secretary of Transportation.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Transportation (DOT), Office of the Secretary of Transportation, announces the fourth meeting of the FAAC Subcommittee on Competitiveness and Viability, which will be held in Denver, Colorado. This notice provides details on the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Subcommittee on Competitiveness and Viability is charged with examining changes in the operating and competitive structures of the U.S. airline industry; considering innovative strategies to open up new international markets and expand commercial opportunities in existing markets; investigating strategies to encourage the development of cost-effective, cutting-edge technologies and equipment that are critical for a competitive industry coping with increasing economic and environmental challenges; and examining the adequacy of current Federal programs to address the availability of intermodal transportation options and alternatives, small and rural community access to the aviation transportation system, the role of State and local governments in contributing to such access, and how the changing competitive structure of the U.S. airline industry is likely to transform travel habits of small and rural communities.

**DATES:** The Subcommittee on Competitiveness and Viability meeting will be held on October 15, 2010, from 10 a.m. to 2:30 p.m. Mountain Daylight Time.

**ADDRESSES:** The meeting will be held in the New Press Room, Denver International Airport, 8500 Peña Boulevard, Main Terminal, Level 6, Denver, Colorado 80249.

*Public Access:* The meeting is open to the public. (*See* below for registration instructions.)

*Public Comments:* Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *www.regulations.gov*) or alternatively through e-mail at *FAAC@dot.gov.* If comments and suggestions are intended specifically for the Subcommittee on Competitiveness and Viability, the term "Competition" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its October 15, 2010, meeting, public comments must be filed by 5 p.m. Eastern Daylight Time Thursday, October 7, 2010.

**SUPPLEMENTARY INFORMATION:**

#### Agenda

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Subcommittee on Competitiveness and Viability of the Future of Aviation Advisory Committee taking place on October 15, 2010, at 10 a.m. to 2:30 p.m. Mountain Daylight Time, in the New Press Room, Denver International Airport, 8500 Peña Boulevard, Main Terminal, Level 6, Denver, Colorado 80249. The agenda includes—

1. Discussion of topics offered by subcommittee teams for referral to the FAAC on the subject of competitiveness and viability of the aviation industry,
2. Establishment of a plan and timeline for further work, and
3. Identification of priority issues for the next subcommittee meeting.

#### Registration

The meeting room can accommodate up to 35 members of the public. Persons desiring to attend must pre-register by October 7, 2010, through e-mail to *FAAC@dot.gov.* The term "Registration: Competition" should be listed in the subject line of the message, and admission will be limited to the first 35 persons to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for audio or video transmission or for oral statements or questions from the public at the meeting. Minutes of the meeting will be taken and will be made available to the public.

#### Request for Special Accommodations

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business Thursday, October 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** Todd Homan, Director, Office of Aviation Analysis, U.S. Department of Transportation; Room 86W–312, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–5903.

Issued in Washington, DC, on September 24, 2010.

**Pamela Hamilton-Powell,**

*Designated Federal Official, Future of Aviation Advisory Committee.*

[FR Doc. 2010–24540 Filed 9–29–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35423]**

### Freightcar Short Line, Inc.—Acquisition and Operation Exemption—Line of Cornhusker Railways, LLC

FreightCar Short Line, Inc. (FCSL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 5.00 miles of rail line (Line) owned by Cornhusker Railways, LLC (CHR).[1] The Line is located just west of Grand Island, Neb., extending between a connection with BNSF Railway Company (BNSF) at West Airport Road near BNSF milepost 103.55 in Ovina, Neb., and a connection with Union Pacific Railroad Company (UP) at County Road 27 near UP milepost 154.50 in Alda, Neb.[2]

[1] FreightCar Rail Services, LLC (FCRS), an affiliate of FCSL, has executed an Asset Purchase Agreement with CHR and CHR's parent for acquisition of the Line but is assigning its right to acquire and operate the Line to FCSL.

[2] Prior to 2005, the Line was private track associated with a U.S. Army ordinance plant. In 2004, the Line was acquired by DTE Rail Services, Inc. (DTERS), for use in the construction and operation of a railcar repair facility being developed on the site. In 2005, DTERS transferred the Line to its affiliate, CHR, to provide common carrier service for other potential shippers who might locate on the former Army site. *See Cornhusker Rys., LLC—Acq. and Oper. Exemp.—Rail Line of DTE Rail Services, Inc.,* FD 34719 (STB served July 20, 2005).

FCSL certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

The transaction is scheduled to be consummated on or after October 14, 2010, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to Docket No. FD 35423, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, 29 North Wacker Drive, Suite 920, Chicago, Ill. 60606.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 27, 2010.

By the Board.

**Rachel D. Campbell,**

*Director, Office of Proceedings.*

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2010–24583 Filed 9–29–10; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advisory Circular 120–79A, Developing and Implementing an Air Carrier Continuing Analysis and Surveillance System

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of Availability.

**SUMMARY:** This notice announces the issuance and availability of Advisory Circular (AC) 120–79A, "Developing and Implementing an Air Carrier Continuing Analysis and Surveillance System". This new advisory circular (AC) updates AC 120–79 originally issued on April 21, 2003. This new AC provides information on methods of developing and implementing a Continuing Analysis and Surveillance System (CASS) required for commercial operators and air carriers certificated under Title 14 of the Code of Federal Regulations (14 CFR) part 119 and conducting operations under either 14 CFR part 121 or 135. A CASS is a system that air carriers and commercial operators use to monitor, analyze, and optimize the performance and effectiveness of their air carrier maintenance programs.

**DATES:** The Office of the Director, Flight Standards Service, AFS–1 issued Advisory Circular 120–79A, Developing and Implementing an Air Carrier Continuing Analysis and Surveillance System on September 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** Russell S. Unangst, Jr., Technical Advisor, Airworthiness, AFS–305, Federal Aviation Administration, Aircraft Maintenance Division, Flight Standards Service, 125B Summer Lake Drive, West Columbia, SC 29170; telephone (803) 451–2666; facsimile (803) 253–3999, e-mail *russell.unangst@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*How To Obtain Copies:* You can read or download this AC from the Internet at *http://rgl.faa.gov* or *http://www.faa.gov/regulations_policies/advisory_circulars/* under the "Advisory Circular" hyperlink. In approximately 6–8 weeks from the date of issuance, you may obtain paper copies of this AC from the U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785. Telephone: 301–322–4961. Fax: 301–386–5394.

You can also order paper copies of this publication from DOT's On Line Publications Web site at *http://isddc.dot.gov.*

Issued in Washington, DC on September 24, 2010.

**Steven W. Douglas,**

*Deputy Division Manager, Aircraft Maintenance Division, Flight Standards Service.*

[FR Doc. 2010–24542 Filed 9–29–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; Renewal

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Renewal.

**SUMMARY:** Pursuant to section 14 (a) (2) (A) of the Federal Advisory Committee Act, and in accordance with section 102–3.65, title 41 of the Code of Federal Regulations, the FAA gives notice it has renewed the Aviation Rulemaking Advisory Committee (ARAC) for a 2-year period beginning September 17, 2010. The Committee's primary purpose is to provide the public with an earlier opportunity to participate in the FAA's rulemaking process. It will continue to operate in accordance with the rules of the Federal Advisory Committee Act and the Department of Transportation Order 1120.3B, Committee Management Policy and Procedures.

For further information about the ARAC, please contact Ms. Renee Butner, FAA Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–5093.

Issued in Washington, DC, on September 24, 2010.

**Pamela A. Hamilton-Powell,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 2010–24538 Filed 9–29–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Extension for the Comment Period

**AGENCY:** Federal Highway Administration, DOT.

**ACTION:** Notice of time extension.

**SUMMARY:** The Federal Highway Administration wishes to announce a 45 day extension for the Comment period on the Draft Environmental Impact Statement (EIS) for the I–5 North Coast Corridor (I–5NCC) Project. The present closing day for comments is October 2, 2010. This additional period would extend the comment period to November 22, 2010.

This project is 27 miles in length through 6 lagoons and six cities within the Coastal Zone. This is a large complex document that incorporates extensive technical studies within this environmentally sensitive corridor.

**FOR FURTHER INFORMATION CONTACT:**

Cesar E. Perez, Senior Transportation Engineer, Federal Highway Administration, California Division, 650 Capitol Mall, Rm. 4–100, Sacramento, CA 95747, (916) 498–5065, *Cesar.perez@dot.gov.*

Shay Lynn Harrison, Chief, Environmental Analysis Branch C, 4050 Taylor St., San Diego, CA 92110, (619) 688–0190, *Shay.Lynn.Harrison@dot.ca.gov.*

Issued on: September 23, 2010.

**Cindy Vigue,**

*Director, State Programs, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2010–24469 Filed 9–29–10; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No. FTA–2010–0034]**

# Notice of Proposed Guidance and Request for Comment on the Federal Transit Administration's Research, Technical Assistance, and Training Programs: Application Instructions and Program Management Guidelines (FTA Circular 6100.1D)

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of proposed guidance and request for comment.

**SUMMARY:** This notice proposes guidance in the form of a revised circular on the Federal Transit Administration's research, technical assistance, and training programs and seeks comment thereon. Proposed FTA Circular 6100.1D, "Research, Technical Assistance, and Training Programs: Application Instructions and Program Management Guidelines," modifies FTA's existing FTA Circular 6100.1C, "Transit Research and Technology Programs: Application Instructions and Program Management Guidelines" to reflect current policy and new FTA programs, restructures the circular, and clarifies FTA's requirements and processes.

**DATES:** Comments must be received by November 29, 2010. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You must include the agency name (Federal Transit Administration) and the docket number (FTA–2010–0034) with your comments. To ensure your comments are not entered into the docket more than once, please submit comments, identified by the docket number (FTA–2010–0034) by only one of the following methods:

1. *Web site:* The U.S. Government electronic docket site is *http://www.regulations.gov.* Go to this Web site and follow the instructions for submitting comments into docket number FTA–2010–0034;

2. *Fax:* Telefax comments to 202–493–2251;

3. *Mail:* Mail your comments to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590; or

4. *Hand Delivery:* Bring your comments to the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions for submitting comments:* You must include the agency name (Federal Transit Administration) and Docket number (FTA–2010–0034) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. For confirmation that FTA has received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided, and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.*

*Docket:* For Internet access to the docket to read background documents and comments received, go to *http://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program questions, please contact MaryAnne Polkiewicz at (202) 366–0203 or *maryanne.polkiewicz@dot.gov.* For legal questions, please contact Linda Sorkin at 202–366–0959 or *linda.sorkin@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

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I. Overview
II. Chapter-by-Chapter Analysis
A. Chapter I—Introduction and Background
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C. Chapter II—Application Instructions
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F. Chapter VI—Financial Management
G. Appendices

## I. Overview

The bulk of this proposed circular consists of restructuring of the 2003 edition of FTA Circular 6100.1C coupled with updates of Federal statutory and regulatory citations, to reflect current policy and new FTA programs; and clarify FTA's requirements and processes.

FTA seeks comments on the proposed circular, in particular those portions of the circular reflecting new guidance, policies, or interpretations. Comments received will be considered by FTA when it develops its final FTA Circular 6100.1D. FTA will reply to comments received in response to this notice in a second **Federal Register** notice to be published after the close of the comment period. The second notice will announce the availability of and the effective date of the final FTA Circular 6100.1D, which final circular will reflect the changes FTA implemented as a result of the comments received in response to this **Federal Register** notice.

## II. Chapter-by-Chapter Analysis

### *A. Chapter I—Introduction and Background*

The first four sections of this chapter are a general introduction to FTA that is proposed to be included in all new and revised program circulars for the orientation of readers new to FTA programs. Section 5 of this chapter sets forth definitions of terms appearing in the proposed circular to ensure a common understanding of terms.

### *B. Chapter II—Program Overview*

Sections 1 and 2 describe the statutory authority and nature of the national research programs and activities for which this circular applies. Section 3 clarifies the project management roles and responsibilities of the recipient and FTA. Section 4 describes civil rights requirements, and Section 5 notes that Federal cross-cutting requirements will apply to these projects.

### *C. Chapter III—Application Instructions*

Chapter III describes application instructions including the use of the Web-based Transportation Electronic Award and Management (TEAM system), the development of pre-applications or white papers, the development of formal applications including project budgets and statements of work, and other application requirements. Section 6 describes how FTA may request recipients to participate in Peer Review of applications.

### *D. Chapter IV—Project Administration*

Chapter IV describes project administration requirements. Section 3 describes project identification requirements on all equipment, hardware, construction, reports, data or any similar items produced in the course of the project. Section 4 describes reporting requirements, clarifying that all recipients must submit quarterly Federal Financial Reports (FFR) and Milestone Progress Reports (MPR) in TEAM and clarifies

the development of Quarterly Narrative Reports. Section 4 also updates guidelines on the Final Report and other major technical report development and clarifies the requirements for electronic copies. Section 4 also clarifies that all FTA-sponsored reports, not just the Final Report, must contain an identification notice acknowledging FTA sponsorship. Section 5 clarifies prior approval requirements and procedures for obtaining prior approval. It clarifies prior approval requirements for transfers of financial assistance between cost categories and permits prior approvals to be requested and granted electronically by authorized officials. Section 6 describes project modifications including budget revisions and amendments. Sections 7, 8, and 9 describe recipient responsibilities for equipment, intangible property, and supplies. Section 10 clarifies the recipient's third party procurement responsibilities. Section 11 describes project close-out procedures. Sections 12 and 13 describe suspension and termination procedures. Section 14 describes responsibilities for record retention.

*E. Chapter V—FTA Oversight*

Section 1 is a general description of FTA's oversight program. Section 2 describes FTA's Oversight Programs that FTA may undertake. Section 3 describes the types of reviews that may apply to the FTA recipient or its projects. Section 3 describes the peer review process FTA may request recipients to participate in.

*F. Chapter VI—Financial Management*

Sections 2–6 describe the proper use and management of Federal assistance including internal controls, non-Federal matching share, the applicable Federal cost principles, indirect costs, and program income. Section 7 describes the single annual audit requirements and describes when these may be extended to for-profit organizations. Section 8 clarifies payment procedures requiring all recipients to make requests using the Request of Advance or Reimbursement Standard Form 270 (SF–270), as is current practice.

*G. Appendices*

Appendix A lists all FTA circulars.

Appendix B provides an example of a Progress Report.

Appendix C describes requirements for developing a Cost Allocation Plan.

Appendix D provides instructions for submitting the Request of Advance or Reimbursement (SF–270).

Appendix E provides FTA regional and metropolitan contact information.

Appendix F is the Subject and Location index.

Issued this 24th day of September 2010.

**Peter Rogoff,**

*Administrator.*

[FR Doc. 2010–24567 Filed 9–29–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighteenth Plenary Meeting: RTCA Special Committee 203: Unmanned Aircraft Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 203: Unmanned Aircraft Systems.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203: Unmanned Aircraft Systems.

**DATES:** The meeting will be held October 19–21, 2010 at 9 a.m. to 5 p.m. (Unless stated otherwise).

**ADDRESSES:** The meeting will be held at the RTCA Conference Rooms, 1828 L Street, NW., 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 Special Committee 203: Unmanned Aircraft Systems meeting. The agenda will include:

**Tuesday, October 19**

- 9 a.m.—Morning Opening Plenary Session.
- Introductory Remarks and Introductions.
- Approval of 17th Plenary Summary held.
- Plenary Presentations
  - Chairperson/Leadership Updates.
  - Designated Federal Official (DFO) Update.
  - Work Plan Status.
  - Work Group Update.
  - Overview of Product Team Breakout Session.
  - RTCA Workspace Web Tool.
  - Closing Plenary Session.
  - Plenary Adjourns until the Closing Session on Thursday.
- Mid-morning/Afternoon.—Work Group Breakout Sessions
  - Systems Engineering Workgroup.
  - Control and Communications Workgroup.
  - Sense and Avoid Workgroup.

**Wednesday, October 20th**

- All Day—Work Group Breakout Sessions:
  - Systems Engineering Workgroup.
  - Control and Communications Workgroup.
  - Sense and Avoid Workgroup.

**Thursday, October 21st**

- Morning—Workgroup Breakout Sessions
  - Systems Engineering Workgroup.
  - Control and Communications Workgroup.
  - Sense and Avoid Workgroup.
- Mid-Morning/Afternoon—Closing Plenary Session
  - Workgroup Back Briefs.
  - Other Business.
  - Date, Place, and Time for next Plenary.
  - Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 22, 2010.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2010–24544 Filed 9–29–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Airport Property at Monroe Regional Airport, Monroe, LA

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Request for Public Comment.

**SUMMARY:** The FAA proposes to rule and invites public comment on the release of land at Monroe Regional Airport under the provisions of Title 49, U.S.C. Section 47153(c).

**DATES:** Comments must be received on or before November 1, 2010.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, LA/NM

Airports Development Office, ASW–640, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mayor James E. Mayo at the following address:

Office of the Mayor, P.O. Box 123, Monroe, LA 71210.

**FOR FURTHER INFORMATION CONTACT:** Lacey D. Spriggs, Manager, Federal Aviation Administration, LA/NM Airports Development Office, ASW–640, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0640.

The request to release property may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release property at the Monroe Regional Airport.

On September 20, 2010, the FAA determined that the request to release property at Monroe Regional Airport submitted by the City of Monroe met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than November 15, 2010.

The following is a brief overview of the request:

The City of Monroe, Louisiana requests the release of 1.643 acres of airport property. The release of property will allow for construction of a new facility for office space and warehouse for JAF Properties, LP to proceed. The sale is estimated to provide $45,200.00 whereas the proceeds will be used to continue the Bermuda Release Program and used to upgrade and expand the security camera system to include more of the Security Passenger Holding area as well as cameras for airfield surveillance.

Any person may inspect the request in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**."

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe Regional Airport, Monroe, Louisiana.

Issued in Fort Worth, Texas on September 21, 2010.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

[FR Doc. 2010–24541 Filed 9–29–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 1069X]**

### Kern Valley Railroad Company—Termination of Trackage Rights—in Las Animas County, CO

On September 10, 2010, Kern Valley Railroad Company (KVR) filed with the Board a petition for exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903 to terminate the grant of trackage rights held by BNSF Railway Company (BNSF) to operate over KVR's 2-mile Jansen Yard Segment between milepost 0.0 and milepost 2.0 in Jansen, Las Animas County, Colo. (the line). The line traverses United States Postal Service Zip Code 81082 and includes no stations.

The line, to KVR's knowledge, does not contain federally granted rights-of-way. Any documentation in KVR's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b).[1] A final decision will be issued by December 29, 2010.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[2]

All filings in response to this notice must refer to Docket No. AB 1069X and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and (2) KVR's representative, Fritz R. Kahn, Esq., Fritz R. Kahn, P.C., 1920 N Street, NW. (8th floor), Washington, DC 20036. Replies to the petition are due on or before October 20, 2010.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 27, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2010–24596 Filed 9–29–10; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The petition seeks termination of trackage rights held by BNSF, which is not a party to this proceeding. The Board will address in a separate decision whether a petition for exemption is appropriate in this context.

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8847

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8847, Credit for Contributions to Selected Community Development Corporations.

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Credit for Contributions to Selected Community Development Corporations.

*OMB Number:* 1545–1416.

*Form Number:* Form 8847.

*Abstract:* Internal Revenue Code section 38 allows a credit for contributions to selected community development corporations as part of the general business credit. Form 8847 is used to compute the amount of the credit for qualified contributions to a selected community development corporation.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 22.

*Estimated Time per Respondent:* 1 hr., 52 min.

*Estimated Total Annual Burden Hours:* 41.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 24, 2010.

**Gerald Shields,**

*Supervisory Tax Analyst.*

[FR Doc. 2010–24501 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

## FEDERAL RESERVE SYSTEM

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Joint notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

**DATES:** Comments must be submitted on or before November 29, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

*OCC:* You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

*Board:* You may submit comments, which should refer to "Consolidated Reports of Condition and Income (FFIEC 031 and 041)," by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include reporting form number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 3064–0052," by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov*. Include "Consolidated Reports of

Condition and Income, 3064–0052" in the subject line of the message.

• *Mail:* Gary A. Kuiper, (202) 898–3877, Counsel, Attn: Comments, Room F–1072, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

*OCC:* Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

*FDIC:* Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The agencies are proposing to revise and extend for three years the Call Report, which is currently an approved collection of information for each agency.

*Report Title:* Consolidated Reports of Condition and Income (Call Report).

*Form Number:* Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

*Frequency of Response:* Quarterly.

*Affected Public:* Business or other for-profit.

**OCC**

*OMB Number:* 1557–0081.

*Estimated Number of Respondents:* 1,491 national banks.

*Estimated Time per Response:* 53.78 burden hours.

*Estimated Total Annual Burden:* 320,744 burden hours.

**Board**

*OMB Number:* 7100–0036.

*Estimated Number of Respondents:* 841 state member banks.

*Estimated Time per Response:* 55.87 burden hours.

*Estimated Total Annual Burden:* 187,947 burden hours.

**FDIC**

*OMB Number:* 3064–0052.

*Estimated Number of Respondents:* 4,800 insured state nonmember banks.

*Estimated Time per Response:* 40.83 burden hours.

*Estimated Total Annual Burden:* 783,936 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 17 to 665 hours per quarter, depending on an individual institution's circumstances.

**General Description of Reports**

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). At present, except for selected data items, these information collections are not given confidential treatment.

**Abstract**

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data are also used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

**Current Actions**

**I. Overview**

The agencies are proposing to implement a number of changes to the Call Report requirements effective March 31, 2011. These changes, which are discussed in detail in Sections II.A through II.L of this notice, are intended to provide data needed for reasons of safety and soundness or other public purposes. The proposed revisions would assist the agencies in gaining a better understanding of banks' credit and liquidity risk exposures, primarily through enhanced data on lending and securitization activities and sources of deposits. The banking agencies are also proposing certain revisions to the Call Report instructions. The proposed changes include:

• A breakdown by loan category of the existing Memorandum items for "Other loans and leases" that are troubled debt restructurings and are past due 30 days or more or in nonaccrual status (in Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets) or are in compliance with their modified terms (in Schedule RC–C, part I, Loans and Leases) as well as the elimination of the exclusion from reporting restructured troubled consumer loans in these Memorandum items;

• A breakdown of "Other consumer loans" into automobile loans and all other consumer loans in the Call Report schedules in which loan data are reported: Schedule RC–C, part I, Loans and Leases; Schedule RC–K, Quarterly Averages; Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets; Schedule RI, Income Statement; and Schedule RI–B, part I, Charge-offs and Recoveries on Loans and Leases;

• A breakdown of the existing items for commercial mortgage-backed securities between those issued or guaranteed by U.S. Government agencies and sponsored-agencies and those that are not in Schedule RC–B, Securities, and Schedule RC–D, Trading Assets and Liabilities;

• A new Memorandum item for the estimated amount of nonbrokered deposits obtained through the use of

deposit listing service companies in Schedule RC–E, Deposit Liabilities;

• A breakdown of the existing items for deposits of individuals, partnerships, and corporations between deposits of individuals and deposits of partnerships and corporations in Schedule RC–E, Deposit Liabilities;

• A new Schedule RC–V, Variable Interest Entities, for reporting the categories of assets of consolidated variable interest entities (VIEs) that can be used only to settle the VIEs' obligations, the categories of liabilities of consolidated VIEs without recourse to the bank's general credit, and the total assets and total liabilities of other consolidated VIEs included in the bank's total assets and total liabilities, with these data reported separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs;

• Breakdowns of the existing items for loans and other real estate owned (OREO) covered by FDIC loss-sharing agreements by loan and OREO category in Schedule RC–M, Memoranda, along with a breakdown of the existing items in Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets for reporting past due and nonaccrual U.S. Government-guaranteed loans to segregate those covered by FDIC loss-sharing agreements (which would be reported by loan category) from other guaranteed loans;

• A breakdown of the existing item for "Life insurance assets" in Schedule RC–F, Other Assets, into items for general account and separate account life insurance assets;

• New items for the total assets of captive insurance and reinsurance subsidiaries in Schedule RC–M, Memoranda;

• New Memorandum items in Schedule RI, Income Statement, for credit valuation adjustments and debit valuation adjustments included in trading revenues for banks with total assets of $100 billion or more;

• A change in reporting frequency from annual to quarterly for the data reported in Schedule RC–T, Fiduciary and Related Services, on collective investment funds and common trust funds for those banks that currently report fiduciary assets and income quarterly, *i.e.,* banks with fiduciary assets greater than $250 million or gross fiduciary income greater than 10 percent of bank revenue; and

• Instructional revisions addressing the reporting of construction loans following the completion of construction in Schedule RC–C, part I, Loans and Leases, and other schedules that collect loan data; incorporating residential mortgages held for trading within the scope of Schedule RC–P, 1–4 Family Residential Mortgage Banking Activities; and revising the treatment of assets and liabilities whose interest rates have reached contractual ceilings or floors for purposes of reporting maturity and repricing data in Schedule RC–B, Securities, Schedule RC–C, part I, Loans and Leases, Schedule RC–E, Deposit Liabilities, and Schedule RC–M, Memoranda.

For the March 31, 2011, report date, banks may provide reasonable estimates for any new or revised Call Report item initially required to be reported as of that date for which the requested information is not readily available. The specific wording of the captions for the new or revised Call Report data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

*Type of Review:* Revision and extension of currently approved collections.

## II. Discussion of Proposed Call Report Revisions

### *A. Troubled Debt Restructurings*

The banking agencies are proposing that banks report additional detail on loans that have undergone troubled debt restructurings in Call Report Schedule RC–C, part I, Loans and Leases, and Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. More specifically, Schedule RC–C, part I, Memorandum item 1.b, "Other loans and all leases" that are restructured and in compliance with modified terms, and Schedule RC–N, Memorandum item 1.b, Restructured "Other loans and all leases" that are past due or in nonaccrual status and included in Schedule RC–N, would be broken out to provide information on restructured troubled loans for many of the loan categories reported in the bodies of Schedule RC–C, part I, and Schedule RC–N. The breakout would also include "Loans to individuals for household, family, and other personal expenditures" whose terms have been modified in troubled debt restructurings, which are currently excluded from the reporting of troubled debt restructurings in the Call Report.

In the aggregate, troubled debt restructurings for all insured institutions have grown from $6.9 billion at year-end 2007, to $24.0 billion at year-end 2008, to $58.1 billion at year-end 2009, with a further increase to $64.0 billion as of March 31, 2010. The proposed additional detail on troubled debt restructurings in Schedules RC–C, part I, and RC–N would enable the agencies to better understand the level of restructuring activity at banks, the categories of loans involved in this activity, and, therefore, whether banks are working with their borrowers to modify and restructure loans. In particular, to encourage banks to work constructively with their commercial borrowers, the agencies recently issued guidance on commercial real estate loan workouts and small business lending. While this guidance has explained the agencies' expectations for prudent workouts, the agencies and the industry would benefit from additional reliable data outside of the examination process to assess restructuring activity for commercial real estate loans and commercial and industrial loans. Further, it is important to separately identify commercial real estate loan restructurings from commercial and industrial loan restructurings given that the value of the real estate collateral is a consideration in a bank's decision to modify the terms of a commercial real estate loan in a troubled debt restructuring, but such collateral protection would normally be absent from commercial and industrial loans for which a loan modification is being explored because of borrowers' financial difficulties.

It is also anticipated that other loan categories will experience continued workout activity in the coming months given that most asset classes have been adversely impacted by the recent recession. This impact is evidenced by the increase in past due and nonaccrual assets across virtually all asset classes over the past two to three years.

Presently, banks report loans and leases restructured and in compliance with their modified terms (Schedule RC–C, part I, Memorandum item 1) with separate disclosure of (a) loans secured by 1–4 family residential properties (in domestic offices) and (b) other loans and all leases (excluding loans to individuals for household, family, and other personal expenditures). This same breakout is reflected in Schedule RC–N, Memorandum item 1, for past due and nonaccrual restructured troubled loans. The broad category of "other loans" in Schedule RC–C, part I, Memorandum item 1.b, and Schedule RC–N, Memorandum item 1.b, does not permit an adequate analysis of troubled debt restructurings. In addition, the disclosure requirements for troubled debt restructurings under generally accepted accounting principles do not exempt restructurings of loans to individuals for household, family, and other personal expenditures. Therefore, if the Call Report added more detail to match the reporting of loans in

Schedule RC–C, part I, and Schedule RC–N, the new data would provide the banking agencies with the level of information necessary to assess banks' troubled debt restructurings to the same extent that other loan quality and performance indicators can be assessed. However, the agencies note that, under generally accepted accounting principles, troubled debt restructurings do not include changes in lease agreements [1] and they therefore propose to exclude leases from Schedule RC–C, part I, Memorandum item 1, and from Schedule RC–N, Memorandum item 1.

Thus, the banking agencies' proposed breakdowns of existing Memorandum item 1.b in both Schedule RC–C, part I, and Schedule RC–N would create new Memorandum items in both schedules covering troubled debt restructurings of "1–4 family residential construction loans," "Other construction loans and all land development and other land loans," loans "Secured by multifamily (5 or more) residential properties," "Loans secured by owner-occupied nonfarm nonresidential properties," "Loans secured by other nonfarm nonresidential properties," "Commercial and industrial loans," and "All other loans (including loans to individuals for household, family, and other personal expenditures)." [2] If restructured loans in any category of loans (as defined in Schedule RC–C, part I) included in restructured "All other loans" exceeds 10 percent of the amount of restructured "All other loans," the amount of restructured loans in this category or categories must be itemized and described.

Finally, Schedule RC–C, part I, Memorandum item 1, and Schedule RC–N, Memorandum item 1, are intended to capture data on loans that have undergone troubled debt restructurings as that term is defined in generally accepted accounting principles. However, the captions of these two Memorandum items include only the term "restructured" rather than explicitly mentioning troubled debt restructurings, which has led to questions about the scope of these Memorandum items. Accordingly, the agencies propose to revise the captions so that they clearly indicate that the loans to be reported in Schedule RC–C, part I, Memorandum item 1, and Schedule RC–N, Memorandum item 1, are troubled debt restructurings.

*B. Auto Loans*

The banking agencies are proposing to add a breakdown of the "other consumer loans" loan category in five Call Report schedules in order to separately collect information on auto loans. The affected schedules would be Schedule RC–C, part I, Loans and Leases; Schedule RC–K, Quarterly Averages; Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets; Schedule RI, Income Statement; and Schedule RI–B, part I, Charge-offs and Recoveries on Loans and Leases. Auto loans would include loans arising from retail sales of passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use. This new loan category would exclude loans to finance fleet sales, personal cash loans secured by automobiles already paid for, loans to finance the purchase of commercial vehicles and farm equipment, and lease financing.

Automobile loans are a significant consumer business for many large banks. Because of the limited disclosure of auto lending on existing regulatory reports, supervisory oversight of auto lending is presently diminished by the need to rely on the examination process and public information sources that provide overall market information but not data on idiosyncratic risks.

Roughly 65 percent of new vehicle sales and 40 percent of used vehicle sales are funded with auto loans. According to household surveys and data on loan originations, banks are an important source of auto loans. In 2008, this sector originated approximately one-third of all auto loans. Finance companies, both independent and those affiliated with auto manufacturers originated a bit more than one-third, while credit unions originated a bit less than one-quarter. In addition to originating auto loans, some banks purchase auto loans originated by other entities, which suggests that commercial banks could be the largest holder of auto loans.

Despite the importance of banks to the auto loan market, the agencies know less about banks' holdings of auto loans than is known about finance company, credit union, and savings association holdings of these loans. All nonbank depository institutions are required to report auto loans on their respective regulatory reports, including savings associations, which originate less than five percent of auto loans. On their regulatory reports, credit unions must provide not only the outstanding amount of new and used auto loans, but also the average interest rate and the number of loans. In a monthly survey, the Federal Reserve collects information on the amount of auto loans held by finance companies. As a consequence, during the financial crisis when funds were scarce for finance companies in general and the finance companies affiliated with automakers in particular, a lack of data on auto loans at banks hindered the banking agencies' ability to estimate the extent to which banks were filling in the gap in auto lending left by the finance companies.

Additional disclosure regarding auto loans on bank Call Reports is especially important with the implementation of the amendments to Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topics 860, Transfers and Servicing, and 810, Consolidations, resulting from Accounting Standards Update (ASU) No. 2009–16 (formerly Statement of Financial Accounting Standards (SFAS) No. 166, *Accounting for Transfers of Financial Assets* (FAS 166)), and ASU No. 2009–17 (formerly SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167)), respectively. Until 2010, Call Report Schedule RC–S had provided the best supervisory information on auto lending because it included a separate breakout of securitized auto loans outstanding as well as securitized auto loan delinquencies and charge-offs. The accounting changes brought about by the amendments to ASC Topics 860 and 810, however, mean that if the auto loan securitization vehicle is now required to be consolidated, securitized auto lending previously reported on Schedule RC–S will be grouped as part of "other consumer loans" on Schedules RC–C, part I; RC–K; RC–N; RI; and RI–B, part I, which diminishes supervisors' ability to assess auto loan exposures and performance.

Finally, separating auto lending from other consumer loans will assist the agencies in understanding consumer lending activities at individual institutions. When an institution holds both auto loans and other types of consumer loans (other than credit cards, which are currently reported separately), the current combined reporting of these loans in the Call Report tends to masks any significant differences that may exist in the performance of these portfolios. For example, a bank could have a sizeable auto loan portfolio with low loan losses, but its other consumer lending, which could consist primarily of unsecured loans, could exhibit very high loss rates.

[1] Accounting Standards Codification paragraph 470–60–15–11.

[2] For banks with foreign offices, the Memorandum items for restructured real estate loans would cover such loans in domestic offices. In addition, banks with foreign offices or with $300 million or more in total assets would also provide a breakdown of restructured commercial and industrial loans between U.S. and non-U.S. addressees.

The current blending of these divergent portfolios into a single Call Report loan category makes it difficult to adequately monitor consumer loan performance.

*C. Commercial Mortgage Backed Securities Issued or Guaranteed by U.S. Government Agencies and Sponsored Agencies*

The agencies propose to split the existing items on commercial mortgage-backed securities (CMBS) in Schedule RC–B, Securities, and Schedule RC–D, Trading Assets and Liabilities, to distinguish between CMBS issued or guaranteed by U.S. Government agencies and sponsored agencies (collectively, U.S. Government agencies) and those issued by others. Until June 2009, information reported in the Call Report on mortgage-backed securities (MBS) issued or guaranteed by U.S. Government agencies included both residential MBS and CMBS. However, in June 2009 when banks began to report information on CMBS separately from residential MBS, data was collected only for commercial mortgage pass-through securities and for other CMBS without regard to issuer or guarantor. Thus, the agencies were no longer able to identify all MBS issued or guaranteed by U.S. Government agencies.

U.S. Government agencies issue or guarantee a significant volume of CMBS that are backed by multifamily residential properties. In the fourth quarter of 2009, out of a total of $854 billion in commercial and multifamily loans that were securitized, loan pools issued or guaranteed by U.S. Government agencies accounted for 19 percent or $164 billion. These pools present a substantially different risk profile than privately issued CMBS, but current reporting does not allow for the identification of bank holdings of CMBS issued or guaranteed by U.S. Government agencies. In addition, because CMBS issued or guaranteed by U.S. Government agencies are accorded lower risk weights for regulatory capital purposes than CMBS issued by others, banks generally should have the information necessary to separately report these two categories of CMBS in the proposed new items in Schedules RC–B and RC–D.

Thus, in Schedule RC–B, the banking agencies are proposing to split both item 4.c.(1), "Commercial mortgage pass-through securities," and item 4.c.(2), "Other commercial MBS," into separate items for those issued or guaranteed by U.S. Government agencies (new items 4.c.(1)(a) and 4.c.(2)(a)) and all other CMBS (new items 4.c.(1)(b) and 4.c.(2)(b)). Similarly, in Schedule RC–D, existing item 4.d, "Commercial MBS," would be split into separate items for CMBS issued or guaranteed by U.S. Government agencies (item 4.d.(1)) and all other CMBS (item 4.d.(2)). Less than five percent of banks hold commercial mortgage-backed securities and would be affected by this proposed reporting change.

*D. Nonbrokered Deposits Obtained Through the Use of Deposit Listing Service Companies*

In its semiannual report to the Congress covering October 1, 2009, through March 31, 2010, the FDIC's Office of Inspector General addressed causes of bank failures and material losses and noted that "[f]ailed institutions often exhibited a growing dependence on volatile, non-core funding sources, such as brokered deposits, Federal Home Loan Bank advances, and Internet certificates of deposit." [3] At present, banks report information on their funding in the form of brokered deposits in Memorandum items 1.b through 1.d of Schedule RC–E, Deposit Liabilities. Data on Federal Home Loan Bank advances are reported in items 5.a.(1) through (3) of Schedule RC–M, Memoranda. These data are an integral component of the banking agencies' analyses of individual institutions' liquidity and funding, including their reliance on non-core sources to fund their activities.

Deposit brokers have traditionally provided intermediary services for financial institutions and investors. However, the Internet, deposit listing services, and other automated services now enable investors who focus on yield to easily identify high-yielding deposit sources. Such customers are highly rate sensitive and can be a less stable source of funding than typical relationship deposit customers. Because they often have no other relationship with the bank, these customers may rapidly transfer funds to other institutions if more attractive returns become available.

The agencies expect each institution to establish and adhere to a sound liquidity and funds management policy. The institution's board of directors, or a committee of the board, should also ensure that senior management takes the necessary steps to monitor and control liquidity risk. This process includes establishing procedures, guidelines, internal controls, and limits for managing and monitoring liquidity and reviewing the institution's liquidity position, including its deposit structure, on a regular basis. A necessary prerequisite to sound liquidity and funds management decisions is a sound management information system, which provides certain basic information including data on non-relationship funding programs, such as brokered deposits, deposits obtained through the Internet or other types of advertising, and other similar rate sensitive deposits. Thus, an institution's management should be aware of the number and magnitude of such deposits.

To improve the banking agencies' ability to monitor potentially volatile funding sources, the agencies are proposing to close a gap in the information currently available to them through the Call Report by adding a new Memorandum item to Schedule RC–E in which banks would report the estimated amount of deposits obtained through the use of deposit listing services that are not brokered deposits.

A deposit listing service is a company that compiles information about the interest rates offered on deposits, such as certificates of deposit, by insured depository institutions. A particular company could be a deposit listing service (compiling information about certificates of deposits) as well as a deposit broker (facilitating the placement of certificates of deposit. A deposit listing service is not a deposit broker if all of the following four criteria are met:

(1) The person or entity providing the listing service is compensated solely by means of subscription fees (*i.e.,* the fees paid by subscribers as payment for their opportunity to see the rates gathered by the listing service) and/or listing fees (*i.e.,* the fees paid by depository institutions as payment for their opportunity to list or "post" their rates). The listing service does not require a depository institution to pay for other services offered by the listing service or its affiliates as a condition precedent to being listed.

(2) The fees paid by depository institutions are flat fees: they are not calculated on the basis of the number or dollar amount of deposits accepted by the depository institution as a result of the listing or "posting" of the depository institution's rates.

(3) In exchange for these fees, the listing service performs no services except (A) the gathering and transmission of information concerning the availability of deposits; and/or (B) the transmission of messages between depositors and depository institutions (including purchase orders and trade confirmations). In publishing or displaying information about depository institutions, the listing service must not

[3] *http://www.fdicig.gov/semi-reports/sar2010mar/OIGSar2010.pdf.*

attempt to steer funds toward particular institutions (except that the listing service may rank institutions according to interest rates and also may exclude institutions that do not pay the listing fee). Similarly, in any communications with depositors or potential depositors, the listing service must not attempt to steer funds toward particular institutions.

(4) The listing service is not involved in placing deposits. Any funds to be invested in deposit accounts are remitted directly by the depositor to the insured depository institution and not, directly or indirectly, by or through the listing service.

*E. Deposits of Individuals, Partnerships, and Corporations*

In Call Report Schedule RC–E, Deposit Liabilities, banks currently report separate breakdowns of their transaction and nontransaction accounts (in domestic offices) by category of depositor. The predominant depositor category is deposits of "Individuals, partnerships, and corporations," which comprises more than 90 percent of total deposits in domestic offices. The recent crisis has demonstrated that business depositors' behavioral characteristics are significantly different than the behavioral characteristics of individuals. Thus, separate reporting of deposits of individuals versus deposits of partnerships and corporations would enable the banking agencies to better assess the liquidity risk profile of institutions given differences in the relative stability of deposits from these two sources.

As proposed to be revised, Schedule RC–E, item 1, "Individuals, partnerships, and corporations," would be split into item 1.a, "Individuals," and item 1.b, "Partnerships and corporations." Under this proposal, accounts currently reported in item 1 for which the depositor's taxpayer identification number, as maintained on the account in the bank's records, is a Social Security Number (or an Individual Taxpayer Identification Number [4]) should be treated as deposits of individuals. In general, all other accounts currently reported in item 1 should be treated as deposits of partnerships and corporations. However, Schedule RC–E, item 1, also includes all certified and official checks. To limit the reporting burden of this proposed change, official checks in the form of money orders and travelers checks would be reported as deposits of individuals. Certified checks and all other official checks would be reported as deposits of partnerships and corporations. The agencies request comment on this approach to reporting certified and official checks.

*F. Variable Interest Entities*

In June 2009, the Financial Accounting Standards Board (FASB) issued accounting standards that have changed the way entities account for securitizations and special purpose entities. ASU No. 2009–16 (formerly FAS 166) revised ASC Topic 860, Transfers and Servicing, by eliminating the concept of a "qualifying special-purpose entity" (QSPE) and changing the requirements for derecognizing financial assets. ASU No. 2009–17 (formerly FAS 167) revised ASC Topic 810, Consolidations, by changing how a bank or other company determines when an entity that is insufficiently capitalized or is not controlled through voting or similar rights, *i.e.,* a "variable interest entity" (VIE), should be consolidated. For most banks, ASU Nos. 2009–16 and 2009–17 took effect January 1, 2010.

Under ASC Topic 810, as amended, determining whether a bank is required to consolidate a VIE depends on a qualitative analysis of whether that bank has a "controlling financial interest" in the VIE and is therefore the primary beneficiary of the VIE. The analysis focuses on the bank's power over and interest in the VIE. With the removal of the QSPE concept from generally accepted accounting principles that was brought about in amended ASC Topic 860, a bank that transferred financial assets to an SPE that met the definition of a QSPE before the effective date of these amended accounting standards was required to evaluate whether, pursuant to amended ASC Topic 810, it must begin to consolidate the assets, liabilities, and equity of the SPE as of that effective date. Thus, when implementing amended ASC Topics 860 and 810 at the beginning of 2010, banks began to consolidate certain previously off-balance securitization vehicles, asset-backed commercial paper conduits, and other structures. Going forward, banks with variable interests in new VIEs must evaluate whether they have a controlling financial interest in these entities and, if so, consolidate them. In addition, banks must continually reassess whether they are the primary beneficiary of VIEs in which they have variable interests.

For those VIEs that banks must consolidate, the banking agencies' Call Report instructional guidance advises institutions to report the assets and liabilities of these VIEs on the Call Report balance sheet (Schedule RC) in the balance sheet category appropriate to the asset or liability. However, ASC paragraph 810–10–45–25 [5] requires a reporting entity to present "separately on the face of the statement of financial position: a. Assets of a consolidated variable interest entity (VIE) that can be used only to settle obligations of the consolidated VIE [and] b. Liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary." This requirement has been interpreted to mean that "each line item of the consolidated balance sheet should differentiate which portion of those amounts meet the separate presentation conditions." [6] In requiring separate presentation for these assets and liabilities, the FASB agreed with commenters on its proposed accounting standard on consolidation that "separate presentation . . . would provide transparent and useful information about an enterprise's involvement and associated risks in a variable interest entity." [7] The banking agencies concur that separate presentation would provide similar benefits to them and other Call Report users, particularly since data on securitized assets that are reconsolidated is no longer reported on Call Report Schedule RC–S, Servicing, Securitization, and Asset Sale Activities.

Consistent with the presentation requirements discussed above, the banking agencies are proposing to add a new Schedule RC–V, Variable Interest Entities, to the Call Report in which banks would report a breakdown of the assets of consolidated VIEs that can be used only to settle obligations of the consolidated VIEs and liabilities of consolidated VIEs for which creditors do not have recourse to the general credit of the reporting bank. The following proposed categories for these assets and liabilities would include some of the same categories presented on the Call Report balance sheet (Schedule RC): Cash and balances due from depository institutions, Held-to-

[4] An Individual Taxpayer Identification Number is a tax processing number only available for certain nonresident and resident aliens, their spouses, and dependents who cannot get a Social Security Number. It is a 9-digit number, beginning with the number "9," formatted like a Social Security Number.

[5] Formerly paragraph 22A of FIN 46(R), as amended by FAS 167.

[6] Deloitte & Touche LLP, "Back on-balance sheet: Observations from the adoption of FAS 167," May 2010, page 4 (*http://www.deloitte.com/view/en_US/us/Services/audit-enterprise-risk-services/Financial-Accounting-Reporting/f3a70ca28d9f8210VgnVCM200000bb42f00aRCRD.htm).*

[7] *See* paragraphs A80 and A81 of FAS 167.

maturity securities; Available-for-sale securities; Securities purchased under agreements to resell, Loans and leases held for sale; Loans and leases, net of unearned income; Allowance for loan and lease losses; Trading assets (other than derivatives); Derivative trading assets; Other real estate owned; Other assets; Securities sold under agreements to repurchase; Derivative trading liabilities; Other borrowed money (other than commercial paper); Commercial paper; and Other liabilities. These assets and liabilities would be presented separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs.

In addition, the agencies propose to include two separate items in new Schedule RC–V in which banks would report the total amounts of all other assets and all other liabilities of consolidated VIEs (*i.e.,* all assets of consolidated VIEs that are not dedicated solely to settling obligations of the VIE and all liabilities of consolidated VIEs for which creditors have recourse to the general credit of the reporting bank). The collection of this information would help the agencies understand the total magnitude of consolidated VIEs. These assets and liabilities would also be reported separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs.

The asset and liability information collected in Schedule RC–V would represent amounts included in the reporting bank's consolidated assets and liabilities reported on Schedule RC, Balance Sheet, *i.e.,* after eliminating intercompany transactions.

*G. Assets Covered by FDIC Loss-Sharing Agreements*

In March 2010, the banking agencies added a four-way breakdown of assets covered by loss-sharing agreements with the FDIC to Schedule RC–M, Memoranda. Items 13.a through 13.d collect data on covered loans and leases, other real estate owned, debt securities, and other assets. In a January 22, 2010, comment letter to the banking agencies on the agencies' submission for OMB review of proposed Call Report revisions for implementation in 2010, the American Bankers Association (ABA) stated that while the addition of the covered asset items to Schedule RC–M was:

> a step in the right direction, ABA believes it would be beneficial to regulators, reporting banks, investors, and the public to have additional, more granular information about the various categories of assets subject to the FDIC loss-sharing agreements. While we recognize that this would result in additional reporting burden on banks, on balance our members feel strongly that the benefit of additional disclosure of loss-sharing data would outweigh the burden of providing these detailed data. Thus, we urge the Agencies and the FFIEC to further revise the collection of data from banks on assets covered by FDIC loss-sharing agreements on the Call Report to include the several changes suggested below * * * We believe these changes would provide a more precise and accurate picture of a bank's asset quality.

The changes suggested by the ABA included revising Schedule RC–M by replacing the two items for covered loans and leases and covered other real estate owned with separate breakdowns of these assets by loan category and real estate category. The ABA also suggested revising existing items 10 and 10.a in Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, which collect data on past due and nonaccrual loans and leases that are wholly or partially guaranteed by the U.S. Government, including the FDIC. The ABA recommended that the reporting of these past due and nonaccrual loans and leases be segregated into separate items for loans and leases covered by FDIC loss-sharing agreements and loans and leases with other U.S. Government guarantees.

After reviewing the ABA's recommendations and discussing them with their staff, the banking agencies are proposing to revise the Call Report along the lines suggested by the ABA. Thus, the banking agencies are proposing to create a breakdown of Schedule RC–M, item 13.a, covered "Loans and leases," that would include each category of "Loans secured by real estate" (in domestic offices) from Schedule RC–C, part I, "Loans to finance agricultural production and other loans to farmers," "Commercial and industrial loans," "Credit cards," "Other consumer loans," and "All other loans and all leases." If any category of loans or leases (as defined in Schedule RC–C, part I) included in covered "All other loans and all leases" exceeds 10 percent of total covered loans and leases, the amount of covered loans or leases in that category or categories must be itemized and described. Similarly, the banking agencies would create a breakdown of Schedule RC–M, item 13.b, covered "Other real estate owned," into the following categories: "Construction, land development, and other land," "Farmland," "1–4 family residential properties," "Multifamily (5 or more) residential properties," and "Nonfarm nonresidential properties." Banks would also report the guaranteed portion of the total amount of covered other real estate owned. In Schedule RC–N, as suggested by the ABA, the banking agencies would remove loans and leases covered by FDIC loss-sharing agreements from the scope of existing items 10 and 10.a on past due and nonaccrual loans wholly or partially guaranteed by the U.S. Government. Past due and nonaccrual covered loans and leases would then be collected in new item 11, which would include a breakdown of these loans and leases using the same categories as in proposed revised item 13.a of Schedule RC–M and also provide for banks to report the guaranteed portion of the total amount of covered loans and leases.

*H. Life Insurance Assets*

Banks purchase and hold bank-owned life insurance (BOLI) policies as assets, the premiums for which may be used to acquire general account or separate account life insurance policies. Banks currently report the aggregate amount of their life insurance assets in item 5 of Call Report Schedule RC–F, Other Assets, without regard to whether their holdings are general account or separate account policies.

Many banks have BOLI assets, and the distinction between those life insurance policies that represent general account products and those that represent separate account products has meaning with respect to the degree of credit risk involved as well as performance measures for the life insurance assets in a volatile market environment. In a general account policy, the general assets of the insurance company issuing the policy support the policy's cash surrender value. In a separate account policy, the policyholder's cash surrender value is supported by assets segregated from the general assets of the insurance carrier. Under such an arrangement, the policyholder neither owns the underlying separate account created by the insurance carrier on its behalf nor controls investment decisions in the account. Nevertheless, the policyholder assumes all investment and price risk.

A number of banks holding separate account life insurance policies have recorded significant losses in recent years due to the volatility in the markets and the vulnerability to market fluctuations of the instruments that are investment options in separate account life insurance policies. Information distinguishing between the cash surrender values of general account and separate account life insurance policies would allow the banking agencies to track banks' holdings of both types of life insurance policies with their differing risk characteristics and changes in their carrying amounts resulting from their performance over

time. Accordingly, the banking agencies are proposing to split item 5 of Schedule RC–F into two items: Item 5.a, "General account life insurance assets," and item 5.b, "Separate account life insurance assets."

*I. Captive Insurance and Reinsurance Subsidiaries*

Captive insurance companies are utilized by banking organizations to "self insure" or reinsure their own risks pursuant to incidental activities authority. A captive insurance company is a limited purpose insurer that may be licensed as a direct writer of insurance or as a reinsurer. Insurance premiums paid by a bank to its captive insurer, and claims paid back to the bank by the captive, are transacted on an intercompany basis, so there is no evidence of this type of self-insurance activity when a bank prepares consolidated financial statements, including its Call Report. The cash flows for a captive reinsurer's transactions also are not apparent in a bank's consolidated financial statements.

A number of banks own captive insurers or reinsurers, several of which were authorized to operate more than ten years ago. Some of the most common lines of business underwritten by bank captive insurers are credit life, accident, and health; disability insurance; and employee benefits coverage. Additionally, bank captive reinsurance subsidiaries may underwrite private mortgage guaranty reinsurance and terrorism risk reinsurance.

As part of their supervisory processes, the agencies have been following the proliferation of bank captive insurers and reinsurers and the performance trends of these captives for the past several years. Collection of financial information regarding the total assets of captive insurance and reinsurance subsidiaries would assist the agencies in monitoring the insurance activities of banking organizations as well as any safety and soundness risks posed to the parent bank from the activities of these subsidiaries.

The agencies propose to collect two new items in Schedule RC–M, Memoranda, for captive insurance subsidiaries operated by banks: Item 14.a, "Total assets of captive insurance subsidiaries," and item 14.b, "Total assets of captive reinsurance subsidiaries." These new items are not expected to be applicable to the vast majority of banks. When reporting the total assets of these captive subsidiaries in the proposed new items, banks should measure the subsidiaries' total assets before eliminating intercompany transactions between the consolidated subsidiary and other offices or subsidiaries of the consolidated bank.

*J. Credit and Debit Valuation Adjustments Included in Trading Revenues*

Banks that reported average trading assets of $2 million or more for any quarter of the preceding calendar year provide a breakdown of trading revenue by type of exposure in Memorandum items 8.a through 8.e of Schedule RI, Income Statement. These revenue items are reported net of credit adjustments made to the fair value of banks' derivative assets and liabilities that are reported as trading assets and liabilities.

There are two forms of credit adjustments that affect the valuation of derivatives held for trading and trading revenue. The first is the credit valuation adjustment (CVA), which is the discounted value of expected losses on a bank's derivative assets due to changes in the creditworthiness of the bank's derivative counterparties and future exposures to those counterparties. In contrast, the debit valuation adjustment (DVA) reflects the effect of changes in the bank's own creditworthiness on its derivative liabilities. During the financial crisis, the recognition of both the CVA and the DVA had a material impact on overall trading revenues. Because of their potential materiality, information on these two adjustments is needed in order for the agencies to better understand the level and trend of banks' trading revenues.

The banking agencies are therefore proposing to add two new Memorandum items to the existing Schedule RI Memorandum items for trading revenue. In new Memorandum item 8.f, banks would report the "Impact on trading revenue of changes in the creditworthiness of the bank's derivatives counterparties on the bank's derivative assets (included in Memorandum items 8.a through 8.e above)." In new Memorandum item 8.g, banks would report the "Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities (included in Memorandum items 8.a through 8.e above)." Because derivatives held for trading are heavily concentrated in the very largest banks, these new items would be reported by banks with $100 billion or more in total assets.

*K. Quarterly Reporting for Collective Investment Funds*

For banks that provide fiduciary and related services, the volume of assets under management is an important metric for understanding risk at these institutions and in the banking system. A bank's assets under management may include such pooled investment vehicles as collective investment funds and common trust funds (hereafter, collectively, CIFs) that it offers to investors. When considering how and where to place funds in pooled investment vehicles, which also include registered investment funds (mutual funds), investors' decisions are highly influenced by risk and return factors. While registered investment funds regularly disclose an array of fund-related data to the U.S. Securities and Exchange Commission and the investing public, the banking agencies' collection and public disclosure of summary data on CIFs is limited to annual data reported in Memorandum items 3.a through 3.h of Call Report Schedule RC–T, Fiduciary and Related Services, as of each December 31.

Like other investment vehicles, CIFs were affected by market disruptions during the recent financial crisis. However, annual reporting on CIFs limited the agencies' ability to detect changes in investor behavior and bank investment management strategies at an early stage in this $2.5 trillion line of business. Thus, the agencies believe it would be beneficial to change the reporting frequency for the Schedule RC–T data on CIFs from annually to quarterly for those institutions that currently report their fiduciary assets and fiduciary income quarterly. Quarterly filing of these Schedule RC–T data is required of institutions with total fiduciary assets greater than $250 million (as of the preceding December 31) or with gross fiduciary and related services income greater than 10 percent of revenue for the preceding calendar year. This proposed reporting change would affect fewer than 100 banks.

*L. Call Report Instructional Revisions*

1. Construction Loans

Banks report the amount of their "Construction, land development, and other land loans" in the appropriate loan subcategory of Call Report Schedule RC–C, part I, item 1.a. Questions have arisen about the reporting treatment for a "Construction, land development, and other land loan" that was not originated as a "combination construction-permanent loan," but was originated with the expectation that repayment would come from the sale of the real estate, when the bank changes the loan's terms so that principal amortization is required. This may occur after completion of construction when the bank renews or refinances the existing

loan or enters into a new real estate loan with the original borrower. The agencies believe that as long as the repayment of a loan that was originally categorized as a "Construction, land development, and other land loan" remains dependent on the sale of the real property, the loan should continue to be reported in the appropriate subcategory of item 1.a of Schedule RC–C, part I, because it continues to exhibit the risk characteristics of a construction loan.

The instructions for Schedule RC–C, part I, item 1.a, state that:

Loans written as combination construction-permanent loans secured by real estate should be reported in this item until construction is completed or principal amortization payments begin, whichever comes first. When the first of these events occurs, the loans should begin to be reported in the real estate loan category in Schedule RC–C, part I, item 1, appropriate to the real estate collateral. All other construction loans secured by real estate should continue to be reported in this item after construction is completed unless and until (1) the loan is refinanced into a new permanent loan by the reporting bank or is otherwise repaid, (2) the bank acquires or otherwise obtains physical possession of the underlying collateral in full satisfaction of the debt, or (3) the loan is charged off.

A combination construction-permanent loan results when the lender enters into a contractual agreement with the original borrower at the time the construction loan is originated to also provide the original borrower with permanent financing that amortizes principal after construction is completed and a certificate of occupancy is obtained (if applicable). This construction-permanent loan structure is intended to apply to situations where, at the time the construction loan is originated, the original borrower:

- Is expected to be the owner-occupant of the property upon completion of construction and receipt of a certificate of occupancy (if applicable), for example, where the financing is being provided to the original borrower for the construction and permanent financing of the borrower's residence or place of business, or
- Is not expected to be the owner-occupant of the property, but repayment of the permanent loan will be derived from rental income associated with the property being constructed after receipt of a certificate of occupancy (if applicable) rather than from the sale of the property being constructed.

For a loan not written as a combination construction-permanent loan at the time the construction loan was originated, the agencies propose to clarify the instructional language quoted above stating that "[a]ll other construction loans secured by real estate should continue to be reported in this item after construction is completed unless and until * * * the loan is refinanced into a new permanent loan by the reporting bank." This clarification is intended to ensure the appropriate categorization of such a loan in Schedule RC–C, part I. Thus, the agencies are proposing to revise the instructions for Schedule RC–C, part I, item 1.a, to explain that the phrase "the loan is refinanced into a new permanent loan" refers to:

- An amortizing permanent loan to a new borrower (unrelated to the original borrower) who has purchased the real property, or
- A prudently underwritten new amortizing permanent loan at market terms to the original borrower—including an appropriate interest rate, maturity, and loan-to-value ratio—that is no longer dependent on the sale of the property for repayment. The loan should have a clearly identified ongoing source of repayment sufficient to service the required principal and interest payments over a reasonable and customary period relative to the type of property securing the new loan. A new loan to the original borrower not meeting these criteria (including a new loan on interest-only terms or a new loan with a short-term balloon maturity that is inconsistent with the ongoing source of repayment criterion) should continue to be reported as a "Construction, land development, and other land loan" in the appropriate subcategory of Schedule RC–C, part I, item 1.a.

2. Reporting of 1–4 Family Residential Mortgages Held for Trading in Schedule RC–P

The banking agencies began collecting information in Schedule RC–P, 1–4 Family Residential Mortgage Banking Activities in Domestic Offices, in September 2006. At that time, the instructions for Schedule RC–C, part I, Loans and Leases, indicated that loans generally could not be classified as held for trading. Therefore, all 1–4 family residential mortgage loans designated as held for sale were reportable in Schedule RC–P. In March 2008, the banking agencies provided instructional guidance establishing conditions under which banks were permitted to classify certain assets (*e.g.,* loans) as trading, and specified that loans classified as trading assets should be excluded from Schedule RC–C, part I, Loans and Leases, and reported instead in Schedule RC–D, Trading Assets and Liabilities (if the reporting threshold for this schedule were met). However, the agencies neglected to address the reporting treatment on Schedule RC–P of 1–4 family residential loans that met the conditions for classification as trading assets. Therefore, the agencies are proposing to correct this by providing explicit instructional guidance that all 1–4 family residential mortgage banking activities, whether held for sale or trading purposes, are reportable on Schedule RC–P.

3. Maturity and Repricing Data for Assets and Liabilities at Contractual Ceilings and Floors

Banks report maturity and repricing data for debt securities (not held for trading), loans and leases (not held for trading), time deposits, and other borrowed money in Call Report Schedule RC–B, Securities; Schedule RC–C, part I, Loans and Leases; Schedule RC–E, Deposit Liabilities; and Schedule RC–M, Memoranda, respectively. The agencies use these data to assess, at a broad level, a bank's exposure to interest rate risk. The instructions for reporting the maturity and repricing data currently require that when the interest rate on a floating rate instrument has reached a contractual floor or ceiling level, which is a form of embedded option, the instrument is to be treated as "fixed rate" rather than "floating rate" until the rate is again free to float. As a result, a floating rate instrument whose interest rate has fallen to its floor or risen to its ceiling is reported based on the time remaining until its contractual maturity date rather than the time remaining until the next interest rate adjustment date (or the contractual maturity date, if earlier). This reporting treatment is designed to capture the potential effect of the embedded option under particular interest rate scenarios.

The ABA has requested that the agencies reconsider the reporting treatment for floating rate instruments with contractual floors and ceilings. More specifically, the ABA has recommended that the instructions be revised so that floating rate instruments would always be reporting based on the time remaining until the next interest rate adjustment date without regard to whether the rate on the instrument has reached a contractual floor or ceiling.

The agencies have considered this request and have concluded that an instruction revision is warranted, but the extent of the revision should be narrower than recommended by the ABA. The agencies believe that when a floating rate instrument is at its contractual floor or ceiling and the

embedded option has intrinsic value to the bank, the floor or ceiling should be ignored and the instrument should be treated as a floating rate instrument. However, if the embedded option has intrinsic value to the bank's counterparty, the contractual floor or ceiling should continue to be taken into account and the instrument should be treated as a fixed rate instrument. For example, when the interest rate on a floating rate loan reaches its contractual ceiling, the embedded option represented by the ceiling has intrinsic value to the borrower and is a detriment to the bank because the loan's yield to the bank is lower than what it would have been without the ceiling. When the interest rate on a floating rate loan reaches its contractual floor, the embedded option represented by the floor has intrinsic value to the bank and is a benefit to the bank because the loan's yield to the bank is higher than what it would have been without the floor.

Accordingly, the agencies are proposing to revise the instructions for reporting maturity and repricing data in the four Call Report schedules identified above. As revised, the instructions would indicate that a floating rate asset that has reached its contractual ceiling and a floating rate liability that has reached its contractual floor would be treated as a fixed rate instrument and reported based on the time remaining until its contractual maturity date. In contrast, the instructions would state that a floating rate asset that has reached its contractual floor and a floating rate liability that has reached its contractual ceiling would be treated as a floating rate instrument and reported based on the time remaining until the next interest rate adjustment date (or the contractual maturity date, if earlier).

**Request for Comment**

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: September 23, 2010.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Board of Governors of the Federal Reserve System, September 24, 2010.

**Jennifer J. Johnson**

*Secretary of the Board.*

Dated at Washington, DC, this 23rd day of September, 2010.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2010–24476 Filed 9–29–10; 8:45 am]

**BILLING CODE 6210–01–P; 4810–33–P; 6714–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2004–46

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–45, Relief from Late GST Allocation.

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Relief from Late GST Allocation.

*OMB Number:* 1545–1895.

*Revenue Procedure Number:* Revenue Procedure 2004–46.

*Abstract:* Revenue Procedure 2004–45 provides guidance to certain taxpayers in order to obtain an automatic extension of time to make an allocation of the generation-skipping transfer tax exemption. Rather than requesting a private letter ruling, the taxpayer may file certain documents directly with the Cincinnati Service Center to obtain relief.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 50.

*Estimated Annual Average Time per Respondent:* 7 hours.

*Estimated Total Annual Hours:* 350.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c)ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: September 7, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–24484 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2007–37

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2007–37, Substitute Mortality Tables for Single Employer Defined Benefit Plans.

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Substitute Mortality Tables for Single Employer Defined Benefit Plans.

*OMB Number:* 1545–2073.

*Revenue Procedure Number:* Revenue Procedure 2007–37.

*Abstract:* Revenue Procedure 2007–37 describes the process for obtaining a letter ruling as to the acceptability of substitute mortality tables under section 430(h)(3)(C) of the Code.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions and farms.

*Estimated Number of Responses:* 450.

*Estimated Annual Average Time per Response:* 56 hrs., 25 min.

*Estimated Total Annual Hours:* 25,400.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–24487 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–246256–96]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–246256–96 (TD 8978), Excise Taxes on Excess Benefit Transactions (§ 53.4958–6).

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Excise Taxes on Excess Benefit Transactions.

*OMB Number:* 1545–1623. *Regulation Project Number:* REG–246256–96.

*Abstract:* This regulation relates to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code and affects certain tax-exempt organizations described in Code sections 501(c)(3) and (4). The collection of information entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) a fair market value.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 150,427.

*Estimated Time per Respondent:* 6 hours, 3 minutes.

*Estimated Total Annual Burden Hours:* 910,083.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 24, 2010.

**Gerald Shields,**

*Supervisory Tax Analyst.*

[FR Doc. 2010–24500 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[PS–52–88]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–52–88 (TD 8455), Election to Expense Certain Depreciable Business Assets. (§§ 1.179–2, 1.179–3).

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Election to Expense Certain Depreciable Business Assets.

*OMB Number:* 1545–1201.

*Regulation Project Number:* PS–52–88 Final.

*Abstract:* The regulations provide rules on the election described in Internal Revenue Code section 179(b)(4); the apportionment of the dollar limitation among component members of a controlled group; and the proper order for deducting the carryover of disallowed deduction. The recordkeeping and reporting requirements are necessary to monitor compliance with the section 179 rules.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, farms, and business or other for-profit organizations.

*Estimated Number of Respondents:* 20,000.

*Estimated Time per Respondent:* 45 min.

*Estimated Total Annual Burden Hours:* 15,000 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 24, 2010.

**Gerald Shields,**

*Supervisory Tax Analyst.*

[FR Doc. 2010–24490 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[EE–43–92]**

### Proposed Collection: Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–43–92 (TD 8619), Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans (§§ 1.401(a)(31)–1, 1.402(c)–2, 1.402(f)–1, 1.403(b)–2, and 31.3405(c)–1.

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue,

NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans.

*OMB Number:* 1545–1341.

*Regulation Project Number:* EE–43–92.

*Abstract:* This regulation implements the provisions of the Unemployment Compensation Amendments of 1992 (Pub. L. 102–318), which impose mandatory 20 percent income tax withholding upon the taxable portion of certain distributions from a qualified pension plan or a tax-sheltered annuity that can be rolled over tax-free to another eligible retirement plan unless such amounts are transferred directly to such other plan in a "direct rollover" transaction. These provisions also require qualified pension plans and tax-sheltered annuities to offer their participants the option to elect to make "direct rollovers" of their distributions and to provide distributees with a written explanation of the tax laws regarding their distributions and their option to elect such a rollover.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 10,323,926.

*Estimated Time Per Respondent:* 13 minutes.

*Estimated Total Annual Burden Hours:* 2,129,669.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 24, 2010.

**Gerald Shields,**

*Supervisory Tax Analyst.*

[FR Doc. 2010–24489 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2004–56

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–56, Model 457 Plan Provisions.

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of revenue procedures should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Model 457 Plan Provisions.

*OMB Number:* 1545–1904.

*Revenue Procedure Number:* Rev. Proc. 2004–56.

*Abstract:* Revenue Procedure 2004–56 contains model amendments to be used by section 457(b) plans (deferred compensation plans) of State or local governments.

*Current Actions:* There are no changes being made to the revenue procedures at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or Tribal governments, and not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 10,260.

*Estimated Annual Average Time Per Respondent/Recordkeeper:* 4 hours.

*Estimated Total Annual Reporting/Recordkeeping Hours:* 41,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–24486 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8867

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8867, Paid Preparer's Earned Income Credit Checklist.

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Paid Preparer's Earned Income Credit Checklist.

*OMB Number:* 1545–1629.

*Form Number:* 8867.

*Abstract:* Form 8867 helps preparers meet the due diligence requirements of Internal Revenue Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal Income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the RIC and the amount of the credit. Failure to do so could result in a $100 penalty for each failure. Completion of Form 8867 is one of the due diligence requirements.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 8,368,447.

*Estimated Time per Respondent:* 1 hour, 47 minutes.

*Estimated Total Annual Burden Hours:* 14,979,521.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–24483 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1120–RIC

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–RIC, U.S. Income Tax Return for Regulated Investment Companies.

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs,gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* U.S. Income Tax Return for Regulated Investment Companies.

*OMB Number:* 1545–1010.

*Form Number:* 1120–RIC.

*Abstract:* Internal Revenue Code sections 851 through 855 provide rules for the taxation of a domestic corporation that meets certain requirements and elects to be taxed as a regulated investment company. Form 1120–RIC is filed by a domestic corporation making such an election in order to report its income and deductions and to compute its tax liability. The IRS uses the information on Form 1120–RIC to determine whether the corporation's income, deductions, credits, and tax have been correctly reported.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,605.

*Estimated Time per Respondent:* 102 hours, 22 minutes.

*Estimated Total Annual Burden Hours:* 369,021.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be

retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2010.

**Gerald Shields,**

*Supervisory Tax Analyst.*

[FR Doc. 2010–24502 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, "Affiliate Marketing/Consumer Opt-Out Notices." The OCC is also giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be submitted on or before November 1, 2010.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0230, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to: OCC Desk Officer, [1557–0230], by mail to U.S. Office of Management and Budget, 725 17th St., NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

*Title:* Fair Credit Reporting Affiliate Marketing.

*OMB Control No.:* 1557–0230.

*Frequency of Response:* On occasion.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 541,860.

*Total Annual Burden:* 16,559 hours.

*Description:* Twelve CFR part 41, subpart C generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer unless the consumer is given notice of that potential use and an opportunity and a reasonably simple method to opt out of such solicitations.

Financial institutions will use the required notices to inform consumers about their rights under section 624 of Fair Credit Reporting Act and to comply with 12 CFR part 41, subpart C. Consumers will use the notices to decide if they want to receive solicitations for marketing purposes or opt out. Financial institutions will use the consumers' opt out responses to determine the permissibility of using eligibility information obtained from an affiliate to make solicitations to the consumer. The responses will be used by financial institutions to comply with section 214 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).[1] We assume that the majority of banks will issue their affiliate marketing notices in a single notice with their annual privacy notice.

*Comments:* A 60-Day **Federal Register** notice was issued on July 22, 2010 (75 FR 42824). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 22, 2010.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

[FR Doc. 2010–24283 Filed 9–29–10; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1023

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1023, Application for Recognition of

[1] Public Law 108–159, 117 Stat. 1952.

Exemption Under Section 501(c)(3) of the Internal Revenue Code.

**DATES:** Comments must be received by November 29, 2010 to be assured of consideration. The Department of the Treasury is piloting the collaborative tool, *http://www.PRAComment.Gov,* to increase public participation and collaboration for the Paperwork Reduction Act information collection activities. In addition to continuing to collect comments on IRS Form 1023, the Department is partnering with the Internal Revenue Service (IRS) to expand the site to include five additional information collection activities:

1. *OMB Number:* 1545–0057.

*Form Number:* Form 1024.

*Abstract:* Organizations seeking exemption from Federal Income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

*Current Actions:* There are no changes being made to the form at this time.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 9,692.

*Estimated Time per Response:* 30 hours.

*Estimated Total Annual Burden Hours:* 291,542.

2. *OMB Number:* 1545–0099.

*Form Number:* Form 1065.

*Abstract:* IRC section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.

*Current Actions:* There are no changes being made to the form at this time. A previous request for comments (75 FR 42831), was made in the **Federal Register** on July, 22, 2010.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit institutions.

*Estimated Number of Respondents:* 2,376,800.

*Estimated Time per Response:* 100 hours.

*Estimated Total Annual Burden Hours:* 721,761,123.

3. *OMB Number:* 1545–0901.

*Form Number:* Form 1098.

*Abstract:* Form 1098 is used to report $600 or more of mortgage interest received from an individual in the course of the mortgagor's trade or business.

*Current Actions:* There are no changes being made to the form at this time. A previous request for comments (75 FR 53737), was made in the **Federal Register** on September 1, 2010.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 66,989,155.

*Estimated Time per Response:* 7 minutes.

*Estimated Total Annual Burden Hours:* 8,038,699.

4. *OMB Number:* 1545–0150.

*Form Number:* Form 2848.

*Abstract:* Form 2848 is used to authorize someone to act for the respondent in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. Data is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons. Also used to input representative on CAF (Central Authorization File).

*Current Actions:* There are no changes being made to the form at this time. A previous request for comments (75 FR 53021), was made in the **Federal Register** on August 30, 2010.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 533,333.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 928,583.

5. *OMB Number:* 1545–1629.

*Form Number:* Form 8867.

*Abstract:* Form 8867 helps preparers meet the due diligence requirements of Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the EIC and the amount of the credit. Failure to do so could result in a $100 penalty for each failure. Completion of Form 8867 is one of the due diligency requirements.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 8,368,447.

*Estimated Time per Response:* 1.79 hours.

*Estimated Total Annual Burden Hour*s: 14,979,521.

The collaboration tool will maintain the official comments in which the Internal Revenue Service will use to determine potential changes to the form and/or to the estimated burden and costs associated with the collection. The Department believes the public comments received through the collaboration tool will reduce the paperwork burden on the public for Form 1023.

**ADDRESSES:** Submit comments by one of the following methods:

- *http://www.PRAComment.gov.*
- Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Gerald Shields at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–4374, or through the Internet at *Gerald.J.Shields@irs.gov.*

**SUPPLEMENTARY INFORMATION:** *Title:* Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology;

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 22, 2010.

**Gerald J. Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–24503 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8835

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8835, Renewable Electricity Production Credit.

**DATES:** Written comments should be received on or before November 29, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Renewable Electricity Production Credit.

*OMB Number:* 1545–1362.

*Form Number:* Form 8835.

*Abstract:* Form 8835 is used to claim the renewable electricity production credit. The credit is allowed for the sale of electricity produced in the United States or U.S. possessions from qualified energy resources. The IRS uses the information reported on the form to ensure that the credit is correctly computed.

*Current Actions:* There are no changes being made to this form at this time.

*Type of Review:* Extension of a current OMB approval.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 46.

*Estimated Time per Respondent:* 14 hrs. 23 minutes.

*Estimated Total Annual Burden Hours:* 662.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–24504 Filed 9–29–10; 8:45 am]

**BILLING CODE 4830–01–P**

Federal Register

Thursday,
September 30, 2010

# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Pygmy Rabbit as Endangered or Threatened; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS-R8-ES-2007-0022]**
**[MO 92210-0-0008-B2]**

## Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Pygmy Rabbit as Endangered or Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of a 12–month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to list the pygmy rabbit (*Brachylagus idahoensis*) as endangered or threatened under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find the listing of the pygmy rabbit is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the pygmy rabbit or its habitat at any time.

**DATES:** The finding announced in the document was made on September 30, 2010.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS-R8-ES-2007-0022. Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, NV 89502. Please submit any new information, materials, comments, or questions concerning this species to the Service at the above street address.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Williams, State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **ADDRESSES**); by telephone (775) 861-6300 or by facsimile (775) 861-6301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that the listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition. In this finding, we will determine that the petitioned action is either: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened , and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding; that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

*Previous Federal Actions*

On November 21, 1991, we added the pygmy rabbit to our list of candidate species as a category 2 candidate species (56 FR 58804). A category 2 candidate species was a species for which we had information indicating that a proposal to list it as threatened or endangered under the Act may be appropriate, but for which additional information on biological vulnerability and threat was needed to support the preparation of a proposed rule. In the February 28, 1996, Candidate Notice of Review (CNOR) (61 FR 7595), we adopted a single category of candidate species defined as follows: "Those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded." In previous CNORs, species matching this definition were known as category 1 candidates for listing. Thus, the Service no longer considered category 2 species as candidates and did not include them in the 1996 or any subsequent CNORs. The decision to stop considering category 2 species as candidates was designed to reduce confusion about the status of these species and to clarify that we no longer regarded these species as candidates for listing.

On April 21, 2003, we received a petition dated April 1, 2003, from the Committee for the High Desert, Western Watersheds Project, American Lands Alliance, Oregon Natural Desert Association, Biodiversity Conservation Alliance, Center for Native Ecosystems, and Mr. Craig Criddle requesting the pygmy rabbit found in Oregon, Idaho, Montana, Wyoming, California, Nevada, and Utah be listed as endangered or threatened in accordance with section 4 of the Act (Committee for the High Desert *et al.* 2003, entirety). The petition was clearly identified as a petition and contained the names, signatures, and addresses of the requesting parties. The petitioners requested designation of critical habitat concurrent with the listing. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, and perceived threats to the pygmy rabbit.

On June 10, 2003, we acknowledged in a letter the receipt of the petition and stated we determined an emergency listing was not warranted for the pygmy rabbit. We also stated if our ongoing status review of the species indicates that an emergency listing is warranted, we would act accordingly. In addition, we advised the petitioners that we would not be able to process the petition in a timely manner. On May 3, 2004, we received a 60–day notice of intent to sue, and on September 1, 2004, we received a complaint regarding our failure to carry out the 90–day and 12–month findings on the status of the pygmy rabbit. On March 2, 2005, we reached an agreement with the plaintiffs to submit to the **Federal Register** a completed 90–day finding by May 16, 2005, and to complete, if applicable, a 12–month finding by February 15, 2006 (*Western Watersheds Project et al.* v. *U.S. Fish and Wildlife Service* (CV-04-0440-N-BLW) (D. Idaho).

On May 20, 2005, we published a 90–day finding in the **Federal Register** (70 FR 29253) stating that the petition did not present substantial information indicating that listing the pygmy rabbit may be warranted. On March 28, 2006, we received a complaint regarding alleged violations of the Act and the Administrative Procedure Act with regard to our May 20, 2005, 90–day finding (*Western Watersheds Project et al. v. Gale Norton and U.S. Fish and Wildlife Service* (CV 06-CV-00127-S-EJL) (D. Idaho)). On September 26, 2007, the court issued an order remanding our May 20, 2005, 90–day finding and required the Service to issue a new 90–day finding on or before December 26, 2007. On January 8, 2008, we published a new 90–day finding (73 FR 1312), and determined that the petition presented substantial information indicating that the petitioned action may be warranted. Additionally in that notice, we indicated that we would be initiating a status review of the pygmy rabbit and opening a 60–day public comment period.

This finding does not address our prior listing of the Columbia Basin distinct population segment (DPS) of the pygmy rabbit which occurs in the State of Washington. On November 30, 2001, we published an emergency listing and concurrent proposed rule to list this DPS of the pygmy rabbit as endangered (66 FR 59734 and 66 FR 59769, respectively). We listed the Columbia Basin DPS of the pygmy rabbit as endangered in our final rule dated March 5, 2003 (68 FR 10388). This finding addresses the petitioned action that requests listing of the pygmy rabbit as endangered or threatened in the remainder of its range in Oregon, Idaho, Montana, Wyoming, California, Nevada, and Utah.

**Species Information**

*Species Description*

The pygmy rabbit is the smallest North American Leporid. Adult weights range from 0.54 to 1.2 pounds (245 to 553 grams); adult lengths range from 9.1 to 12.1 inches (in) (23.1 to 30.7 centimeters (cm)) (Dice 1926, p. 28; Grinnell *et al.* 1930, p. 554; Bailey 1936, p. 110; Orr 1940, p. 194; Janson 1946, pp. 21, 23; Durrant 1952, p. 88; Ingles 1965, p. 143; Bradfield 1974, pp. 10-11; Holt 1975, pp. 125-126; Campbell *et al.* 1982, p. 100). Adult females are generally larger than adult males. The species can be distinguished from other rabbits by its small size, gray color, short rounded ears, small hind legs, and the absence of white on the tail (66 FR 59734).

*Taxonomy*

The pygmy rabbit is a member of the family Leporidae, which includes rabbits and hares. This species has been placed in various genera positions since its type specimen was described in 1891 by Merriam (1891, pp. 76-78), who classified the "Idaho pygmy rabbit" as *Lepus idahoensis*. Currently, the pygmy rabbit is generally placed within the monotypic genus *Brachylagus* and classified as *B. idahoensis* (Green and Flinders 1980a, p. 1; Washington Department of Fish and Wildlife (WDFW) 1995, p. 1); this is the taxonomy accepted by the Service. The analysis of blood proteins (Johnson 1968, cited in WDFW 1995, p. 1) suggests that the pygmy rabbit differs greatly from species within both the *Lepus* and *Sylvilagus* genera. Halanych and Robinson (1997, p. 301) supported the separate generic status as *Brachylagus* for the pygmy rabbit based on phylogenetic position and sequence divergence values. The pygmy rabbit has no recognized subspecies (Grinnell *et al.* 1930, p. 555; Davis 1939, p. 364; Larrison 1967, p. 64; Green and Flinders 1980a, p. 1; Janson 2002, p. 4).

*Ecology and Life History*

Pygmy rabbits are typically found in areas of tall, dense *Artemisia* spp. (sagebrush) cover and are considered a sagebrush obligate species because they are highly dependent on sagebrush to provide both food and shelter throughout the year (Dice 1926, p. 27; Grinnell *et al.* 1930, p. 553; Orr 1940, pp. 194-197; Hall 1946, p. 615; Janson 1946, pp. 39-40, 53; Wilde 1978, p. 46; Green and Flinders 1980a, pp. 1-3 and b, pp. 137-141; Weiss and Verts 1984, pp. 569-570; Katzner *et al.* 1997, p. 1,053). Anthony (1913, p. 22) also mentioned he found pygmy rabbits in "little draws and flats" in Oregon, where the tall sagebrush was thick and where *Chrysothamnus* spp. (rabbit brush) grew in extensive patches, and occasionally they were found on "sparsely brushed flats and hills."

The winter diet of pygmy rabbits is composed of up to 99 percent sagebrush (Wilde 1978, p. 46; Green and Flinders 1980b, p. 138), which is unique among leporids (rabbits and hares) (White *et al.* 1982, p. 107). During spring and summer in Idaho, their diet consists of approximately 51 percent sagebrush, 39 percent grasses (particularly native bunch-grasses, such as *Agropyron* spp. and *Poa* spp.), and 10 percent forbs (Green and Flinders 1980b, p. 138). There is evidence that pygmy rabbits preferentially select native grasses as forage over other available foods during this period. In addition, total grass cover relative to forbs and shrubs may be reduced within the immediate areas occupied by pygmy rabbits as a result of their use during spring and summer (Green and Flinders 1980b, pp. 138-141). The specific diets of pygmy rabbit likely vary by region (68 FR 10388).

Pygmy rabbits may be active at any time of the day or night, and appear to be most active during mid-morning (Anthony 1913, p. 23; Bailey 1936, p. 111; Bradfield 1974, pp. 14-15; Green and Flinders1980a, p. 3; Gahr 1993, pp. 45-46). Flinders *et al.* (2005, p. 27) found pygmy rabbits to be 72 percent more active during twilight. Larrucea (2007, p. 79) found pygmy rabbits were most active during dawn and dusk (a bimodal diel activity pattern). Activity at dawn was greatest except for during winter when dusk activity was higher. Lee (2008, p. 33) found pygmy rabbits were active during all time periods of the day, but the greatest activity occurred at night.

Pygmy rabbits maintain a low stance, have a deliberate gait, and are relatively slow and vulnerable in more open areas. They can evade predators by maneuvering through the dense shrub cover of their preferred habitats, often along established trails, or by escaping among their burrows (Anthony 1913, pp. 22-23; Bailey 1936, p. 111; Severaid 1950, p. 3; Bradfield 1974, pp. 26-27). Due to their small size, behavior, and habitat, these small rabbits can be easily overlooked (Merriam 1891, p. 75; Grinnell *et al.* 1930, p. 553; Janson 1940, p. 1; Severaid 1950, p. 3; Holt 1975, p. 135; Janson 2003, p. 71).

The pygmy rabbit is one of only two rabbits in North America that digs its own burrows (Nelson 1909, p. 22; Bailey 1936, p. 111; Hall 1946, p. 617; Janson 1946, p. 43; Bradfield 1974, p. 28; Wilde 1978, p. 17). Pygmy rabbit burrows are typically found in relatively deep, loose soils of wind-borne or water-borne (e.g., alluvial fan) origin. Pygmy rabbits, especially juveniles, likely use their burrows as protection from predators and inclement weather (Bailey 1936, p. 111; Bradfield 1974, pp. 26-27). Some burrows have only one entrance. Others have multiple entrances, some of which are concealed at the base of larger sagebrush plants (Dice 1926, p. 27). A single entrance burrow may be referred to as a "burrow" while single entrance burrows, multi-entrance burrows, or an entire site may be referred to as a "burrow system". Burrows are relatively simple and shallow, often no more than 2.2 yards (yd) (2 meters (m)) in length and usually less than 1.1 yd (1 m) deep with no distinct chambers (Bailey 1936, p. 111; Bradfield 1974, pp. 29-30; Green and Flinders 1980a, p. 2; Gahr 1993, p. 63). Burrows are typically dug into gentle slopes or mound or inter-mound areas of more level or dissected topography (Wilde 1978, p. 26; Gahr 1993, pp. 77-80).

In general, the number of active burrows in an area increases over the summer as the number of juveniles increase. However, the number of active burrows may not be directly related to the number of individuals in a given area because some individual pygmy rabbits appear to maintain multiple burrows and some individual burrows are used by multiple individuals (Janson 1940, p. 21; Janson 1946, p. 44; Gahr 1993, pp. 66, 68; Heady 1998, p. 25).

Pygmy rabbits may also be using more than one burrow or burrow system at a specific time or during different times of the year (Purcell 2006, p. 96). In Idaho, Sanchez and Rachlow (2008, p. 1306) found the number of burrows used by individuals increased with home range size. Patterns of burrow system use varied by study area, sex, and season (Sanchez and Rachlow 2008, pp. 1306-

1307). Larrucea (2007, pp. 96-97) found annual and intra-annual changes at three study sites during a 3–year period in the Reese River Valley, Nevada. During two of the three years, one site showed lack of activity during winter and spring. Pygmy rabbits returned to this site in June and many new burrows were found. This site may have been marginal habitat and rabbits using the area in June may have been dispersing juveniles from other areas. At the other two sites where pygmy rabbits were observed year-round, the fewest active burrows were found from July to October. With the return of cooler weather in the fall, the number of active burrows again increased. Many of these new active burrows were ones that had previously been inactive or collapsed.

Flinders *et al.* (2005, p. 25) reported distances between burrow systems. They found burrow systems with multiple entrances averaged 124.6 yd (114.0 m) away from the next nearest multiple entrance system, while distances between systems with multiple entrances to single entrance burrows averaged 57.1 yd (52.2 m) away. Single entrance burrow systems averaged 14 yd (12.8 m) away from the nearest single entrance system.

Pygmy rabbits occasionally make use of burrows abandoned by other species, such as the yellow-bellied marmot (*Marmota flaviventris*), badger (*Taxida taxus*), or Utah prairie dog (*Cynomys parvidens*) (Borell and Ellis 1934, p. 41; Hall 1946, p. 617; Bradfield 1974, p. 28; Green and Flinders 1980a, p. 2; Flinders *et al.* 2005, p. 30). As a result, they may occur in areas of shallower or more compact soils that support sufficient shrub cover (Bradfield 1974, p. 29). Natural cavities (such as holes in volcanic rock), rock piles, stone walls, and areas around abandoned buildings may also be used (Janson 1946, pp. 44-46). During winter, pygmy rabbits make extensive use of snow burrows, possibly for access to sagebrush forage (Bradfield 1974, p. 17; Katzner and Parker 1997, p. 1,069), as travel corridors among their underground burrows, for protection from predators, and/or as thermal cover (Katzner and Parker 1997, pp. 1,063, 1,069-1,070).

Pygmy rabbits tend to have relatively small home ranges during winter, remaining within 98 ft (30 m) of their burrows (Janson 1946, p. 75). Bradfield (1974, p. 20), Katzner and Parker (1997, p. 1,066), and Flath and Rauscher (1995, p. 3) found pygmy rabbit tracks in snow indicating movements of 262 to 328 ft (80 to 100 m) or more from their burrows. They have larger home ranges during spring and summer (Janson 1946, p. 75; Gahr 1993, pp. 103-105). During the breeding season in Washington, females tend to make relatively short movements within a small core area and have home ranges covering roughly 6.7 acres (ac) (2.7 hectares (ha)); males tend to make longer movements, traveling among a number of females, resulting in home ranges covering roughly 49.9 ac (20.2 ha) (Gahr 1993, p. 118). Katzner (1994, pp. 14-15) found home range size extremely variable in Wyoming; home ranges were from 0.12 to 0.86 ac (0.05 to 0.35 ha) for females and 0.82 to 4.4 ac (0.33 to 1.8 ha) for males. Burak (2006, p. 22) found in Owyhee County, Idaho, that pygmy rabbit home range sizes based on Minimum Convex Polygons differed between the sexes and ranged from 49.9 to 69.7 ac (20.2 to 28.2 ha) for males and from 4 to 5.4 ac (1.6 to 2.2 ha) for females during the breeding season. Crawford (2008, p. 47) found that pygmy rabbit annual home ranges in southeastern Oregon and northwestern Nevada differed between the sexes and ranged from 1.2 to 25.8 ac (0.49 to 10.46 ha) for males and 0.27 to 18.7 ac (0.11 to 7.55 ha) for females. During the breeding season, home ranges for males ranged from 0.27 to 18.5 ac (0.11 to 7.49 ha) and from 0.15 to 17.5 ac (0.06 to 7.10 ha) for females.

Sanchez and Rachlow (2008, p. 1307) in Idaho found range use between consecutive seasons and between seasons over 2 years was highly variable; some pygmy rabbits shifted seasonal ranges markedly, but most ranges showed overlap between seasons and years. One male shifted his range center by 8,013.9 yd (7,332 m), but other males shifted their range centers between 33 and 122 yd (30 and 112 m). Females shifted their range centers between 58 and 144 yd (53 and 132 m) (Sanchez and Rachlow 2008, p. 1307). Distances shifted between like seasons over the 2 years were similar to those observed between consecutive seasons. Males showed a distance shift of between 47 and 269 yd (43 and 246 m) and females showed a shift of between 0 and 150 yd (0 and 137 m) (Sanchez and Rachlow 2008, p. 1307).

Earlier reports indicated pygmy rabbits were known to have traveled up to 0.75 mile (mi) (1.2 kilometers (km)) from their burrows (Gahr 1993, p. 108), and there are a few records of individuals moving up to 2.17 mi (3.5 km) (Green and Flinders 1979, p. 88; Katzner and Parker 1998, p. 73). Rauscher (1997, p. 5) reported that pygmy rabbits crossed 500 yd (457.2 m) of relatively open grassland habitat to reach a sagebrush stringer in Montana. Katzner (1994, p. 105) accounted for all the rabbits within a range of 0.62 mi (1 km) of his study area. When pygmy rabbits not previously observed appeared, he concluded these individuals must have traveled a "considerable distance." More recently, Estes-Zumpf and Rachlow (2009, p. 367) radio-tagged juvenile pygmy rabbits in Idaho and found median dispersal movements of 0.93 mi (1.5 km) and 3.9 mi (6.2 km) and maximum dispersal movements of 4.0 mi (6.5 km) and 7.4 mi (11.9 km) by male and female rabbits, respectively. Burak (2006, p. 27) indicated the maximum distance a male pygmy rabbit moved was 1,662.5 yd (1,521 m) and 1,112.7 yd (1,018 m) for a female. Crawford (2008, p. 54) in Nevada and Oregon reported that 24 radio-marked rabbits moved greater than 0.3 mi (0.5 km) with a maximum long-distance movement of 5.3 mi (8.5 km) recorded by a juvenile female. Twenty-one of the individuals that traveled greater than 0.3 mi (0.5 km) were juveniles.

Pygmy rabbits may begin breeding the year following their birth (Wilde 1978, pp. 64-66, 127; Fisher 1979, p. 13). In some parts of the species' range, females may have up to three litters per year and average six young per litter (Davis 1939, p. 365; Hall 1946, p. 618; Janson 1946, pp. 67-69; Green 1978, pp. 35-36; Wilde 1978, p. 69). Breeding appears to be highly synchronous in a given area and juveniles are often identifiable to cohorts (Wilde 1978, pp. 69-70). Prior to publication of a study in 2005, no evidence of nests, nesting material, or lactating females with young had been found in burrows (Bailey 1936, p. 111; Janson 1940, p. 23; Janson 1946, p. 69; Bradfield 1974, p. 29; Gahr 1993, p. 82 Rauscher 1997, p. 11). Recent studies have found that natal burrows are constructed by pygmy rabbits. Rachlow *et al.* (2005, pp. 137-138) provide information on seven natal burrows found in Lemhi Valley, Idaho. Females were observed digging and subsequently back-filling burrows with soil. Fine grasses, shredded sagebrush bark, and hair were the primary components used in the nesting material. Larrucea (2007, pp. 89-90) found three natal burrows in Reese River Valley, Nevada, but did not describe them. Burak (2006, p. 29) found female pygmy rabbits construct natal burrows outside of their original home range core area. Three of the four natal burrows he found were located outside of the core area; the fourth female stayed within a second core area that included the natal burrow and when the burrow became inactive, she returned to her original core area (Burak 2006, p. 29). Individual juveniles have been found under clumps of sagebrush, although it is not known if they are

routinely hidden at the bases of scattered shrubs or within burrows (Wilde 1978, p. 115).

A wide range of pygmy rabbit population densities has been reported. Janson (1946, p. 84) reported estimated pygmy rabbit densities of 0.75 to 1.75 per ac (1.9 to 4.3 per ha) and 3.5 pygmy rabbits per ac (8.6 per ha) in Utah. Flinders *et al.* (2005, p. 16) reported 0.3 rabbits per ac (0.79 rabbits per ha) in Grass Valley, Utah. Green (1978, p. 62) reported an estimate of 18.2 pygmy rabbits per ac (45 per ha) in Idaho. In Montana, Rauscher (1997, p. 10) estimated pygmy rabbit density as 0.67 rabbits per burrow or 1.2 per ac (3.0 per ha). Based on fecal dropping counts, Larsen *et al.* (2006, pp. 26-27) estimated rabbit density in Deep Creek watershed, Utah, as 0.07 per ac (0.17 rabbits per ha). Using line transects in Wyoming, Purcell (2006, pp. 100, 105) reported a range of burrow systems per mi (km) for systematic transects (1.7 to 18.2 per mi, 2.7 to 29.3 per km) and random transects (0.8 to 7.4 per mi, 1.33 to 11.97 per km) in 10 study areas. Larrucea (2007, p. 89) estimated, using transect counts, that the relative density at five study areas in California and Nevada ranged from 0.4 to 1.7 rabbits per ac (0.9 to 4.2 rabbits per ha).

The annual mortality rate of adult pygmy rabbits may be as high as 88 percent, and more than 50 percent of juveniles can die within roughly 5 weeks of their emergence (Wilde 1978, pp. 139-140). Estes-Zumpf and Rachlow (2009, p. 367) found mortality rates were 69.2 percent and 88.5 percent for male and female juvenile pygmy rabbits, respectively, in their study area in east-central Idaho. The mortality rate was highest within two months of emerging from the natal burrow. However, the mortality rates of adult and juvenile pygmy rabbits can vary considerably between years, and even between juvenile cohorts within years (Wilde 1978, pp. 85-95, 138-140). Predation is the main cause of pygmy rabbit mortality (Green 1979, p. 25). Sanchez (2007, pp. 90-91) attributed 42 percent of natural mortalities to mammalian and avian predation. She was unable to determine the cause of death in 58 percent of the mortalities.

Predators of the pygmy rabbit include badgers, long-tailed weasels (*Mustela frenata*), coyotes (*Canis latrans*), bobcats (*Felis rufus*), great horned owls (*Bubo virginianus*), long-eared owls (*Asio otus*), ferruginous hawks (*Buteo regalis*), northern harriers (*Circus cyaneus*), and common ravens (*Corvus corax*) (Borell and Ellis 1934, p. 42; Janson 1946, pp. 89-90; Gashwiler *et al.* 1960, p. 227; Green 1978, p. 37; Wilde 1978, pp. 96, 141-143; Johnson and Hanson 1979, p. 952; WDFW 1995, p. 6).

Sanchez (2007, p. 92) estimated that for known-aged rabbits, the average lifespan was 1.16 years. For rabbits captured as adults, assuming a birth date of May 1 of the previous year, estimated average life expectancy was 1.7 years, and the maximum lifespan achieved was 3.3 years.

Population cycles are not known in pygmy rabbits, although local, relatively rapid population declines have been noted in some States (Janson 1946, p. 84; Bradfield 1974, p. 39; Weiss and Verts 1984, p. 569). Janson (2003, p. 71) remarked that pygmy rabbits likely undergo local, if not regional, fluctuations. After initial declines, pygmy rabbit populations may not have the same capacity for rapid increases in numbers in response to favorable environmental conditions as compared to other rabbit species. This may be due to their close association with specific components of sagebrush ecosystems, and the relatively limited availability of their preferred habitats (Wilde 1978, p. 145; Green and Flinders 1980b, p. 141; WDFW 1995, p. 13). No study has documented rapid increases in pygmy rabbit numbers in response to environmental conditions (Gabler 1997, p. 95). Long-term population monitoring studies are not available indicating whether population fluctuations or cycles occur for pygmy rabbits or if seasonal or other habitat shifts or movements have been misinterpreted as declines.

Literature indicates that pygmy rabbits have never been evenly distributed across their range (Bailey 1936, p. 111; Janson 1940 p. 5; Holt 1975, pp. 133-134). While the species occurs throughout most of the Great Basin, they exhibit extremely specialized habitat requirements, and thus occupy only a small subset of locations within this range (Larrucea 2007, p. 2). They are found in areas within their broader distribution where sagebrush cover is sufficiently tall and dense, and where soils are sufficiently deep and loose to allow burrowing (Bailey 1936, p. 111; Green and Flinders 1980a, p. 2; Campbell *et al.* 1982, p. 100; Weiss and Verts 1984, p. 563; WDFW 1995, p. 15). Sagebrush- dominated communities are naturally subject to disturbances of various kinds resulting in a heterogeneous distribution of different stand sizes and age classes, and on the landscape scale, pygmy rabbit distribution is naturally disjunct (Himes and Drohan 2007, p. 380). Local distribution of this habitat and thus pygmy rabbit populations likely shift over time due to natural and human disturbances including fire, agriculture production, flooding, grazing, and weather patterns (Keinath and McGee 2004, p. 5). In the past, dense vegetation along permanent and intermittent stream corridors, alluvial fans, and sagebrush plains probably provided travel corridors and dispersal habitat for pygmy rabbits between suitable use areas (Green and Flinders 1980a, p. 1; Weiss and Verts 1984, p. 570; WDFW 1995, p. 15). Since European settlement of the western United States, dense vegetation associated with human activities (fence rows, roadway shoulders, borrow ditches, crop margins, abandoned fields) may have also acted as avenues of dispersal between local populations of pygmy rabbits (Green and Flinders 1980a, p. 1; Rauscher 1997, p. 16).

*Distribution, Abundance, and Trends*

The pygmy rabbit's general historical and current geographic range, excluding the Columbia Basin DPS, includes most of the Great Basin and some of the adjacent intermountain areas of the western United States (Green and Flinders 1980a, p. 1), and the boundaries can be described as follows: the northern boundary extends into southeastern Oregon and southern Idaho. The eastern boundary extends into southwestern Montana and south central Wyoming. The southeastern boundary extends into southwestern Utah. Central Nevada and eastern California provide the southern and western boundaries (Merriam 1891, p. 75; Nelson 1909, p. 275; Grinnell *et al.* 1930, pp. 553, 558; Bailey 1936, pp. 110-111; Janson 1946, pp. 32-33; Campbell *et al.* 1982, p. 100; WDFW 1995, pp. 1-2, Purcell 2006, pp. 1, 7-11, 30). Based on available information, the current distribution of the pygmy rabbit indicates a possible range contraction in northern California (Larrucea and Brussard 2008a, p. 696). Because uncertainty remains about whether this possible range contraction has occurred due to limited survey efforts in northern California both historically and recently, it is not shown in Figure 1. Figure 1 illustrates the approximate historical and current range of the pygmy rabbit in the seven States discussed in this finding.

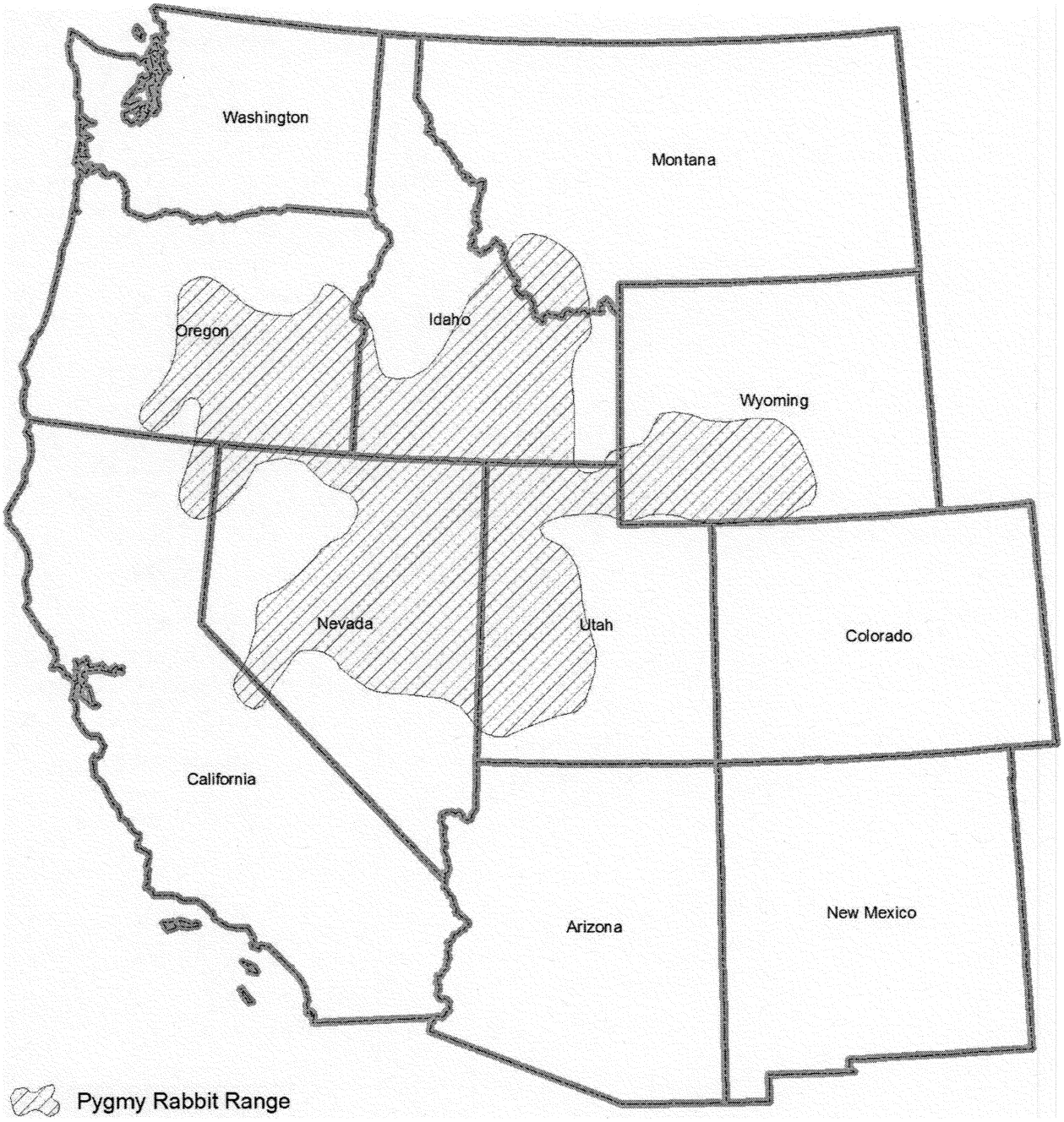


Figure 1. Approximate historical and current range (based on data from 1877 to 2008) of the pygmy rabbit (*Brachylagus idahoensis*) not including the Columbia Basin DPS in Washington State.

To determine the historical and current distribution and trend analysis for pygmy rabbits across the seven States discussed in this finding, we reviewed published scientific peer-reviewed literature; unpublished agency documents; dissertations; theses; databases maintained by State heritage programs, State wildlife agencies, and Federal agencies; survey data sheets; museum records; electronic mail records; and agency notes to the files. Older published literature (prior to the mid to late 1990's) generally focused on the species' life history, behavior, and some habitat relationships and provided location information of study areas. More recent unpublished literature (since the mid to late 1990's to 2008) has been primarily related to surveys conducted by government agencies or their consultants and universities to determine pygmy rabbit occurrence within portions of a State and some information regarding species' life history, behavior, and habitat relationships. Survey efforts have focused on location of pygmy rabbit signs rather than on documenting known or perceived threats to the species at these sites. Rarely has revisiting of sites occurred with the purpose of monitoring populations over time. While we consider this information of limited use to our finding due to its local, short-term nature, it is the best scientific information available to conduct our analysis.

We compiled a database of records (location points) of various pygmy rabbit signs for each State from these various data sources listed above. Some records were not entered into a State database if adequate information was

not provided (e.g., we could not determine a location point because the source map did not indicate location or survey data sheet location point information was unreadable). Once each State database was compiled, we reviewed each location point and eliminated its database record if it was not determined to be a reliable data point as discussed below. The final databases combined contain approximately 68 percent of all the location points compiled. We consider the location point data retained in these seven State databases to be the best scientific information available. We will refer to these created State databases as the Service's databases.

We are aware of concerns related to the use of anecdotal occurrence records to determine distribution of species (McKelvey *et al.* 2008, pp. 549-554). We are also aware of confidence levels related specifically to pygmy rabbit presence and level of activity at particular sites due to various factors (e.g., sighting of targeted species vs. only targeted species sign or potential targeted species sign observed; if burrow activity is uncertain, the site should be revisited; uncertainties due to other species or other rabbit species using burrows; pellets being misidentified) (Bartels 2003, pp. 47-49; Keinath and McGee 2004, pp. 32-34).

As a result of these concerns, we have based our analysis on what we considered to be the more reliable records indicating pygmy rabbit presence and activity level. The following types of records were not included in the Service's databases for our analysis: database records that showed some level of uncertainty for the information being provided (e.g., other leporid species data included; uncertainty about whether pygmy rabbit was observed or other leporid species; using words such as "possible", "potential", "maybe", "unsure"); records that only provided location data or indicated pygmy rabbit sign with no additional information indicating what type of sign (e.g., burrow, pellet, track, sighting of animal as relates to reliability) had been observed; records related to telemetry locations (while informative in determining an individual's distribution within its home range, this provides little information at the larger landscape scale used here; we did include the capture location of any individual pygmy rabbit trapped and fitted with a tradio collar); records based solely on pellets or tracks due to concerns with species misidentification; those lacking key information (e.g., year which is needed for trend analysis) and duplicate records.

For our analysis, we mapped records of "active" sites or burrows defined as those database records that indicated an activity level (at the time of the survey) of current, present, occupied, active, or recently active burrows; burrows in combination with fresh pellets; a visual sighting; photographic evidence; fecal DNA confirmation; specimen collected; trapping effort; in combination with tracks; or any combination thereof. All sighting records were included in our analysis even if no other information was provided, unless uncertainty was expressed about whether it had been a pygmy rabbit observed or another leporid species.

We also mapped records of "inactive" sites or burrows defined as those database records that indicated an activity level (at the time of the survey) of inactive, not recent, old, very old, collapsed, or burrow plus old pellets. In addition, we assumed "inactive" for site or burrow records that did not provide a status and did not provide information to support a determination of active, those with an "undetermined" activity status, or were unclear. We reviewed the mapped distribution for the "active" and "inactive" site categories across each State.

In addition, we mapped database records of "absent" areas defined as points where no sign of pygmy rabbit occupancy was evident. Most databases do not include records of areas surveyed but where no pygmy rabbit sign was observed. We believe this type of information can be valuable; however, we do not assume that pygmy rabbits were or should have been present in areas where they were determined to be absent. It is possible that an area is unsuitable for pygmy rabbits while appearing suitable to surveyors. Conversely, it is possible an area that appears unsuitable to surveyors for pygmy rabbits may actually be so (Ulmschneider *et al.* 2004, pp. 2-3). On the ground surveying is necessary to positively indicate pygmy rabbit occupancy (Bartels 2003, pp. 92-94; Lenard *et al.* 2005, p. 1; Meisel 2006, pp. 26, 48). The "absent" information indicates locations where survey efforts were conducted but pygmy rabbit sign was not evident. Limited "absent" information was obtained for the States of Oregon, California, Nevada, and Wyoming.

During our analysis we encountered some difficulties in adapting data collected for another's purpose for our species' status review, and there were several limitations. Overall, survey information collected over the years reflects different surveyors, different survey methods, different levels of survey intensity, and different amounts and types of information recorded. We generally accepted the information indicated in a report, data sheet, or database and tried to do as little interpretation as possible. For some locations, we replaced locational descriptions (Township, Range and Section or a narrative description) with Universal Transverse Mercator (UTM) coordinates or a center point for a section surveyed or a point was buffered to indicate an approximate location. For a portion of records from Oregon, we created a point representing the center of a study area and "active" and "inactive" burrows were separated.

We encountered some difficulties with interpreting data provided under different reporting techniques. In general, most surveys for pygmy rabbits report location information in terms of point data (i.e., legal description or Global Positioning System (GPS)) with qualifiers or descriptions for sign, such as burrows (present, absent), activity level (occupied, unoccupied, active, inactive, current, recent, old, very old), pellets (fresh, old), sightings (actual sightings of pygmy rabbits, specimen collection, capture, photographic record), and tracks. Some surveyors developed their own rating system or confidence level for burrow or site activity (Purcell 2006, p. 38; Himes and Drohan 2007, p. 375; Flinders *et al.* 2005, pp. 8-9). Some efforts reported only those sites that were considered positive (confirmed with photographic evidence), active, or occupied sites and did not include information for areas considered inactive or unoccupied. Location data may represent a burrow, a burrow system, or an entire site that was surveyed which represents one or more burrows or burrow systems.

Various techniques have been used to detect pygmy rabbit evidence on the landscape. Techniques may include driving and walking transects in perceived suitable habitat, winter aerial flights over potential habitat with subsequent selection of areas for further ground surveys (Rachlow and Witham 2006, pp. 4-8), random searches in perceived suitable habitat, or spot lighting at night. Survey efforts have been made during all times of the year. It is advised that sites that indicate pygmy rabbit sign should be confirmed through sightings or photographic evidence; this may or may not have occurred. The Service has recommended using draft survey guidelines developed by Ulmschneider *et al.* (2004, entire) in conducting

pygmy rabbit surveys, but it has not always been used since its availability.

Larrucea (2007, p. 3) tested pellet, sighting, burrow, and camera survey methods at 20 locations in 4 known, active pygmy rabbit populations in California and Nevada. She also assessed road transect surveys for detecting and determining relative abundance in an area (Larrucea 2007, p. 3). Results indicated that pellets were found at all sites, but pellets determined to be fresh were found at only 70 percent of the sites. Sighting individual rabbits provided positive results 30 percent of the time. Burrows were located at 85 percent of the sites, but burrows determined to be active were found at only 55 percent of the sites. Cameras provided positive results 95 percent of the time (Larrucea 2007, p. 6). Photographs were taken of pygmy rabbits at all types of active sites including those with only burrows determined to be inactive and with pellets determined to be old (Larrucea 2007, p. 7). During the 10 transect counts, different rabbit and hare species were observed 569 times and 545 were identified to genus (Larrucea 2007, p. 7). *Lepus* was observed 491 times (90.1 percent); *Sylvilagus* 44 times (8.1 percent) and *Brachylagus* 10 times (1.8 percent) (Larrucea 2007, p. 7). Photographs taken from the camera locations provided 409 photos of rabbit and hare species; the number of photographs of *Lepus* was 199 (48.7 percent), *Brachylagus* 195 (47.7 percent), and *Sylvilagus* 15 (3.7 percent) (Larrucea 2007, p. 7).

Camera surveys are more effective than burrow, pellet, sightings, or road transect surveys for determining current pygmy rabbit activity at a site (Larrucea 2007, p. 7). Burrows are a good indicator that pygmy rabbits may be present, but locating one does not mean pygmy rabbits are currently using the site (Larrucea 2007, p. 8). Lack of active burrows may not mean that there are no pygmy rabbits in the area. Burrows may be used seasonally, may be difficult to locate, or may be lacking in dispersal areas (Larrucea 2007, pp. 8-9). Old pellets do not confirm current use of a site and pellets may be misidentified due to young rabbits of other species cohabiting a site. Not finding fresh pellets does not mean pygmy rabbits are not currently using a site as environmental conditions can influence how rapidly pellets dry and change color (Larrucea 2007, p. 9). Sightings of individual pygmy rabbits do confirm current activity, but observers should be experienced as the young of cottontails (*Sylvilagus* spp.) and jackrabbits (*Lepus* spp.) can be confused with pygmy rabbits. Sightings of pygmy rabbits are difficult and do not occur often due to the dense vegetation inhabited, limited home ranges, and their elusive nature (Larrucea 2007, p. 10). Road transect surveys are inefficient for pygmy rabbits due to their reluctance to cross open areas and roads (Bradfield 1975, p. 3). Pygmy rabbits are more likely to run a short distance, sit tight, or disappear into a burrow than to run for a long distance making detection more difficult (Larrucea 2007, p. 10).

We are also aware of difficulties in interpreting site activity during surveys. For example, in Montana, Lenard *et al.* (2005, p. 9) commented that comparisons of active to inactive burrows may be complicated, stating that burrows exhibiting current rabbit activity were easier to locate because tracks in the snow made them very apparent. The relative difference in abundance between currently active and recently active should not be interpreted to indicate any level of past versus current activity. Flinders *et al.* (2005, p. 33), in Utah, commented that single burrow systems are harder to detect than multiple entrance burrow systems. The Bureau of Land Management (BLM) (2007a, p. 1) used the Ulmschneider *et al.* (2004, entire) method and noted that this type of inventory covered large expanses and typically found the larger pygmy rabbit populations and a small subset of the actual burrow systems on a particular site. However, when sites were re-inventoried intensively, BLM found numerous additional burrow systems. Lee *et al.* (2008, pp. 4-5), in Utah, commented that using criteria from Rachlow and Witham (2004b, pp. 6-7) or Ulmschneider *et al.* (2004, entire) is somewhat inaccurate in predicting current pygmy rabbit burrow utilization. Lee *et al.* (2008, p. 5) used remote cameras to verify the presence or absence of pygmy rabbits in comparison to burrow classification. By using both burrow classifications methods along with remote cameras, refinement of burrow classifications and census techniques may be possible in the future.

Bartels (undated) compared active and passive survey methods for detecting pygmy rabbit burrow occupancy at what she considered isolated and low density sites. She compared the use of an active survey method (peeper probe) and a passive survey method (surface classification of burrows using sign (burrows, pellets) to determine occupancy by pygmy rabbits (Bartels undated, pp. 3-4). A total of 233 burrows were compared on 27 sites in Oregon and Idaho. Under the passive method, all 233 burrows were considered occupied (Bartels undated, p. 5). Under the active survey method, 122 (52.4 percent) of the burrows were classified as occupied and as recently occupied, and 111 (47.6 percent) were classified as unoccupied (Bartels undated, p. 5). Bartels (undated, p. 7) recommended use of an active survey method in areas where pygmy rabbit numbers appear to be low and isolated sites are found. Viewing the internal attributes of burrows and establishing a standard for occupancy increases survey accuracy and could lead to greater accuracy when monitoring pygmy rabbit occupancy over time.

We must also take into consideration complicating factors when interpreting current distribution and/or status as we do not have a complete understanding of pygmy rabbit habitat use. For example, it appears that some habitat use may be seasonal and pygmy rabbits may be somewhat migratory as some burrow systems appear occupied during certain times of the year and inactive during others, or from year to year (Flinders *et al.* 2005 p. 35; Bockting 2007 p. 2; Larrucea 2007, pp. 96-97). Flinders *et al.* (2005 p. 35) reported that areas where pygmy rabbits were relatively abundant in Utah suddenly became sparse after the juveniles dispersed. Other areas then appeared to indicate an increase in the numbers of pygmy rabbits. In Utah, Flinders *et al.* (2005, p. 32) found active burrows were more common than the other activity classifications (i.e., recent, old, very old), and thus support statements that pygmy rabbits use more than one burrow system. He thought inactive burrows likely play an important role in providing escape cover. Cameras placed on burrows classified as old or very old documented use by pygmy rabbits. Larrucea (2007, p. 7) also photographed pygmy rabbits at sites where burrows were determined to be inactive.

After reviewing the available information, we consider our approach in using information to determine the status of the pygmy rabbit to be conservative. We have used these data to compare historical (1999 and earlier) to current (2000 and later) distribution patterns. We have used the data to compare activity levels (active; inactive) of sites or burrows during these two time periods. Questions have been raised regarding surveyors' abilities to accurately determine activity level due to possible detection differences, absence of long-term site monitoring, and our incomplete understanding of the pygmy rabbit's life history requirements (e.g., possible seasonal use of some areas or periods of burrow non-use). We are also aware that some

survey techniques provide better data than others. Though these data are limited in their usefulness for our purposes due to their local, short-term nature, they are understood, by the Service to be the best available information. This data does provide baseline information that could be the foundation for future survey and monitoring efforts.

*Models*

To facilitate pygmy rabbit surveys in recent years, models of potential habitat have been developed for some States or study areas. Eliminating areas in these models that are unsuitable can be important as it can concentrate efforts and resources in areas that are more likely to support pygmy rabbits (Gabler *et al.* 2000, p. 763). Large areas that seem to be appropriate pygmy rabbit habitat may not be suitable based on the specific habitat characteristics needed for pygmy rabbits (Gabler *et al.* 2000, p. 763). To aid pygmy rabbit research in Oregon, modeling efforts have been conducted by the following researchers: Bartels (2003, p. 35) for the BLM Burns District using GIS; Meisel (2006, p. 4) for the Hart Mountain National Antelope Refuge; and Hager and Lienkaemper (2007, pp. 1-2) for large blocks of State land.

In Idaho, modeling efforts have been conducted by Rachlow and Svancara (2006, p. 828); Bartels (2003, pp. 35-38), and Gabler *et al.* (2000, pp. 762-763; 2001 entirety). In Montana, Lenard *et al.* (2005, p. 1) reported on the development of four predictive models in Montana. In Wyoming, Purcell (2006, p. 28) used a probabilistic distribution map developed by Keinath and Thurston (2005, cited in Purcell 2006, p. 28) using the combination of two models, DOMAIN (environmental similarity method) and CART (classification and regression tree analysis). Based on data collected during Purcell's study, a new predictive distribution model was created (Purcell 2006, p. 31).

In Nevada, a predictive equation was produced based on habitat data collected and used as a model to characterize habitat where pygmy rabbits or sign occurred. The model explained the occurrence of pygmy rabbits or their sign on 56.7 percent of transects (Himes and Drohan 2007, p. 376). Larrucea and Brussard (2008a, p. 693) used GIS coverages. In Utah, Lee *et al.* (2008, p. 3) used vegetation data from the 2004 Southwestern Regional Gap Analysis Project. In general, these models are helpful in focusing survey efforts over a large area; however, researchers also recognize that due to scale and available data for particular attributes such as soils and vegetation, only on the ground surveying can positively indicate pygmy rabbit presence (Bartels 2003, pp. 92-94; Meisel 2006, pp. 26, 48; Lenard *et al.* 2005, p. 1).

We believe our large-scale, rangewide analysis, based on the Service's databases, represents the best scientific and commercial information available on the distribution of pygmy rabbits. As mentioned above, many individual records were considered but not included in the Service's databases for the following reasons: database records showing some level of uncertainty for the information being provided (e.g., other leporid species data included; uncertainty about whether pygmy rabbit was observed or other leporid species; using words such as "possible", "potential", "maybe", "unsure"); records that only provided location data or indicated pygmy rabbit sign with no additional information indicating what type of sign (e.g., burrow, pellet, track, sighting of animal as relates to reliability) had been observed; records related to telemetry locations (while informative in determining an individual's distribution within its home range, this provides little information at the larger landscape scale used here; we did include the capture location of any individual pygmy rabbit trapped and fitted with a radio collar); records based solely on pellets or tracks due to concerns with species misidentification; those lacking key information (e.g., year which is needed for trend analysis); and duplicate records.

Eliminating records with these types of concerns provides for a more accurate representation of pygmy rabbit range-wide distribution rather than including all records without considering some level of reliability of the data. While pygmy rabbits likely occur in additional unsurveyed areas and even in some areas that have been surveyed (pygmy rabbit sign can be easily overlooked), we have made our finding based on our review of these databases, which represent the best scientific and commercial information available.

*Distribution by State*

The following distribution and trend discussion is based on information obtained from published and unpublished literature and an interpretation of the survey location point data compiled in the Service's databases. The following review does not discuss every document from the various information sources due to the volume, but a selection of literature that provides substantive historical information and survey information on a large scale. The literature is generally, but not entirely, associated with records included in the Service's databases. This is because not all reports provided specific location points and not all location points are associated with a report, and as stated earlier, some records are not included in the Service's databases. This analysis compares our understanding of the historical and current ranges of the pygmy rabbit discussed in this finding.

*Oregon*

The earliest pygmy rabbit records for the State of Oregon include: two specimens collected in Callow Valley, Harney County, Oregon (Nelson 1909, p. 278); specimens collected near Ironsides, Malheur County, Oregon in 1911-1912 (Anthony 1913, pp. 20-21); and 10 specimens collected near Baker, Baker County, Oregon (Dice 1926, p. 27).

Bailey (1936, pp. 110-111) indicated that pygmy rabbits in Oregon extended from the southern foothills of the Blue Mountain Plateau and eastern base of the Cascade Range over the southeastern quarter of the State. He reported that they were absent from areas of open country where sagebrush and rabbit brush were not abundant. As a result, there are numerous wide gaps in their range.

Brodie and Maser (1966, pp. 11-12) reported the contents from owl pellets collected in 1966 at Lower Bridge, Deschutes County, Oregon. Prey animals consisted of pygmy rabbits. This location was reported as a new location for the pygmy rabbit as the nearest previously documented location was Redmond, Oregon (Hall and Kelson 1959, cited in Brodie and Maser 1966, p. 12) about 10 miles (16.1 km) east of Lower Bridge.

Olterman and Verts (1972, p. 25) listed 37 museum records for Oregon which occurred in general near the following areas: Baker, Baker County; Paulina, Crook County; Redmond, Deschutes County; Beakley, Beaties Butte, Burns, Rock Creek Ranch, Crane, Drewsey, Narrows, Sageview, Mud Lake, Steens Mountain, Voltage, and Waverly, Harney County; Fremont and Klamath Falls, Klamath County; Adel, Ft. Rock, Guano Creek, Guano Valley, Rabbit Creek, andSilver Lake, Lake County; and Cold Springs, Cow Creek Lake, Ironside, Mahogany Mountains, Malheur, McDermitt, Riverside, and Rome, Malheur County. At the time of their writing, Olterman and Verts (1972, p. 25) indicated recent observations by biologists demonstrated that pygmy

rabbits were occurring over the same area as in the past. Pygmy rabbits were observed near Hines, Wagontire, Lakeview, Hart Mountain National Antelope Refuge, Hampton, Ft. Rock, and Lower Bridges.

Bradfield (1974, p. 39) also spent time at Ironside, in Malheur County, Oregon. He found evidence of previous pygmy rabbit use, but no fresh sign of use or rabbits, which supported his belief that they were in decline on a larger geographic scale.

Weiss and Verts (1984, p. 563) attempted to search for pygmy rabbits in Oregon based on museum record information for sites listed in Olterman and Verts (1972, p. 25). Because of the generality of the location descriptions provided, they also reviewed aerial photography and soil maps to assist in narrowing searches in the areas described where pygmy rabbits had been collected previously (Weiss and Verts 1984, p. 564). Evidence of pygmy rabbits was found at 51 of 211 areas searched in 1982 (Weiss and Verts 1984, p. 566). In 1983, only 5 of the 15 sites that had been sampled for soil and vegetation information in 1982 showed recent pygmy rabbit activity (Weiss and Verts 1984, p. 566). Of 51 burrows found at 5 of the sites occupied in 1982, 19 burrows were found open in 1983 and 8 had fresh pellets (Weiss and Verts 1984, p. 568). Only the locations of the 15 occupied sites in Grant and Lake Counties where Weiss and Verts (1984, p. 566) recorded vegetation and soil data are provided in their document.

Since 2000, additional survey efforts have been conducted. Bartels (2003, p. 70) visited 54 previously known pygmy rabbit sites located on BLM lands in 2000 and 2001 in Harney, Malheur, Lake, and Deschutes Counties, Oregon. Results from these visits showed 12 sites were occupied, 8 were of undetermined occupancy, and 34 showed no occupancy. Three additional sites were surveyed off of BLM lands. One site was occupied, one showed no evidence of pygmy rabbit use, and one was considered undetermined and warranted further investigation (Bartels (2003, p. 86). Some of these sites included those visited by Weiss and Verts (1984, p. 564) (Bartels 2003, p. 91).

BLM conducted surveys on their Lakeview and Vale Districts in Harney and Lake Counties, Oregon in 2002 and 2003 (BLM 2003a, p. 1). Forty-five sites were surveyed in fall of 2002 and winter 2003 on the Lakeview District with 19 sites indicating pygmy rabbit activity (10 active, 9 inactive). Twenty sites were surveyed in fall of 2002 and winter 2003 on the Vale District with two sites indicating pygmy rabbit activity (1 active, 1 inactive). The remaining sites surveyed (44) on the two districts in fall of 2002 and winter 2003 showed no evidence of pygmy rabbit use (BLM 2003a, p. 1). During the summer of 2003, 23 additional sites were surveyed and 19 showed pygmy rabbit activity (11 active, 8 inactive); 4 sites showed no evidence of pygmy rabbit use (BLM 2003a, no page number provided). BLM continued to conduct surveys on their Burns and Lakeview Districts in Harney and Lake Counties, Oregon, respectively, in 2005 and 2006 (BLM 2006a, pp. 3-4); active pygmy rabbit use was found at four of the seven sites surveyed. In 2006 and 2007, BLM surveyed 12 additional sites on the Lakeview District, and active pygmy rabbit use was found at 8 sites (BLM 2007b, p. 1). Various numbers of burrow systems were found at the different sites (BLM 2003a, p. 3; BLM 2006a, pp. 3-4; BLM 2007b, pp. 3-6).

Meisel (2006, p. 4), improved the known distribution of pygmy rabbits at Hart Mountain National Antelope Refuge, Lake County, during 2004 and 2005. The sagebrush habitat on the refuge has been protected from development and other human disturbances for at least 70 years (Meisel 2006, p. 9). Remote infrared 35-mm cameras were used to confirm occupancy by pygmy rabbits (Meisel 2006, p. 12). Habitat characteristics were measured at 45 occupied burrows (Meisel 2006, p. 18). In 2005, refuge staff found approximately 99 occupied burrows near burrow locations that were found in 2004 by Meisel (R. Huddleston-Lorton, cited in Meisel 2006, p. 27). Location information on these 99 burrows was not included in Meisel (2006). It is possible that a large population inhabits the northeast portion of the refuge (Meisel 2006, p. 27). Meisel (2006, p. 27) recommends future research be conducted in areas of Wyoming big sagebrush to locate all burrows and document the population status on the refuge which is currently unknown.

Hager and Lienkaemper (2007, p. 1) conducted surveys to determine the presence or absence of pygmy rabbits on State lands in Malheur, Harney, Lake, and Deschutes Counties. One hundred and fifty-seven sites were ground surveyed during 2004 and 2005 (Hager and Lienkaemper 2007, p. 3). Of the 157 sites, 18 were determined to be active, 14 inactive, and 125 showed no evidence of pygmy rabbit presence (Hager and Lienkaemper 2007, pp. 4-5).

Most historical records (1999 and earlier) for Oregon occur in the following counties: Malheur, Harney, and Lake. A few historical records also occur in Baker, Grant, Crook, Deschutes, and Klamath Counties. There is also a 1992 database sighting record for Jefferson County. Current information (2000 and later) indicates Malheur, Harney, and Lake as well as Klamath and Deschutes Counties continue to support pygmy rabbit activity. We are unaware of information indicating any recent survey efforts have been conducted to determine pygmy rabbit activity for Baker, Grant, or Jefferson Counties. Baker County indicated some activity in 1926. Grant County indicated inactivity during 1982 and 1983. Jefferson County had some activity in 1992. The southeastern portion of Crook County was searched during 2005 by BLM, but pygmy rabbit evidence was not found. In general, pygmy rabbit activity continues to occur in southeastern Oregon in a similar distributional pattern as compared with historical information.

*Idaho*

Merriam (1891) was the first to describe the "Idaho pygmy rabbit (*Lepus idahoensis*)" based on a specimen collected on September 16, 1890, along the upper part of the Pahsimeroi River by Basil Dutcher (Merriam 1891, pp. 7, 13, 75-78). Merriam (1891, p 75) indicated that the general distribution for the pygmy rabbit was the "Sage Plains" along the Snake River, and in Birch Creek and Lemhi Valleys, Little Lost River Valley, Pahsimeroi Valley and Big Lost River Valley, Idaho and into northern Nevada to the south, and to the west "probably" into eastern Oregon and Washington.

Other early records include: six specimens collected from Big Lost River Valley, Birch Creek, Junction, Lost River Mountain, and Pahsimeroi Valley, Idaho (Nelson 1909, p. 278); and a report of two pygmy rabbits collected from 1 mi (1.6 km) west of Schutt's Mine in November 1930 (Whitlow and Hall 1933, p. 269). In May 1931, a female was collected near Trail Creek (Whitlow and Hall 1933, p. 270). These records extended the known range by 75 mi (120.7 km) to the southeast (Whitlow and Hall 1933, p. 270). Observations of pygmy rabbits in Idaho occurred near the head of the Pahsimeroi River, Idavada, Pahsimeroi Valley, Riddle, and Pocatello (Davis 1939, p. 364). Davis lists locations of 10 specimens examined: Owyhee County, near Riddle, 2; Cassia County, Elba, 1; Butte County, Craters of the Moon National Monument, 1; Power County, near Michaud, 3; Bannock County, near Schutt's Mine, 2; Trail Creek near Pocatello, 1. Additional records mentioned included Nelson's (1909)

records of Lemhi County, Junction; Custer County, Pahsimeroi Valley. Additional locations included Minidoka County, Minidoka (Seton 1929, cited in Davis 1939, p. 366); Cassia County, Burley (Grinnell *et al.* 1930, cited in Davis 1939, p. 366); Clark County, Birch Creek; Butte County, Big Lost River Valley; Lost River Mountains (Lyon 1904, cited in Davis 1939, p. 366). Lyon (1904, cited in Davis 1939, p. 366) also includes a record from Ione Valley. Davis (1939, p. 366) was unable to find Ione Valley in Idaho and thought the specimen may have been from Nevada.

Bradfield (1974, p. 39) speculated that the pygmy rabbit population was declining in his study area in Bingham County, Idaho. This was based on the number of abandoned burrows, number of skulls indicating death by predation or other means, and fewer observed rabbits.

In her Idaho study area in portions of Idaho National Engineering and Environmental Laboratory (Laboratory) in Butte and Jefferson Counties, Gabler (1997, p. 42) found 101 burrow sites, of which 26 were active. Gabler (1997, p. 94) also revisited Wilde's (1978) three study areas on Laboratory lands, and found two collapsed burrows with no sign of occupancy; four active burrows which were abandoned 10 months later; and 34 abandoned burrows, respectively.

Several surveys were conducted by Roberts between 1997 and 2004. In 1997 and 1998, Roberts (2001, pp. 4-6) conducted surveys on BLM lands administered by the Salmon and Challis Field Offices (FO) in Lemhi and Custer Counties. The 3 areas occurred in the upper Lemhi River and upper Birch Creek Valleys; upper Pahsimeroi River and upper Little Lost River Valleys; and the upper Warm Springs Creek and upper Big Lost River Valleys. He found that pygmy rabbits were found widely scattered in all 3 of these areas (Roberts 2001, pp. 10-11). In addition, Roberts (2001, p. 11) mentioned an occupied area in Railroad Canyon adjacent to Bannock Pass. This may be contiguous with habitat found in Horse Prairie Creek, Montana reported by Rauscher (1997, p. 13). Other areas of occupied rabbit habitat were found in Hawley Creek and in Bradshaw Basin (Roberts 2001, p. 11). During 2002, Roberts (2003a, pp. 3, 5) conducted surveys in the Snake River Plains area in southern Idaho. Surveys were conducted on BLM lands within Idaho Falls, Pocatello, Shoshone, Owyhee, Jarbidge, and Burley FO areas, on U.S. Forest Service (USFS) lands within Targhee, Caribou, Cache, Sawtooth, Salmon, and Challis National Forests, and the Curlew National Grasslands. Roberts (2003a, p. 6) found 9 currently active pygmy rabbit burrow systems. Four were found on the Owyhee FO, two on the Pocatello FO and one each in Idaho Falls and Jarbidge FO areas. One was found on the Curlew National Grasslands. Two systems were classified as recently active. One was found on the Owyhee FO area and the other on the Shoshone FO area.

During the summer of 2003, Roberts (2003b, p. 3) searched areas in Big Lost River Valley, Little Lost River Valley, Birch Creek, and Medicine Lodge Creek for pygmy rabbits. He found three currently and recently active burrow sites in Big Lost River Valley; seven currently and recently active burrows in Little Lost River Valley; seven currently active burrow sites in Birch Creek where five pygmy rabbits were observed; and one currently active burrow site at Medicine Lodge Creek area. Another active burrow site was found in upper Medicine Lodge Creek (Targhee National Forest 3 miles from Bannock Pass).

In 2004, Roberts (2004, p.2) continued to survey areas in Big Lost River Valley, Little Lost River Valley, Birch Creek, and Medicine Lodge Creek located in Butte and Clark Counties. He was unable to find pygmy rabbit evidence in the areas he searched in Big Lost River (Roberts 2004, pp. 3-4). He found 11 currently active sites in Little Lost River area. In the Birch Creek area he found 7 currently and recently used sites. He saw 6 pygmy rabbits at one of these areas. In this area, the pygmy rabbits were using cracks and crevices in and around large rocks and boulders as their burrows. In the Medicine Lodge Creek area he found 10 new burrow sites. He found 2 active burrows on the Targhee National Forest. Two additional active burrow sites were found on the U.S. Sheep Experiment Station.

White and Bartels (2002, p. 1) surveyed for pygmy rabbits on 11 grazing allotments in Twin Falls and Cassia Counties on BLM lands administered by the Burley FO. Results included 35 burrows found on 6 of the allotments (White and Bartels 2002, p. 5). Twenty-four of the burrows were revisited with a peeper probe and six burrows located on two allotments were considered occupied by pygmy rabbits (White and Bartels 2002, p. 5). In addition, White and Bartels (2002, p. 7) attempted to visit 31 historical locations for pygmy rabbits in Cassia, Minidoka, Blaine, Power, and Oneida Counties, Idaho. Eighteen sites were too vague to relocate, eight were disturbed due to various factors, and five were potentially suitable habitat (White and Bartels 2002, pp. 7-8). No active pygmy rabbit burrows were found on any of the 13 disturbed or potentially suitable sites visited.

Red Willow Research Inc. conducted several surveys between 1999 and 2004. In 1999, Red Willow Research Inc. (2000, pp. 5-6) reported on sightings of pygmy rabbits at five locations in Cassia and Oneida Counties. Red Willow Research Inc. (2002, pp. 99-100) reported that all nine study areas within the BLM Shoshone FO area showed presence of pygmy rabbit use. Recent or current signs of occupancy were found at five individual sites along transects within three of the nine study areas in 2001 and 2002. Red Willow Research Inc. (2004, p. 3) continued surveys in and adjacent to the nine study areas identified in the 2002 study. The 2004 survey resulted in one sighting and one possible sighting of a pygmy rabbit, one inactive burrow system, and identification of additional areas for future survey efforts (Red Willow Research Inc. 2004, p. 4).

North Wind, Inc. (2004, p. 2) surveyed for pygmy rabbits on BLM lands in eight areas located in the northern portions of the BLM Idaho Falls District. Five sites indicated recent or past pygmy rabbit use, including a pygmy rabbit sighting (North Wind, Inc. 2004, p. 13).

Rachlow and Witham conducted several surveys between 2003 and 2006. Rachlow and Witham (2004a, p. 2) surveyed 12 locations in Camas, Blaine, and Gooding Counties, south central Idaho that had been identified as potential habitat in 2003. Two sites were confirmed to support pygmy rabbit populations. Witham and Rachlow (2004, p. 3) surveyed three potential sites at Craters of the Moon National Monument and Preserve in 2004 and found no evidence of pygmy rabbit presence. Rachlow and Witham (2005, p. 1) conducted a pilot study to test whether pygmy rabbit sign could be detected during aerial surveys in the Camas Prairie of south central Idaho. The study area included the two previously known locations found in 2003 and confirmed in 2004 by Rachlow and Witham (2004a, pp. 2-3) (Rachlow and Witham 2005, p. 2). The aerial surveys identified 25 potential sites and 21 were ground checked (Rachlow and Witham 2005, p. 7). Seven of the 21 sites were confirmed to support pygmy rabbit populations (Rachlow and Witham 2005, p. 7). Rachlow and Witham (2006, p. 1) surveyed a portion of the Camas Prairie in south central Idaho by fixed-wing aircraft during February 2006. They identified 67 potential sites from the air and evaluated 64 of them on the ground. Presence of pygmy rabbits was

confirmed at 32 sites. Sign at the remaining sites was attributed to cottontail rabbits or other species. These new locations expanded the known distribution of pygmy rabbits in the Shoshone FO area.

BLM (2005a, p. 1) reported on surveys conducted between 2002 and 2005 on BLM lands within the Boise District (Owyhee FO). In 2002, four survey routes were walked and pygmy rabbit evidence was observed on each route (BLM 2005a, p. 2). Two sites were at or near previously known locations and two were new locations. One site was considered active. In 2003, 25 routes were walked and 12 locations found (7 active or recent, 5 inactive) (BLM 2005a, p. 2). In 2004, 14 routes were walked and 2 new populations were found (1 active or recent, 1 unrecorded activity level) (BLM 2005a, p. 2). In 2005, 242 routes were walked with 16 new populations found (9 active or recent, 7 inactive) (BLM 2005a, p. 2).

Bartels (2005, p. 2) conducted pygmy rabbit surveys in the southern portion of BLM's Jarbidge FO area during 2005. Sixteen pygmy rabbit burrows were identified with an additional 25 documented as potential pygmy rabbit burrows. Burrows were generally located near Coonskin Butte, Pigtail Butte, Dorsey Table, Worley Draw, and Signal Butte. During the survey four pygmy rabbits were confirmed observed. These rabbits were observed at Worley Draw and Coonskin Butte.

Waterbury (2005, p.3) conducted winter surveys in late 2004 and early 2005 for pygmy rabbits in areas previously identified as potentially suitable habitat but where their presence or absence had not been conclusively determined on BLM (Salmon and Challis FO) and USFS (Leadore, North Fork, and Challis Ranger Districts) lands. Of the 38 locations surveyed, pygmy rabbits were present at 12 of them (Waterbury 2005, p. 4). Waterbury (2006, p. 5) expanded search areas compared with previous efforts on BLM lands (Challis FO) located in Custer and Lemhi Counties. Surveys documented 269 positive detections of pygmy rabbits (burrows, tracks, pellets, sightings) over 20 areas (Waterbury 2006, pp. 9, 27-32). The areas of greatest concentrations occurred in Big Lost River Valley, Thousand Springs Valley, Pahsimeroi River Valley, Upper Spar Canyon, and Upper Road Creek (Waterbury 2006, p. 9). Forty-six pygmy rabbits were observed during the study (Waterbury 2006, p. 9). Of the 265 positive detections associated with burrow systems, 91 percent were at active or recently active systems (Waterbury 2006, p. 9). These surveys expanded the known pygmy rabbit locations in the Challis FO and confirmed the persistence of historical populations in the Upper Pahsimeroi and Thousand Springs Valleys (Waterbury 2006, p. 11).

Wackenhut (2008, pp. 4, 6, 7) conducted pygmy rabbit surveys across much of Bear Lake Plateau, Bear Lake County, Idaho between December 2006 and March 2007. Information was collected on 568 active burrows in 19 different locations across the plateau. Ten pygmy rabbits were sighted during the study. Fecal pellets were collected at 19 individual burrows. DNA analysis for pygmy rabbit was positive for 13 of these samples; 5 samples were positive for mountain cottontail and 1 sample failed (Wackenhut 2008, p. 4).

Most of the historical records (1999 and earlier) for Idaho occur in the following counties: Owyhee, Cassia, Minidoka, Bannock, Bingham, Butte, Custer, and Lemhi. Additional records are from Canyon, Ada, Twin Falls, Lincoln, Power, Oneida, Blaine, Bear Lake, and Clark. Current information (2000 and later) indicates the following 11 counties continue to support pygmy rabbit activity: Owyhee, Twin Falls, Cassia, Bear Lake, Lincoln, Blaine, Bingham, Butte, Custer, Lemhi, and Clark. Active areas were also found in the following counties without previous records: Washington, Gooding, Camas, Jefferson, and Fremont. Payette County indicated a recent inactive area.

We are uncertain of the current pygmy rabbit activity in Canyon, Ada, and Bannock Counties because we are unaware of any survey efforts in 2000 or later occurring in these counties. Limited recent survey effort in Minidoka, Power, and Oneida Counties indicate inactivity at previously known sites. Records from Canyon and Ada Counties indicate activity in 1915 and 1982, respectively. Power and Minidoka Counties indicate activity in the 1930's and 1940's, respectively. Both Bannock and Oneida Counties indicate activity in the 1990's. However, recent survey efforts have expanded the known distribution in this State. Numerous previously unknown locations currently show signs of pygmy rabbit occupancy including locations in previously undocumented counties.

*Montana*

The pygmy rabbit was first documented in Montana in 1918 (Hoffman *et al.* 1969, cited in Rauscher 1997, p. 1). In 1963, a specimen was collected in Big Sheep Basin (Rauscher 1997, p. 1). Between 1963 and 1997 no additional documentation regarding the pygmy rabbit in Montana occurred (Rauscher 1997, p. 1).

Rauscher (1997, entirety) documented the results of pygmy rabbit surveys in Montana during 1996 and 1997. Pygmy rabbits occupied suitable habitat in most of Beaverhead County, the extreme southern end of Deer Lodge County, and the western edge of Madison County (Rauscher 1997, p. 5). Because of the discontinuous distribution of pygmy rabbits, every occupied site may not have been found, and as a result pygmy rabbits may occur outside of this range (Rauscher 1997, p. 5). Five of six historical sites were searched and four showed signs of occupation (Rauscher 1997, p. 6). He mentioned some sites were found that no longer appeared to be occupied. These occurred west of Dillon, at the southern end of Dutchman Mountain, and at the northern edge of Frying Pan Basin (Rauscher 1997, p. 6). Rauscher concluded pygmy rabbits appeared to occupy much of the historical range (Rauscher 1997, p. 13).

Janson (2002, p. 33) wrote that the historical range in Montana continues to support pygmy rabbits, with some exceptions. This was based on his limited observations in Beaverhead County, Montana in 2001.

During 2004 and 2005, the Montana Natural Heritage Program conducted pygmy rabbit surveys for BLM (Dillon FO) to assess current distribution in the State (Lenard *et al.* 2005, p. 1). These surveys focused on Beaverhead (2004) and Madison (2005) Counties in areas of known use and areas where no activity had been previously documented (Lenard *et al.* 2005, p. 1). Due to snow, known locations in Horse Prairie, Medicine Lodge Creek (south of Ayers Canyon), Badger Gulch/Sagebrush Creek, and Upper Ermont Creek were inaccessible (Lenard *et al.* 2005, p. 1). New areas of pygmy rabbit activity were identified, expanding the current known distribution of the species (Lenard *et al.* 2005, p. 1). In 2004, five previously known locations were surveyed and four of the five indicated current activity in Beaverhead County. The fifth showed recent activity (Lenard *et al.* 2005, pp. 9-10). Seven new areas were surveyed and all showed current pygmy rabbit activity (Lenard *et al.* 2005, p. 10).

In Madison County, five areas were surveyed in 2005. Although a few pygmy rabbit locations had been previously documented in one of these areas, the remaining areas were previously unknown to surveyors regarding pygmy rabbit occupancy. Of these five areas, three areas showed current activity; two areas showed recent activity (Lenard *et al.* 2005, p. 12). Four new areas were surveyed and

three areas were reported as showing no pygmy activity; one area could indicate a dispersal area as pellets were found but no burrows (Lenard *et al.* 2005, pp. 12-13).

In Montana, during the winter of 2007, pygmy rabbit surveys were conducted in areas where no prior surveys had been conducted or where recent activity had not been documented in Beaverhead and Deer Lodge Counties (Hendricks *et al.* 2007, p. 3). Twenty-four sites were surveyed and four sites were found to have current pygmy rabbit activity (Hendricks *et al.* 2007, p. 9). Twelve sites had no evidence of pygmy rabbit activity, eight were considered unsuitable habitat for pygmy rabbits, and two were considered potential but were inaccessible due to snow (Hendricks *et al.* 2007, p. 9). Two active sites in Big Hole Valley were notable as they indicated current activity at sites that had not been resurveyed since they were active in 1997 (Hendricks *et al.* 2007, p. 10). The two other active sites were previously undocumented pygmy rabbit sites (Hendricks *et al.* 2007, p. 11). These new sites occurred in gaps between other locations suggesting additional locations may be found between those currently known (Hendricks *et al.* 2007, p. 13). The distribution and status of pygmy rabbits in Montana has become clearer since 1997 (Hendricks *et al.* 2007, p. 15). However, Hendricks *et al.* (2007, p. 15) suggested additional surveys should occur in Centennial Valley, Jefferson River corridor north of Twin Bridges, Frying Pan Basin west of Dillon, and the Ruby River and Sweetwater Creek corridors.

Most of the historical and recent records for Montana occur in the following two counties: Beaverhead and Madison. Current information (2000 and later) indicates these two counties, as well as Deer Lodge County, continue to support pygmy rabbit activity. There is a notable increase in the current distribution of the pygmy rabbit to the northeast in Madison County.

*Wyoming*

During the 1980's and 1990's a few reports documented pygmy rabbits in Wyoming. Campbell *et al.* (1982, p. 100) were the first to confirm the existence of pygmy rabbits in Wyoming. In 1981, 6 specimens were collected, 17 individuals were observed, and 2 skulls and many pellets were found at 2 sites in Uinta and Lincoln Counties in southwestern Wyoming (Campbell *et al.* 1982, p. 100). These two new locations found in Wyoming extended the known range of the pygmy rabbits about 149 mi (240 km) to the southeast and 90 mi (145 km) to the northeast (Campbell *et al.* 1982, p. 100). Clark and Stromberg (1987, p. 75) reported three sites from Lincoln and Uinta Counties located in southwestern Wyoming. Garber and Beauchaine (1992, p. 3) compiled previously reported observations from Campbell *et al.* (1982, p. 100) and information from the Wyoming Game and Fish Department database. Although, this report does not indicate locations, which ones were revisited, or their status, several sites were revisited and new sites were found in 1990. Eleven new observations were recorded which increased records to 50 site confirmations (Garber and Beauchaine 1992, p. 4). Documented observations expanded the known distribution in Wyoming by including two additional counties: Sublette and Sweetwater (Garber and Beauchaine 1992, p. 8).

In 2004 and 2005, Purcell (2006, pp. 1, 7-11, 30) conducted her study in 10 areas in Lincoln, Sublette, Sweetwater, Fremont, and Carbon Counties. She found pygmy rabbits more widely distributed in southwestern and south central Wyoming than formerly thought due to previously unknown locations being found in Fremont and Carbon Counties. Purcell (2006, p. 32) suggested pygmy rabbits in Wyoming could occur as far east as Rawlins, as far north as Riverton, and as far south as Baggs.

Western EcoSystems Technology, Inc. (2006, p. 1) conducted a pygmy rabbit survey in Lincoln and Uinta Counties, Wyoming. During the survey, 88 pygmy rabbit points indicating sign of pygmy rabbit presence were documented.

Aster Canyon Consulting, Inc. conducted several surveys between 2005 and 2007 in relation to proposed oil and gas facilities in Wyoming. These surveys provide pygmy rabbit sightings and signs in Lincoln, Sublette, and Sweetwater Counties.

Grasslands Consulting, Inc. (2007, pp, 1,2) conducted pygmy rabbit surveys in 2007 in relation to three proposed oil and gas facilities in Sweetwater and Uinta Counties, Wyoming. These surveys provided pygmy rabbit sightings and signs in these counties.

Most of the historical and recent records for Wyoming occur in the following four counties: Uinta, Lincoln, Sublette, and Sweetwater. Current information (2000 and later) indicates these counties continue to support pygmy rabbit activity. Recent survey efforts have expanded the known distribution in this State considerably as numerous previously unknown areas have been found in southern Sublette, southern Fremont, and eastern Sweetwater Counties. Areas in western Carbon County indicate a further range extension of the known distribution.

*California*

Early records indicate that pygmy rabbits were documented in eastern Modoc, Lassen, and Mono Counties. Henshaw (1920, p. 9) mentioned obtaining rabbit specimens in northeastern California at Goose Lake, Modoc County, in 1877 (at the time identified as Trowbridge's hare (*Lepus trowbridgei*) but later determined to be *Brachylagus idahoensis* as described by Merriam). Grinnell *et al.* (1930, p. 553) collected 20 pygmy rabbit specimens during 1926 and 1928 in the vicinity of Ravendale, Lassen County. Orr (1940, p. 195) observed pygmy rabbits on the south edge of the Madeline Plains, located east of Ravendale, in October 1931. Severaid (1950, pp. 1-2) recorded observations and collection in 1948 of pygmy rabbits at Bodie, a famed gold mining ghost town, located in northern Mono County. The southern limit of their distribution in California was documented in 1955 in the vicinity of Crowley Lake in southern Mono County (Jones 1957, p. 274).

During 2004, surveys were conducted on lands managed by BLM (Eagle Lake FO) in northern California (Sequin 2004, entirety). Twenty historical records are documented within the boundaries of the Eagle Lake FO and were located near Ravendale based on information provided by Grinnell *et al.* (1930) and Orr (1940). Pygmy rabbits were not found at any of the historical sites; no evidence of old or fresh pellets or burrows were seen (Sequin 2004, p. 6). Sequin (2004, p. 6) also surveyed 356 potential sites for pygmy rabbit sign within the Eagle Lake FO boundary. No pygmy rabbit activity, either old or current, was found at any of these potential sites (Sequin 2004, p. 6). As all potential pygmy rabbit habitat was not surveyed, it is possible that pygmy rabbits may still be found within the Eagle Lake FO boundary (Sequin 2004, p. 8).

Larrucea and Brussard (2008a, pp. 692, 694-695), surveyed locations in Nevada and California between 2003 and 2006 which includes information reported in Sequin (2004). In California, active sites were found in Mono County, but not in Modoc or Lassen Counties (Larrucea and Brussard 2008a, p. 694). This area is on the edge of the pygmy rabbit's western range (Larrucea and Brussard 2008a, p. 694). It is possible that pygmy rabbits have been extirpated from Modoc and Lassen Counties. A range contraction would be more expected in a peripheral area, such as northern California, if it were to occur

(Larrucea and Brussard 2008a, p. 696). The Mono County populations may be isolated from other known populations because they appear to be separated by a distance of approximately 100 mi (162 km) from the nearest known populations in Nevada (Larrucea and Brussard 2008a, p.694). These pygmy rabbit populations may have become isolated from more eastern populations at the end of the Pleistocene (Grayson 2006, pp. 2969-2970).

There are only a few historical (1999 and earlier) records for California which included Modoc, Lassen, and Mono Counties. Current information (2000 and later) indicates that while pygmy rabbit activity continues to occur in Mono County, pygmy rabbits may have been extirpated from both Modoc and Lassen Counties in northeastern California. Due to limited survey efforts in northern California overall, uncertainty remains whether this contraction has actually occurred. Therefore, Figure 1 does not depict this possible range contraction.

*Nevada*

The earliest pygmy rabbit records for Nevada include a collection of 12 pygmy rabbits from Paradise, Humboldt County, Nevada in 1908 and 1909 (Nelson 1909, p. 278). Nelson also indicated he examined 23 additional specimens from Halleck, Ione Valley, Monitor Valley, Reese River, and Skelton, Nevada.

Hall (1946, p. 618) indicates he examined 56 pygmy rabbit specimens and sight records from several locations throughout the State. The years of these collections and sightings are not included but were recorded for the following eight counties: Washoe, Humboldt, Pershing, Churchill, Lander, Nye, Elko, and White Pine. The range map for Nevada also included Eureka County and a portion of Lincoln County (Hall 1946, p. 615).

During 1993 and 1994, surveys were conducted on Sheldon National Wildlife Refuge lands located in Washoe and Humboldt Counties. Twenty-four surveys were completed; 17 locations were found to be occupied by pygmy rabbits (Service 1995, p. 1). In 2002, surveys were conducted on the refuge and locations reported in 1993 and 1994 were also revisited (Service 2004, p. 1). In total, 41 sites were surveyed for pygmy rabbits and 18 had pygmy rabbit sign of which 15 sites were confirmed with photography (Service 2004, p.2). Ten of the sites from the mid 1990's had pygmy rabbit sign in 2003. Fifteen new sites were surveyed in 2003; eight of these showed pygmy rabbits and/or their sign (Service 2004, p. 2).

Marriott (2005, p. 4) reported conducting surveys for pygmy rabbits in all or portions of 23 units on the Ruby Lakes National Wildlife Refuge and an area immediately adjacent to refuge lands, located in Elko and White Pine Counties in 2004 and 2005. Evidence of pygmy rabbits was found in seven units. The populations reported by Ports and Ports (1989, p. 127) were found in the sand dune area adjacent to two of the refuge units (Marriott (2005, p. 4). It was confirmed that at least 27 burrows were active (Marriott (2005, p. 4). Three pygmy rabbits were observed (Marriott 2005, p. 5). The surveyors were confident that they had not found all the burrow systems within the refuge boundaries (Marriott 2005, p. 7). They also suspected that more pygmy rabbits occur in the sand dune area as they were unable to survey the entire area (Marriott 2005, p. 8). In 2006, Wienke (2006) reported conducting pygmy rabbit surveys in two areas of the Ruby Lakes National Wildlife Refuge and adjacent BLM lands. The sand dune area survey found 44 pygmy rabbit burrow systems of which 20 appeared to be active (Wienke 2006, p. 2). Three pygmy rabbits were observed (Wienke 2006, p. 2). In the Unit II-D area, 162 burrow systems were found; 53 were active (Wienke 2006, p. 2). Ten pygmy rabbits were observed (Wienke 2006, p. 2).

Etzelmiller (2003, p. 1) conducted 33 survey transects in northwestern Nye County, Nevada in 2003 and 10 showed evidence of pygmy rabbit sign. Pygmy rabbits appear to be concentrated in Indian, Eastern Ione, and Upper Reese River Valleys (Etzelmiller 2003, p. 3).

In 2003 Himes and Drohan (2007) surveyed for pygmy rabbits in White Pine, Lincoln, and Nye Counties in eastern and central Nevada. Pygmy rabbit sign (individuals, burrow, pellets) was found along 261 of 642 transects (40.7 percent) walked (pygmy rabbits and/or fresh burrows and pellets on 89 transects (13.9 percent); fresh pellets only on 33 transects (5.1 percent); old burrows and pellets on 113 transects (17.6 percent); old pellets only on 26 transects (4.0 percent)). No sign was observed on 381 transects (59.3 percent) (Himes and Drohan 2007, p. 376). The southern limit of the previously known record in Nevada was extended by about 7.5 mi (12 km) south (Himes and Drohan 2007, p. 376). All transects where pygmy rabbits and/or sign of pygmy rabbit presence were observed in the study area were considered new locations. Due to the extreme remoteness and fairly inaccessible terrain in the survey area, additional localities are almost certain to remain undocumented (Himes and Drohan (2007, p. 380).

During surveys conducted between 2003 and 2006, a total of 1,474 locations were surveyed in Nevada and California (Larrucea and Brussard 2008a, pp. 692, 694-695). Pygmy rabbits were documented at 258 sites (Larrucea and Brussard 2008a, p. 694). The current distribution of active sites in Nevada is similar to the historical distribution (Larrucea and Brussard 2008a, p. 694). Active sites were found throughout the historical range (Larrucea and Brussard 2008a, pp. 694-695). Positive (confirmed) locations for pygmy rabbits in Larrucea (2007) should be considered as minimum occurrence because it occurred on a large, state-wide basis (Larrucea 2007, p. 28). Information from Larrucea (2006) was incorporated into the Larrucea (2007) study. Associated with the previous study (Larrucea 2007), Larrucea and Brussard (2008b, p. 1638) revisited 105 sites based on 118 historical records from Nevada (109) and California (9) dated between 1877 and 1946 for current pygmy rabbit presence. Pygmy rabbits were found to be present at 36 percent of the historical sites (Larrucea and Brussard 2008b, p. 1638). When a radius (buffer) around a positive location was increased to 3.1 mi (5 km) around a historical site, positive locations increased to 48 percent, and when a radius of positive location was increased to 6.2 mi (10 km) around a site, positive locations increased to 60 percent (Larrucea 2007, p. 56). As indicated in Larrucea and Brussard (2008a) many additional sites were found throughout the historical range.

The Southern Nevada Water Authority (2007, p. 5) conducted pygmy rabbit surveys in 2005 and 2006 in Dry Lake, Cave, Lake, and Hamlin Valleys in Lincoln County and Spring, Snake, and Steptoe Valleys in White Pine County, Nevada. Fifty-six locations were surveyed and 15 had pygmy rabbit sign (SNWA 2007, p. 5). There was one confirmed and one potential pygmy rabbit sightings observed (SNWA 2007, p. 5). Pygmy rabbit sign occurred in Cave, Dry Lake, and Lake Valleys, Lincoln County and Spring Valley, White Pine County (SNWA 2007, pp. 5-10).

Most of the historical records (1999 and earlier) for Nevada document occurrences in the following counties: Elko, Eureka, Lander, White Pine, and Nye Counties. There are fewer records from Washoe, Humboldt, Pershing, and Churchill Counties. Current information (2000 and later) indicates all of these counties, with the exception of Pershing County, continue to support pygmy

rabbit activity, and across a broader area within those counties than historically noted. Pershing County is an exception because we are unaware of any recent survey efforts being conducted in the County, and therefore do not know if pygmy rabbits continue to exist there. In addition, pygmy rabbit activity has been found in Lincoln County. The recent survey efforts have located populations over a greater area within the State and the expansion of the known range has occurred most notably in Washoe, Lincoln, and Nye Counties.

*Utah*

Early reports of pygmy rabbits occurring in Utah include the first reporting in 1932 after having been detected in 1931 (Stanford 1932, cited in Oliver 2004, p. 14). Janson (1940, p. 6) collected pygmy rabbits from Blue Creek Hills 10 miles (16.1 km) west of Tremonton and in Iron County about 5 miles (8 km) west of Cedar City. He observed them in the valley bottom west of Parowan. Anecdotal reports to Janson indicated that pygmy rabbits occurred at the foot of Lake Mountains west of Utah Lake. Janson (1940, p. 6) thought it was "probable" the pygmy rabbit occurred in "a more or less broken strip through the Upper Sonoran sagebrush areas of western Utah from the northern boundary of the State nearly to the Iron-Washington County line southwest of Cedar City." In 1946, Janson (1946, p. 32) wrote that the pygmy rabbit "appears" to extend through Utah west of the Wasatch Mountains from the Idaho border to the northern border of Washington County. He reported specimens had been collected near Clarkston, Cache County; Blue Spring Hills and Grouse Creek, Boxelder County; and near Modena, Lund, Kanarraville, and Cedar City, Iron County. Pygmy rabbits or their sign had been observed near Snowville, Lucin, and Promontory, Boxelder County; and Parowan, Iron County. He mentioned a reliable report of their presence west of Utah Lake, Utah County, and a questionable report west of Trout Creek (county unknown). Schantz (1947, p. 187) noted, based on three specimens collected by Janson in 1938, a 270 mile (434.4 km) southern expansion of known pygmy rabbit distribution in Utah from Promontory, Boxelder County, to Cedar City, Iron County.

Janson (1946, p. 84) reported that in the winter of 1946, pygmy rabbits appeared to be more scarce than in 1941 based on two study areas in Utah (near Cedar City, Iron County; near Tremonton, Box Elder County). Areas where he considered pygmy rabbits common in Utah in 1941 were found to have no pygmy rabbits occupying them in 1946.

Durrant (1952, p. 88) reported that the pygmy rabbit range in Utah included Boxelder, Cache and Iron Counties and "probably" occurred between areas along the eastern margin of Pleistocene Lake Bonneville. He also listed additional records provided by Janson (1946, pp. 32-33) and included Juab County (Durrant 1952, p. 89).

Holt (1975, p. 131) indicated considerable information was obtained that altered the distributional range of the species. Populations from Sevier River tributaries and surrounding areas indicated that the pygmy rabbit was not restricted to the Upper Sonoran life zone (Holt 1975, p. 132). Holt (1975, pp. 136-138) indicated additional specimens have been examined from Boxelder, Tooele, Millard, Sevier, Beaver, Piute, Garfield, and Washington Counties. These are in addition to Janson's (1946, pp. 32-33) records or sightings from Boxelder, Cache, Utah, Juab, and Iron Counties.

Pritchett *et al.* (1987, p. 231) reported pygmy rabbit records outside of the published range in the Bonneville Basin. One record is near Panguitch, Garfield County (Stephenson 1966, cited in Pritchett *et al.* 1987, p. 231). They mention Holt's (1975, p. 137) record of a population south of Fish Lake on Parker Mountain and a collection and sighting of pygmy rabbits south of Fish Lake Ranger Station and west of Loa, Wayne County. In addition, Pritchett *et al.* (1987, p. 231) reported collecting six live individuals and two skulls from the Parker Mountain region of the Awapa Plateau, Wayne County. The Awapa Plateau is part of the Fremont River watershed and is outside of the Pleistocene Lake Bonneville drainage. During 1986, Pritchett *et al.* (1987, p. 233) looked for pygmy rabbits or their sign and were able to find evidence from Burrville, about 0.5 mi (0.8 km) northwest of Parker Mountains, south through Grass Valley to north of Otter Creek Reservoir. They were unable to find Holt's (1975, p. 137) population west of Otter Creek Reservoir Pritchett *et al.* (1987, p. 233). They wrote that the valley between Kingston and Otter Creek is narrow and disturbed. They found no evidence of pygmy rabbits from Sigurd to Burrville or through Emery Valley.

Based on the two previous study areas in Utah between 1938 and 1946, and limited observations in Utah (near Clarkston, Cache County; near Snowville and Grouse Creek, Box Elder County) in 2001, Janson (2002, p. 32) wrote that recent information indicated pygmy rabbit populations had declined in some areas where they were previously more abundant, mostly as a result of human actions. He states that residential and commercial development, farming, and range improvements for grazing, especially near Cedar City, had impacted the sagebrush habitat. He found no recent sign of occupancy near Cedar City, Utah.

Oliver (2004 pp. 16-18) provides a review of pygmy rabbit in Utah and lists location records for the pygmy rabbit between 1946 and 2003 which includes the following 14 counties: Washington, Boxelder, Garfield, Piute, Iron, Sevier, Cache, Beaver, Rich, Wayne, Toole, Millard, Juab, and Utah.

In 2005, Welch (2005, pp. 15-17, 36) conducted walking surveys of 48 big sagebrush stands or sites in Utah (41 sites in Box Elder, Rich, Tooele, Davis, Utah, Wasatch, Duchesne, Uintah, Juab, Carbon, Sevier, Beaver, Piute, Wayne, Iron, and Washington Counties), Idaho (4 sites in Cassia and Oneida Counties), and Nevada (3 sites in Elko and White Pine Counties) in 2003 and 2004. Twelve of these sites were known to have supported pygmy rabbits in the past, 26 possibly supported pygmy rabbits in the past, and 10 sites had no record of past use (Welch 2005, p 2). Of the 12 sites known to have supported pygmy rabbits in the past, 4 were found to support pygmy rabbits or current sign (Cassia County, Idaho; Piute and Rich Counties, Utah; Elko County, Nevada); of the 26 possible historical sites, 1 was found to support current pygmy rabbit activity during his study (Iron County, Utah) (Welch 2005, pp. 9, 14-17, 36). In addition, he surveyed 13 other sites previously listed by Janson (2002, pp. 10-11) (Welch 2005, p 2). Of these 13 sites, none showed signs of current use; only 5 had some remaining suitable habitat (Welch 2005, p 10).

Flinders *et al.* (2005, p. 7) surveyed habitat in Grass Valley in Piute, Sevier, and Wayne Counties located in south central Utah. Pygmy rabbit surveys were conducted in areas slated for sagebrush treatment but where pygmy rabbit surveys had not been previously conducted as well as revisiting areas where pretreatment pygmy rabbit surveys had been completed by BLM employees (Flinders *et al.* 2005, p. 13). According to Flinders *et al.* (2005, p. 13), BLM surveys identified 118 active burrow systems and 85 inactive ones. Flinders *et al.* (2005, p. 13) found 14 locations with active burrow systems and all others found in treatment areas were determined to be inactive.

During 2005 and 2006, Larsen *et al.* (2006) surveyed for pygmy rabbits in Deep Creek watershed, Tooele County.

This watershed is located on the Utah-Nevada border and the closest known extant pygmy rabbit population in Nevada occurs about 52 miles (84 km) to the northwest (Larsen *et al.* 2006, p. 4). The Nevada population had been surveyed within the past 5 years (Larsen *et al.* 2006, p. 4). Four historical (1905-2002) sites showed no evidence of present occupation by pygmy rabbits (Larsen *et al.* 2006, p. 5). In addition, three active pygmy rabbit locations (confirmed with photography) and three inactive ones were found within the watershed (Larsen *et al.* 2006, pp. 5-6). Pygmy rabbits were not photographed at the inactive sites and fresh pellets were lacking; however, given the recent activity and the potential for reoccupation, the authors believed these inactive sites are important to the species in the watershed (Larsen *et al.* 2006, p. 15). Interestingly, based on the map provided by Larsen *et al.* (2006, p. 16), the three inactive sites and the three active sites are located north and south of the historical sites, respectively.

Flinders (2007, pp. 2-3) indicates discovery of fairly extensive populations in Hamlin Valley located on the Utah-Nevada border in Iron and Beaver Counties. Numerous burrows systems classified as current or recently current have been found in the area. This area may provide a corridor between Utah and Nevada pygmy rabbit populations. Pygmy rabbit use was found on both sides of the border.

In summary, most historical records (1999 and earlier) for Utah occurred in the following six counties: Boxelder, Iron, Washington, Garfield, Piute, and Wayne Counties. Fewer records occurred in Beaver, Millard, Juab, Tooele, Sevier, Utah, Rich, and Cache Counties. Current information (2000 and later) indicates Boxelder, Tooele, Beaver, Iron, Washington, Garfield, Piute, Wayne, Sevier, and Rich Counties continue to support pygmy rabbit activity. Current pygmy rabbit activity is uncertain in Cache, Utah, and Juab because we are unaware of any recent survey efforts occurring in these counties. A new area in Millard County was searched in 2003 and activity was not observed. The recent survey efforts have located active population in Sanpete County and in additional areas previously unknown within the other counties where surveys have occurred.

*Abundance*

We are unaware of any historical or current population estimates being made for the pygmy rabbit by individual States or for the range considered in this finding. Any figures related to numbers of pygmy rabbits provided in the literature have been reported as individuals collected (Dice 1926 p. 27 (10 in Oregon); Grinnell *et al.* 1930, pp. 553-554 (20 in California), p. 555 (35 in Nevada); Bailey 1936, p. 111 (8 in Oregon); Severaid 1950, p. 2 (4 in California); Borell and Ellis 1934, pp. 41-42 (7 in Nevada)), or individuals observed (Grinnell *et al.* 1930, p. 553 (1 in California); Bailey 1936, p. 111 (40 in Oregon); Jones 1957, p. 274 (1 in California); Bartels 2003, p. 88 (5 in Oregon); Rachlow and Witham 2004a, p. 3 (20 in Idaho); Flinders *et al.* 2005 p. 45 (250 in Utah)), or individuals photographed (Flinders *et al.* 2005 p. 45 (241 in Utah)) or individuals live trapped (Rauscher 1997, p. 9 (58 in Montana); Rachlow and Witham 2004a, p. 3 (25 in Idaho); Crawford 2008, p. 22 (337 in Nevada and Oregon)), or mortalities reported related to study efforts (Rauscher 1997, p. 9 (11 in Montana)) in various parts of its range by researchers.

Other authors used qualifying statements to indicate abundance (Anthony 1913, p. 22, in Oregon wrote, "On account of the thick growth and the animal's habit of circling about under cover an accurate count of the inhabitants of such a locality was difficult to obtain." Anthony (1913, p. 21) also stated that the species was "not uncommon" around Ironside, Malheur County, Oregon; Bailey (1936, p. 111) stated that Oregon pygmy rabbits are locally abundant only where conditions are favorable. Janson (1940, p. 41) wrote that pygmy rabbits in Utah occur in scattered communities which are limited by characteristics favorable to the pygmy rabbit. In these areas where characteristics favorable to the pygmy rabbit are found, the pygmy rabbit may be quite abundant.

Under the species description provided above, several researchers have reported a variety of density estimates for pygmy rabbits on individual sites. However, the number of active burrows may not be directly related to the number of individuals in a given area because some individual pygmy rabbits appear to maintain multiple burrows, while some individual burrows are used by multiple individuals (Janson 1940, pp. 21, 29; Janson 1946, p. 44; Gahr 1993, pp. 66, 68; Heady 1998, p. 25). It is not appropriate to extrapolate any of these reported densities beyond the local scale due to the patchy distribution of suitable habitat and the variable amount of habitat actually occupied (Keinath and McGee 2004, p. 20). Efforts to model the amount and distribution of suitable habitat have met with minimal success and are useful mainly for focusing future survey efforts (Keinath and McGee 2004, p. 20).

More recently, attempts have been made to estimate pygmy rabbit abundance by different methods. Rachlow and Witham (2004b, pp. 2-13) in Idaho evaluated several census techniques for pygmy rabbits (thermal imagery, burrow surveys, live trapping, line transect surveys, fecal pellet counts). They found several techniques were infeasible due to cost or the likelihood of providing imprecise estimates. Surveys of burrow systems provide an obtainable index of activity, but more work is needed to associate this index with population density estimates (Rachlow and Witham 2004b, p. 13). Price (2008, p. 2) in Idaho is attempting to develop a standardized method to monitor abundance of pygmy rabbits. Price is attempting to calibrate an index of abundance based on burrow systems by correlating the index with estimates of population density. Sanchez (2007, p. 108) states that tools used for estimating relative abundance of pygmy rabbits rely on locating and assessing burrows and fecal pellets. Sanchez evaluated the temporal changes in fecal pellets and burrow systems to assess their potential usefulness as indicators of relative abundance of pygmy rabbits (Sanchez *et al.* 2009, p. 427). The persistence and detectability of pellets and burrows over time may be influenced by factors such as weather, soil microorganisms, invertebrates, vertebrates, vegetative growth, or the soil's susceptibility to slumping or compaction (Sanchez *et al.* 2009, p. 427). Sanchez *et al.* (2009) determined that next to actual sightings of pygmy rabbits, burrow systems and pellets are the most reliable evidence of pygmy rabbit presence in an area; together they may provide an indirect index of population trend but depend on the objectives of the investigator as multiple factors can affect changes in pellets and burrows over time (Sanchez *et al.* 2009, p. 433). Therefore, reliably estimating the abundance of pygmy rabbits on a statewide or range wide basis is not currently possible.

*Trend*

Population trends are normally defined in terms of distribution or abundance. In the case of the pygmy rabbit, the available scientific information does not allow for an analysis of abundance over time. Abundance trends for the pygmy rabbit in each State and throughout its range are unknown and how impacts to the sagebrush habitat from various events or actions have affected pygmy rabbit abundance remain unclear.

Distribution information obtained from early literature and records represent a collection of sightings documented by different individuals over time. These early records were not collected in a systematic, comprehensive manner with the goal of determining the pygmy rabbit's distribution. However, they do reflect the species historical distribution known or suggested at that time, which was modified as previously unknown locations were found. Our understanding of the distributional trend throughout the species' range has improved only recently.

Surveys have concentrated on documenting populations within a particular State by revisiting historical sites and looking for previously unknown sites. It is important to understand that considering only contemporary surveys of historical sites is likely to result in an apparent loss of a species from any number of locations regardless of whether the species has suffered a decline in numbers or not (Shaffer *et al.* 1998, cited in Larrucea and Brussard 2008b, p. 1639). Populations naturally fluctuate locally so some historical sites are expected to disappear due to chance alone (Hanski 1991, cited in Larrucea and Brussard 2008b, p. 1639). In addition, it is often difficult to determine whether pygmy rabbit activity continues in a particular area because many historical site descriptions are vague.

With the possible exception of California and Nevada, recent survey efforts have not been comprehensive in individual States. Due to funding limitations, various individuals from various agencies have selected different areas in each State to survey. As a result, different methodologies were developed for these surveys. Some individual sites or locations have been destroyed while some populations may have relocated to other areas across the landscape because of various factors. Appropriately, surveys have also expanded into new areas and have found previously undocumented pygmy rabbit populations. These efforts have improved our understanding of the species' current distribution across its range. Because of the emphasis in determining where pygmy rabbits occur on the landscape, monitoring of known sites over time has essentially not occurred for pygmy rabbit populations.

Historical records provide no information on the amount of area where pygmy rabbits were collected or observed. Rarely do recent survey efforts report the amount of acreage attributed to occupied or unoccupied pygmy rabbit burrow systems. Therefore, we are unable to compare changes in the amount of acres used historically or currently by pygmy rabbits.

Because of this lack of long-term distributional data, we have compared active and inactive (occupied versus unoccupied) records in the Service's databases from 1877 to 1999 to active and inactive records from 2000 to 2008. Based on a comparison of these two groups of records, the distribution of pygmy rabbits is quite similar to our understanding of the historical range in all States except California as discussed in more detail above. Not only do pygmy rabbits continue to occupy the general areas previously known, new areas of current activity have been documented due to increased survey efforts in recent years. We are encouraged by recent survey efforts and that researchers continue to find populations where they occurred historically. These survey efforts have also lead to the discovery of active areas in previously unknown or undocumented locations, and assist in improving our understanding of the distribution of the pygmy rabbit across its range.

In some States (Montana, Nevada, and most notably Wyoming) these increased survey efforts have led to an extension of the current distribution of pygmy rabbits within these States. We are not suggesting that these populations have expanded in these States, only that increased survey efforts have located previously unknown or undocumented populations of this species. It appears that recent survey efforts have not occurred in the peripheral counties in Oregon so we are unsure of current pygmy rabbit activity in these areas. Idaho also shows some uncertainties because of some inactive areas and we are unaware of previous areas being revisited; however, active areas have also been found in previously unknown areas and counties. Utah shows some uncertainties because we are unaware of previous areas being revisited. Active areas have been found in previously unknown areas and counties in Utah. It is possible that California has experienced a relatively small range contraction in the northeast in Modoc and Lassen Counties. Because we eliminated undesirable records from our analysis, as explained above, we believe we have presented a conservative look at our current understanding of the distribution of the pygmy rabbit across its range. The pygmy rabbit not only occurs generally throughout its historical range, it also occurs in previously unknown or undocumented areas, thus increasing our understanding of the species' current distribution.

*Habitat*

Sagebrush is the most widespread vegetation in the western United States' intermountain lowlands (West and Young 2000, p. 259). A number of species and subspecies of sagebrush are recognized (Connelly *et al.* 2004, p. 5-2) and each has unique habitat requirements and responses to disturbances (West and Young 2000, pp. 259-261). Sagebrush species and subspecies occur in areas dictated by local soil type, soil moisture, and climatic conditions (West 1983, pp. 333, 355-357; West and Young 2000, pp. 259-261). The degree of dominance by sagebrush varies with local site conditions and disturbance history. Plant associations, typically defined by perennial grasses, further describe distinctive sagebrush communities (Miller and Eddleman 2001, p. 14; Connelly *et al.* 2004, p. 5-3) and are influenced by soil type, elevation, topography, and precipitation.

Sagebrush species are long-lived with some surviving to 100 years (West and Young 2000, p. 259). Allelopathic chemicals are produced that reduce seed germination, seedling growth and root respiration of competing plant species and inhibit the activity of soil microbes and nitrogen fixation. Sagebrush species are resistant to environmental extremes, with the exception of fire and on occasion defoliating insects (West 1983, p. 341). Most species of sagebrush are killed by fire (Miller and Eddleman 2001, p. 17; West and Young 2000, p. 259). The natural re-colonization of sagebrush in burned areas depends on the presence of adjacent live plants for a seed source or on a seed bank, if present (Miller and Eddleman 2001, p. 17).

Sagebrush species are typically divided into two groups, tall sagebrush (also known as "big") and low sagebrush, based on their affinities for different soil types (West and Young 2000, p. 259). Within tall sagebrush, there are three subspecies, *Artemesia tridentata* ssp. *wyomingensis* (Wyoming big sagebrush), *A. t.* ssp. *tridentata* (basin big sagebrush), and *A. t.* ssp. *vaseyana* (mountain big sagebrush) which are the most widely distributed (Knick *et al.* 2003, p. 614). There are two primary species in the low sagebrush group: *A. arbuscula* (low sagebrush) and *A. nova* (black sagebrush) (Knick *et al.* 2003, p. 614). Big sagebrush occurs in coarse-textured and/or well drained sediments, while low sagebrush typically occurs where erosion has exposed clay or calcified soil horizons (West and Young 2000, p. 261). Big sagebrush will die if saturated long

enough to create anaerobic conditions for 2 to 3 days (West and Young 2000, p. 259). Some low sagebrush species are more tolerant of occasionally supersaturated soils, and many low sagebrush sites are partially flooded during spring snowmelt. Sagebrush species do not tolerate high salinity soils (West and Young 2000, p. 270).

Sagebrush and sagebrush ecosystem response to natural and human influenced disturbances varies based on the sagebrush species and its understory, as well as abiotic factors such as soil type and precipitation. Mountain big sagebrush, for example, generally can recover more quickly and robustly than Wyoming big sagebrush following a disturbance (Miller and Eddleman 2001, p. 22) likely due to its occurrence on moist, well drained soils as compared to the very dry soils typical of Wyoming big sagebrush communities. Soil associations have resulted in disproportionate levels of habitat conversion across different sagebrush communities. Basin big sagebrush occurs at lower elevations, in soils that retain moisture two to four weeks longer than in well drained, but dry and higher elevation soils typically occupied by Wyoming big sagebrush. As a result, sagebrush communities dominated by basin big sagebrush have been converted to agriculture more extensively than communities found on poorer soils (Winward 2004, cited in 70 FR 2254). The effects of disturbance on sagebrush species are not constant across their range.

Within the sagebrush ecosystem, there are two primary features of pygmy rabbit habitat: relatively taller and denser big sagebrush and deep soils (Ulmschneider *et al.* 2004, p. 2). Pygmy rabbit burrows are usually found in the taller and denser sagebrush within an area. The height of the sagebrush can vary greatly, from approximately 1.5 to 7 ft (0.46 to 2.1 m). Sagebrush density can also vary, but it is common that the sagebrush canopy cover at burrows is greater than 30 percent (within a 20-ft (6.1 m) radius of burrow) (Ulmschneider *et al.* 2004, pp. 2, 23). Occupied habitat includes various subspecies of sagebrush, including Wyoming, mountain, and basin. Other shrub species may also be present, including *Purshia tridentata* (bitterbrush), rabbit brush, *Sarcobatus vermiculatus* (greasewood*), Symphoricarpos* spp. (snowberry), and *Juniperus* spp. (juniper). In Oregon and Nevada, some areas occupied by pygmy rabbits include rabbit brush as dominant or co-dominant with sagebrush and burrows have been found under large, dense rabbit brush and greasewood (Ulmschneider *et al.* 2004, p. 2).

Pygmy rabbits can also occupy habitat that does not appear ideal. These areas include sagebrush that is short in height and "bad" soil. In east central Idaho, pygmy rabbits occupy "mima mounds" (mounds of soil several feet (ft) high and approximately 20 to 30 ft (6.1 to 9.1 m) in diameter) with taller and denser sagebrush dotted in a landscape of shorter and thinner sagebrush. In Montana, the average sagebrush height in occupied sites can be about 15 in (38.1 cm). In Montana, pygmy rabbits have been found in areas where the sagebrush is not very dense and is about 30 in (76.2 cm) high, especially in mountain bowls and where sagebrush has been manipulated. In Utah, pygmy rabbits have been found to occupy 12 to 120-inch (30.5 to 304.8 cm) tall sagebrush. Regardless of the absolute height of the vegetation, pygmy rabbits will almost always burrow in the tallest and densest sagebrush on the landscape (Ulmschneider *et al.* 2004, pp. 2-3).

Generally, pygmy rabbits burrow in loamy soils deeper than 20 in (50.8 cm). Soil composition needs to be soft enough for digging, yet be able to support a burrow system. In southwest Idaho, pygmy rabbits occur in areas with soils classified as stony sandy loam, and sandy loam over sandy clay and clay loam. In east central Idaho, soils are gravelly outwash plains with lime-coated rocks. On the lava plains of southeast Idaho, rabbits will often burrow between or under lava boulders. In Nevada, soils are light-colored and friable (easily crumbled) (Ulmschneider *et al.* 2004, p. 3).

Occupied pygmy rabbit habitats in Oregon are very similar to those in Idaho (below). Most habitat occurs where big sagebrush inclusions are mixed with low sagebrush, rabbit brush, or shorter stature big sagebrush. Mounding similar to "mima mounding" occurs in most of these sites. Sagebrush on the mounds is usually 1 to 3 ft (0.30 to 0.91 m) taller than those in the surrounding area. Another common type of occupied habitat in Oregon is small draw bottoms where deeper soils have collected. Most of these sites are vegetated with basin big sagebrush in the drainage bottom, surrounded by Wyoming big sagebrush, low sagebrush, or mountain big sagebrush in the surrounding uplands. Some areas utilized by pygmy rabbits are dominated by rabbit brush. Some soil mounding can occur in these areas, but can be subtle. Burrows in these areas seem to be restricted to the very bottom of the drainages or the lower inside slopes of the drainage (Ulmschneider *et al.* 2004, p. 4).

In Oregon, Weiss and Verts (1984, p. 567) found mean shrub cover in areas occupied by pygmy rabbits was about 29 percent and mean shrub height was about 33.1 in (84 cm). Mean shrub cover best distinguished occupied sites from adjacent sites (29 versus 18 percent), followed by mean soil depth (51 versus 31 cm), and mean shrub height (84 versus 53 cm). Percent basal area of perennial grasses, density of annual grasses, density of forbs, and components of soil texture were found to contribute little to the difference between occupied areas and adjacent sites. Meisel (2006, p. 21) found average sagebrush height 2.1 ft (0.65 m) and percent sand content in the soil (50.2 percent) as the two variables that determined occupied burrows. Unoccupied burrows had an average sagebrush height of 1.0 ft (0.32 m) and 45.5 percent sand in the soil sample.

In Idaho, pygmy rabbits are found in mima mound areas. In the Salmon, Idaho area, pygmy rabbits are found on alluvial plains dotted with mounds about 20 to 30 ft (6.1 to 9.1 m) in diameter, 1 to 2 ft (0.3 to 0.61 m) tall, several hundred ft or yd apart, where the sagebrush is taller than in the surrounding inter mound spaces. In southwest Idaho, a similar habitat is occupied by pygmy rabbits where big sagebrush islands are intermingled with low sagebrush. In the Owyhees of southwest Idaho, pygmy rabbits are found in swales of taller sagebrush. Soil mounding is present, but it does not form distinctive mima mounds. In the Bruneau Plateau, pygmy rabbits are found in the bottoms and lower slopes of small drainages where the sagebrush is denser and taller, indicating deeper soils (Ulmschneider *et al.* (2004, p.3). In the Owyhees of southwestern Idaho, Burak (2006, pp. 63-64) found occupied pygmy rabbit areas had significantly greater total shrub, sagebrush (*A. t.* ssp. *vaseyana*), forbs, and litter cover, and significantly less bare soil and rock than in unoccupied areas. Total shrub, sagebrush (*A. t.* ssp. *vaseyana*) and snowberry cover was greater in occupied pygmy rabbit habitat. Height of total shrubs and sagebrush was also significantly higher in occupied areas. Total shrub cover values ranged from 41 to 67 percent. Sagebrush cover values ranged from 12 to 60 percent. These differences in total shrub cover and sagebrush cover suggest that total shrub cover does not need to be comprised of sagebrush primarily. It is unknown what minimum amount of sagebrush cover is needed for pygmy rabbit survival. Burak (2006, p. 65) found in his study areas

average total shrub and sagebrush height to be 160 in (63 cm) and 167.6 in (66 cm), respectively.

Pygmy rabbits in Montana are found in habitats similar to those in Idaho and Oregon- large intermountain valley bottoms, alluvial fans, mountain valleys and bowls, drainage bottoms, plateaus, rolling sagebrush plains and isolated patches of sagebrush in grasslands. Preferred habitat in Montana appears to be gently sloping or nearly level floodplains where adequate sagebrush and appropriate soils exist. However, many occupied sites have marginal sagebrush cover and shallower soils. If pygmy rabbits are found in areas containing mima-like mounds, they generally occur throughout the continuous sagebrush coverage at varying densities and into sagebrush drainages (Ulmschneider *et al.* 2004, p. 4).

In Wyoming, pygmy rabbits occur in swales of taller, denser sagebrush in a setting of hillsides with thinly distributed, shorter sagebrush. The general areas used by pygmy rabbits have evenly distributed, taller, and more structurally diverse sagebrush with a dense canopy. Three subspecies of big sagebrush can be present, basin, Wyoming, and mountain (Ulmschneider *et al.* 2004, p. 5). In Wyoming, Purcell (2006, p. 62) found that the proportion of bare ground and shrub cover may influence habitat features used by pygmy rabbits. Of the 10 study areas, 6 had significantly less bare ground at use sites than at non-use sites. Six of the 10 study areas had significantly greater shrub cover at use sites compared with non-use sites. Although sagebrush was the dominant shrub in all study areas, other shrubs contributed to the shrub cover. In relation to soils, Purcell (2006, pp. 64-65) found 8 of the 10 study areas showed a higher fine fraction of soil in both the surface and subsurface levels at use sites. The amount of coarse material in the soil may not inhibit digging if the soil is soft. Both surface and subsurface samples indicated that softer soils occurred at the use sites compared with the non-use sites. There did not appear to be a relationship between soil texture and areas used by pygmy rabbits (Purcell 2006, p. 65).

Western EcoSystems Technology, Inc. (2008, pp. 18, 20, 22-23) found the dominant habitat types within 6.6 ft (2 m) of pygmy rabbit burrows along three pipeline routes in 2007 were tall sagebrush (42 percent), low sagebrush (48 percent), and desert scrub (10 percent). The average percent of different shrub types located within 16 ft (5 m) of pygmy rabbit burrows along two of the pipeline routes in 2006 indicated tall sagebrush at 56.6 percent, low sagebrush at 34.7 percent, and greasewood at 7.7 percent. Average percentages of shrub cover within 6.6 ft (2 m) of burrows along the three routes in 2007 show 58 percent of burrows had between 26 and 50 percent shrub cover. Twenty-eight percent had a shrub cover of between 11 and 25 percent. Along two of the routes in 2006, pygmy rabbit burrows were found in 33.3 percent loam, 30.2 percent clay, and 20.3 percent sand.

In California, pygmy rabbits occupy areas near Mono Lake in islands of big sagebrush and loamy soils, similar to areas in Nevada, but with sandier soils. Burrows tend to be in sandy loam soils, which are often surrounded by very sandy soils. Near Bodie, an abandoned mining town approximately 10 mi (16.1 km) north of Mono Lake, the habitat includes shorter, more uniform sagebrush, often less than 3 ft (0.9 m) tall, with less clumping of the sagebrush. Pygmy rabbit habitat in northeastern California is very similar to habitat in adjacent Nevada (Ulmschneider *et al.* 2004, p. 5).

In Nevada, pygmy rabbits are found in broad valley floors, drainage bottoms, alluvial fans, and other areas with friable soils. Burrows can be located in mounds (either natural or human caused) when they are available in these types of soils. Pygmy rabbit burrows are easiest to find in light colored, friable soils. These soils are usually found in valley bottoms and can be associated with rabbit brush or sagebrush vegetation. The understory of grasses and forbs can vary from almost none to dense (Ulmschneider *et al.* 2004, p. 4). In California and Nevada, Larrucea and Brussard (2008a, pp. 695-697) found mean sagebrush cover at occupied sites was 44.7 percent. Mean sagebrush height at occupied sites was 38.8 in (98.4 cm), but it was not found to be a significant factor. Pygmy rabbits were more likely to occupy sites within clusters of sagebrush located higher than the surrounding sagebrush or in sagebrush islands. These islands occurred in a range of surrounding sagebrush heights of 4.7 to 46.1 in (12 to 117 cm). These islands also had greater sagebrush cover. Occupied sites were located on loamy soils with a mean sand and clay content of 39.1 percent and 20.4 percent, respectively. Pygmy rabbits occupied sites with little or no understory.

In Utah, site characteristics inhabited by pygmy rabbits vary considerably, because they occupy three different ecoregions: Central Basin and Range, Wyoming Basin, and the Wasatch and Uintah Mountain. These ecoregions vary in latitude, elevation, precipitation, and geologic history. Pygmy rabbits are found in the western half of the state in alluvial deposits and in favorable micro sites on "bench tops". Habitat in northern Utah is characterized by Wyoming, mountain, and basin big sagebrush, and bitterbrush and snowberry present at the higher elevations. Pygmy rabbit habitat in southern areas is often limited to the bottom of gentle drainages supporting Wyoming sagebrush with black sagebrush, *Atriplex confertifolia* (shadscale), and *Kochia americana* (gray molly) community of minimal height (11.0 in, 28 cm) (Ulmschneider *et al.* 2004, p. 5).

**Evaluation of Information Pertaining to the Five Threat Factors**

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may determine to be endangered or threatened on the basis of any of the following five factors:

(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.

In making this 12–month finding, information pertaining to the pygmy rabbit in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making our 12–month finding on the petition, we considered and evaluated the best scientific and commercial information available.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act.

*Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

The following potential factors that may affect the habitat or range of the pygmy rabbit are discussed in this section, including: (1) Habitat conversion, (2) agriculture, (3) sagebrush treatment, (4) livestock grazing, (5) nonnative invasive plants, (6) fire, (7) pinyon-juniper woodlands encroachment, (8) urban and rural development, (9) mining (10) energy exploration and development, (11) habitat fragmentation, (12) habitat manipulation conducted to benefit greater sage-grouse (*Centrocercus urophasianus urophasianus*), and (13) conservation strategies and actions.

Habitat Conversion

Sagebrush once covered approximately 270 million ac (109 million ha) in western North America within 13 States (Washington, Oregon, Idaho, Montana, Wyoming, North and South Dakota, Colorado, New Mexico, Arizona, Utah, Nevada and California (American Lands Alliance 2001, p. 3). Today, because of various land uses, about 150 million ac (61 million ha) of sagebrush habitat remain (American Lands Alliance 2001, p. 3). Pygmy rabbits occur within a portion of this area, but they are not known to occur in Arizona, Colorado, North or South Dakota, or New Mexico. The amount of sagebrush acres suitable for supporting pygmy rabbits is a subset of the remaining acres in the states they are known to occur, based on the species' specific habitat needs within the range of the sagebrush ecosystem. Therefore, the amount of suitable sagebrush habitat for pygmy rabbits has always been less than the total amount of sagebrush acreage distributed across western North America.

A number of activities have been identified as potentially impacting pygmy rabbit habitat and individuals or populations across the species' range. These activities most commonly include land management practices which result in the direct loss of sagebrush habitat (e.g., conversion of sagebrush habitat to agricultural purposes, sagebrush treatment to increase forage for livestock); livestock grazing; invasive nonnative plant species; fire; urban and rural development; mining; energy exploration and development; fragmentation of sagebrush habitat, and sagebrush modification for other species such as greater sage-grouse (Roberts 2001, p. 17; Red Willow Research Inc. 2002, pp. 58-59, 64-65; Bartels 2003, pp. 101-104; Keinath and McGee 2004, pp. 14, 23-25; Hayden Wing Associates, Inc. 2008b, p. 1; Larrucea 2006, p. 7; Larrucea and Brussard 2008b, p. 1636).

As discussed in the background section, the pygmy rabbit is a sagebrush obligate, but it occurs within a subset of the sagebrush ecosystem within its range. Pygmy rabbits are found where sagebrush cover is sufficiently tall and dense and where soils are sufficiently deep and loose to allow burrow construction (Bailey 1936, p. 111; Green and Flinders 1980a, p. 2; Campbell *et al.* 1982, p. 100; Weiss and Verts 1984, p. 563; WDFW 1995, p. 15). Thus, pygmy rabbits are not distributed uniformly across the full range of the sagebrush shrub-steppe ecosystem. In large areas of the sagebrush habitat, pygmy rabbits are not known to occur, and in those areas where it does occur it is patchily distributed. For each of the following potential threats listed in Factor A, the available information provides general characteristics of sagebrush habitat degradation or provides examples of impacts in site-specific areas resulting in possible impacts to pygmy rabbits.

*Agriculture*

Large-scale conversions of western rangelands to agricultural lands began under the Homestead Acts of the 1800's (Todd and Elmore 1997, cited in Braun 1998, p. 4). More than 70 percent of the sagebrush shrub-steppe habitat has been converted to agricultural crops in some States (Braun 1998, p. 2). Hironaka *et al.* (1983, cited in 70 FR 2255) estimated that 99 percent of basin big sagebrush habitat in the Snake River Plain has been converted to cropland. Across the Interior Columbia Basin of southern Idaho, northern Utah, northern Nevada, eastern Oregon and Washington, about 15 million ac (6 million ha) of shrub-steppe habitat has been converted to agricultural cropland (Altman and Homes 2000, p. 10). Development of irrigation projects to support agricultural production also resulted in sagebrush habitat loss (Braun 1998, p. 4). Reservoirs have been constructed to facilitate these irrigation projects, impacting native shrub-steppe habitat adjacent to rivers, as well as supporting the conversion of more upland shrub-steppe habitat to agriculture. As irrigation techniques have improved, additional land has been irrigated, and more big sagebrush (*A. tridentata*) cleared. Shrub-steppe habitat continues to be converted to dry land and irrigated cropland but at a much lower rate (Braun 1998, p. 4).

Review of current sagebrush steppe habitat and agricultural lands within Great Basin sagebrush among states within the range of the pygmy rabbit show that less than 10 percent is impacted by agriculture for Oregon, Montana, Wyoming, California, Nevada and Utah. Only Idaho has a greater percentage of agricultural lands within Great Basin sagebrush at about 18 percent (75 FR 13925).

The loss or modification of sagebrush habitat due to agricultural conversion and impacts to pygmy rabbits across its range could include injury or death at the time of vegetation clearing, reduction in forage and shelter, temporary or permanent home range abandonment, increased habitat fragmentation, increased dispersal barriers, increased predation, and population declines. As a sagebrush-dependent species, complete loss of sagebrush over a large area could have long-term impacts to pygmy rabbits. According to Roberts (1998, p. 11), of the 583,600 ac (236,180 ha) he inventoried in Lemhi and Custer Counties, Idaho for pygmy rabbit occupancy, 122,300 ac (49,494 ha) had been permanently removed due to agriculture conversion. However, the acreage or percentage of land that had been occupied by pygmy rabbits is unknown. White and Bartels (2002, pp. 7-8) believe that the pygmy rabbit historically was impacted by sagebrush removal for agricultural purposes in Idaho as 3 of 13 historic sites they visited were disturbed by agriculture, and pygmy rabbit activity was not observed at these sites.

In Utah, Pritchett *et al.* (1987, p. 233) reported that a portion of the Sevier River Valley between Kingston and Otter Creek, containing one of the last large patches of sagebrush, had been plowed. They speculated this may previously have been a dispersal route for pygmy rabbits from Iron County to Wayne County, Utah. Janson (2002, pp. 31-32) reported in 2001 that he found wheat acreage had expanded in the Blue Springs Hills of Box Elder County and that the sagebrush was almost gone. He also stated that the foothills area near Clarkston, Cache County had experienced increased farming activity which had eliminated sagebrush. Larsen *et al.* (2006, p. 5) visited four historical pygmy rabbit sites in Tooele County, Utah which were unoccupied. Some of them (number not indicated) showed evidence of conversion to farmland.

In Utah, Idaho, and Nevada, Welch (2005, p. 10) visited historical pygmy rabbit sites in 2003 and 2004. He mentioned 7 of 13 were impacted or likely impacted by agricultural conversion to farmland including wheat and alfalfa fields.

In Montana, Rauscher (1997, p. 16) thought conversion of sagebrush to agriculture was minimal in southwest Montana because of the large expanses of public land. He documented that the suspected location for one historical pygmy rabbit record had been converted to irrigated farmland (Rauscher 1997, p. 14).

In California, Williams (1986, p. 51) indicated that loss of sagebrush habitat in California to agriculture was less of a concern than loss of habitat to overgrazing. Larrucea and Brussard (2008b, p. 1638) revisited 105 of 118 historical pygmy rabbit sites from Nevada (109) and California (9) dated between 1877 and 1946 to document current pygmy rabbit presence. They determined the presence or absence of current land use (agricultural conversion, livestock grazing, fire, urbanization and presence of pinyon-juniper) at each site. This was to determine what type of impacts were presently occurring, and they do not imply that these land use practices are what led to the loss of pygmy rabbits at any of the extirpated sites (Larrucea and Brussard 2008b, p. 1638). Larrucea and Brussard (2008b, p. 1639) found agricultural fields at 6 of the 105 historical sites. Most historical sites occurred in the foothills and not on valley floors where vegetation was more meadow-like. This may have changed after 1880 as excessive grazing reduced grasses, increased erosion, and lowered water tables and fire suppression allowed sagebrush to increase on valley floors (Miller and Rose 1999, cited in Larrucea and Brussard 2008b, p. 1640), creating pygmy rabbit habitat at these lower elevations.

*Summary of Agricultural Impacts*

Information indicating loss of sagebrush due to agricultural conversion in specific portions of the pygmy rabbit's range has been documented. However, because of the pygmy rabbit's patchy habitat distribution across the landscape, as discussed earlier, the scope of loss or modification of sagebrush habitat in general due to agricultural conversion does not equally relate to the loss or modification of pygmy rabbit habitat. Based on information in site-specific areas, agricultural conversion has resulted in some loss of sagebrush habitat used by pygmy rabbits and likely has resulted in some localized population declines in areas of Idaho, Montana, California, Nevada, and Utah.

As presented above, the examples of conversion of sagebrush habitat are few in number across the range and do not indicate a systematic or widespread loss of habitat that may have been or is now suitable for pygmy rabbits. While there has been some documented loss of historical pygmy rabbit sites due to agricultural conversion, the best available scientific information does not indicate a significant loss or modification of habitat, and measureable population decreases attributed to habitat loss or modification due to agriculture impacts are not occurring across the range. While sagebrush habitat will continue to be converted to agricultural lands in the future, it will occur at a much lower rate as much of the appropriate habitat has already been converted. Therefore, based on the best available scientific information, we conclude that sagebrush loss or modification due to agriculture is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Sagebrush Treatment*

Treatment of sagebrush by mechanical (mowing, rotobeating, roller chopping, grubbing, chaining, bulldozing, cabling, raking, railing, and plowing) and chemical methods (herbicide) primarily for rangeland improvement and grazing management to increase forage production for domestic and wild ungulates has been common in sagebrush ecosystems (Connelly *et al.* 2004, pp. 7-46 to 7-47). Over 5 million ac (2 million ha) of sagebrush habitat was mechanically or chemically treated or burned by the 1970s (Crawford *et al.* 2004, p. 12). According to Braun (1998, p. 9) mechanical treatments began in the 1930s and continued at relatively low levels until the late 1990s. While many square miles of sagebrush habitat have been lost during the last 150 years due to conversion for agriculture (discussed above), today this conversion occurs at relatively low levels (70 FR 2255).

Possible effects to pygmy rabbits of mechanical or chemical sagebrush treatments include injury or death at the time of treatment, reduction in forage and shelter, temporary or permanent home range abandonment, increased habitat fragmentation, increased dispersal barriers, increased predation, and population declines. As a sagebrush dependent species, complete loss of sagebrush in a large area could have long-term impacts to pygmy rabbits. Olterman and Verts (1972, p. 25) and Wilde (1978, p. 120) cautioned that the practice of sagebrush removal from some livestock ranges in Oregon and Idaho, respectively, could be a threat to the pygmy rabbit in the future. The researchers noted that land changes should be monitored and adequate "safeguards" implemented to reduce excessive clearing of large areas.

Roberts (1998, p. 11) calculated that of the 583,600 ac (236,180 ha) he inventoried for pygmy rabbit occupancy in Lemhi and Custer Counties, Idaho, 49,000 ac (19,830 ha) (8 percent) were lost due to sagebrush eradication; Roberts (1998, p. 11) did not estimate the amount of lost pygmy rabbit habitat. In Oregon, BLM (2007b, pp. 5-6) documented active pygmy rabbit use at one of eight sites that had sagebrush strips removed by mowing. It appeared that pygmy rabbits had been there prior to the mowing (as evidenced by burrows), with residency continuing following mowing. Mowing may have opened the area for new growth of herbaceous vegetation which can be beneficial to pygmy rabbits (BLM 2007b, p. 7).

In Montana, Rauscher (1997, pp. 13-14) reported that sagebrush removal was a "popular" rangeland improvement practice in the southwestern portion of the State. Sagebrush in the Coyote Creek area of the Big Sheep Creek Basin has been extensively treated, and only one active burrow was located. In nearby areas where sagebrush had not been treated, pygmy rabbits were more abundant. In lower Badger Gulch, BLM lands border private lands, and pygmy rabbits were found on the public lands but absent on the private lands where sagebrush had been removed. However, it is unclear how much sagebrush removal had occurred on the private lands and whether pygmy rabbits had previously occupied these same lands.

In Wyoming, Katzner (1994, p. 106) mentioned that sagebrush eradication may have significant adverse effects on the pygmy rabbit where they were known to occur in southwestern Wyoming at that time. He recommended that if sagebrush management is "mandated," management plans should consider the pygmy rabbit and retain large patches of sagebrush or corridors connecting areas of suitable habitat.

Welch (2005, p. 10) visited 13 historical pygmy rabbit sites in Utah and Idaho. He indicated one site was no longer occupied by pygmy rabbits and had been impacted by range improvement.

In Utah, Holt (1975, p. 159) mentioned a concern that removing large areas of sagebrush by chaining and spraying in order to plant grass would harm rabbits, including the pygmy rabbit. Flinders *et al.* (2005, p. 7) surveyed habitat in Grass Valley in Piute, Sevier, and Wayne Counties located in south central Utah. Pygmy rabbit surveys were conducted in areas slated for sagebrush treatment, but

where pygmy rabbit surveys had not been previously conducted. Areas where pretreatment pygmy rabbit surveys (Oak Springs and Praetor Slopes) had been completed by BLM employees (Flinders *et al.* 2005, p. 13) were revisited, as well. According to Flinders *et al.* (2005, p. 13), BLM surveys identified 118 active burrow systems and 85 inactive ones. Flinders *et al.* (2005, p. 13) found 14 locations with active burrow systems and determined all other burrows in treatment areas to be inactive. BLM surveyed sites recorded as active were found to be "abandoned" or plowed when revisited (Flinders *et al.* 2005, p. 13).

Where pygmy rabbits were still occupying treatment areas, they were in wide sections of sagebrush that was intact and connected to adjacent remaining sagebrush (Flinders *et al.* 2005, p. 13). In undisturbed sagebrush, pygmy rabbits were in isolated patches (Flinders *et al.* 2005, p. 13). Flinders *et al.* (2005, p. 36) thought treatment projects could be beneficial to pygmy rabbits if the sagebrush stands were left in wide, connected corridors as this would provide forage as well as cover. BLM treatment areas revisited found active burrows only where the sagebrush treatment occurred in mosaics that were connected to other sagebrush stands or the areas of removal were much smaller and distances between the treatments were minimal. Patchy, smaller sagebrush removal more likely mimics the natural historical fire regime. Flinders (2007, p. 3) reported on his preliminary results from a multi-year pygmy rabbit study in Grass Valley, Utah and found a reduction in suitable pygmy rabbit habitat due to sagebrush treatments. He found pygmy rabbit activity was restricted to a narrow band adjacent to mature stands of sagebrush and showed significantly decreased activity within the treated areas. Burrow abandonment was noted following treatment, and he suggested a 131.2 ft (40 m) buffer between active burrows and habitat treatment. In Grass Valley, Piute and Sevier Counties, and Parker Mountain, Wayne County, Utah, Lee (2008, pp. 4, 7) found lower fecal pellet counts in mechanically-treated sagebrush areas as compared to untreated sagebrush areas. Average pygmy rabbit fecal pellet counts decreased with distance from sagebrush (Lee 2008, p. 10). Lee (2008, p. 11) recommended avoiding treatments of big sagebrush in areas occupied by pygmy rabbits and in areas with all suitable habitat conditions. If treatments cannot be avoided, they should leave intact large swaths of undisturbed mature big sagebrush (Lee 2008, p. 11). Lee (2008, p. 14) recommended that corridors between residual stands of sagebrush within a treatment area be maintained for connectivity and dispersal. Lee (2008, p. 13) recommended that stands of remaining mature big sagebrush be about 54 yd (490 m) across in any direction, and the areas of big sagebrush removed should be narrow (44 yd; 40 m).

BLM has proposed a national program to treat vegetation across several western States to reduce hazardous fuels, control unwanted vegetation and improve habitat and resource conditions through the use of prescribed fire, wildland fire, herbicides, manual and mechanical methods, and biological controls (BLM 2007c, p. 1-3 Abstract, Executive Summary, Chapters 1 through 7, and Appendices). BLM manages approximately 261 million ac (105.6 million ha) in 17 western States including Alaska (BLM 2007c, p. 1-1 Abstract, Executive Summary, Chapters 1 through 7, and Appendices). States encompassing the range of the pygmy rabbit are included in this program. BLM estimated that 6 million ac (2,428,166.7 ha) of vegetation would need to be treated annually over the next 10 years (BLM 2007c, p. 1-7 Abstract, Executive Summary, Chapters 1 through 7, and Appendices). Estimated acres treated annually by the various methods include: 2.2 million ac (890,327.8 ha) by mechanical means; 2.1 million ac (849,858.4 ha) by fire; 932,000 ac (377,175.2 ha) by herbicides; 454,000 ac (183,731.3 ha) by biological control; and 271,000 ac (109,672.2 ha) by manual means (BLM 2007c, p. ES-2 Abstract, Executive Summary, Chapters 1 through 7, and Appendices). The implementation of this program, methods, acres treated, and locations are yet to be determined.

*Summary of Sagebrush Treatment Impacts*

Although loss of sagebrush due to sagebrush treatment for rangeland and grazing management in specific portions of the pygmy rabbit's range has been documented, the examples presented above are few in number across the range and are not indicative of a systematic or widespread loss of habitat that may have been or is now suitable for pygmy rabbits. Because of the pygmy rabbit's patchy habitat distribution across the landscape, the scope of loss or modification of sagebrush habitat in general due to treatments does not equally relate to loss or modification of pygmy rabbit habitat. Sagebrush treatment has been documented to be responsible for loss of sagebrush habitat used by pygmy rabbits in a few specific areas of Oregon, Idaho, Montana, Wyoming, Utah and may have resulted in localized population declines. The known presence of pygmy rabbits prior to treatment is not documented in all cases and some areas show continued occupancy or use by pygmy rabbits at some level after treatments were conducted (e.g. Flinders *et al.* 2005; Lee 2008).

Depending on the design and size of the sagebrush treatment, impacts to pygmy rabbits may be minimized, and if designed appropriately, sagebrush treatments may be beneficial to pygmy rabbits. We are aware of a BLM proposal to implement sagebrush treatments that could impact sagebrush habitat in the western United States, however no actions have been implemented at this time (BLM 2007c). Available information indicates that a significant loss or modification of habitat, and measureable population decreases attributed to habitat loss or modification due to treatment impacts and impacts to the pygmy rabbit with regard to injury or death, temporary home range abandonment or permanent shift to adjacent areas, habitat fragmentation, or increased predation are not occurring across the range. Therefore, based on the best available scientific and commercial information, we conclude that sagebrush loss or modification due to treatments is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Livestock Grazing*

Livestock grazing is the most widespread land use type across sagebrush communities (Connelly *et al.* 2004, p. 7-29). Excessive grazing by domestic livestock during the late 1800s and early 1900s, along with severe drought, significantly impacted sagebrush ecosystems and the long-term effects involving plant community and soil changes, continue today (Yensen 1981, cited in Knick *et al.* (2003, p. 616). By the 1940s, animal unit months (AUM) on all Federal lands were estimated to be 14.6 million, increasing to 16.5 million in the 1950s, however estimated AUMs decreased to 10.2 million by the 1990s (Miller and Eddleman 2001, p. 19). Grazing impacts may be associated with the direct loss of sagebrush vegetation through physical damage by rubbing, battering, breaking and trampling of seedlings, or habitat degradation due to associated facilities or actions such as: construction of fences; wells; water tanks; pipelines which concentrate livestock or redistribute livestock;

seeding of crested wheatgrass to increase livestock forage; and weed infestations.

Impacts of livestock grazing on the arid west include selective grazing for native species, trampling of plants and soil, damage to soil crusts, reduction of mycorrhizae fungi, increases in soil nitrogen, increases in fire frequency, and contribution to nonnative plant introductions (Belsky and Gelbard (2000, pp. 12-18); Paige and Ritter (1999, pp. 7-8)). When sagebrush-grass habitats are overgrazed, native perennial grasses can be eliminated, and shrubs, such as big sagebrush, tend to form dense monotypic (single species) stands (Blaisdell 1949, cited in Yensen 1982, p. 25; Tisdale and Hironaka 1981, cited in Paige and Ritter 1999, p. 7). In addition, the understory becomes sparse with unpalatable perennials (Tisdale and Hironaka 1981, cited in Paige and Ritter 1999, p. 7) and invasions of annual species like *Bromus tectorum* (cheatgrass) can occur (Gabler 1997, p. 96; Rauscher 1997, p. 14). Reduction of native grasses and increases in invasive plant species may reduce habitat quality and suitability for pygmy rabbits by reducing summer forage and impeding their movements or ability to see predators.

Possible effects of livestock grazing include direct injury or death due to trampling, degradation of sagebrush plant structure resulting in reduced forage and shelter, habitat fragmentation, increased predation, reduced grasses and forbs resulting in loss of summer forage, increased visual capabilities and ease of movement, trampling of burrows, increased invasive plant species resulting in reduced visual capabilities and ease of movement, and population declines. However, livestock grazing in pygmy rabbit habitat has been noted in the early literature. For example, Dice (1926, p. 27) in Oregon, found pygmy rabbits near Baker in an area that was overgrazed by domestic sheep. He stated very little vegetation remained except for sagebrush and rabbit brush. The patch of habitat being used was about 300 yd long (274.2 m) by 50 yd (45.7 m) wide and was surrounded by low sagebrush (Dice 1926, p 27).

Flath and Rauscher (1995, p. 2) and Purcell (2006, p. 33) found that areas of tall, dense sagebrush inhabited by pygmy rabbits were typically located along streams. Livestock can impact these areas disproportionately by concentrating in riparian areas where trampling and vegetation removal can occur (Red Willow Research Inc. 2002, p. 107). These researchers do not indicate any specific pygmy rabbit locations along streams that have been impacted by livestock grazing.

In Oregon, Hager and Lienkaemper (2007, p. 6) reported that all 157 sites, located mostly on State lands, surveyed for pygmy rabbits had evidence of cattle grazing. Many areas showed heavy use by cattle which had resulted in a decrease in shrub cover. Additionally, many of the areas where no evidence of pygmy rabbit presence was found may have had potential to support pygmy rabbits, as predicted by a habitat model, but the habitat may have been rendered unsuitable due to grazing reducing shrub cover (Hager and Lienkaemper 2007, p. 6). However, it is unknown whether pygmy rabbits were present previously or were absent from these areas based on other factors. The BLM (2007b, p. 4) reported livestock use at one of eight occupied sites surveyed in Oregon.

In Idaho, Red Willow Research Inc. (2000, p. 8) documented pygmy rabbit sightings on two separate BLM grazing allotments which demonstrated historical and current grazing activities. Another sighting occurred on private land subjected to grazing and was also close to dwellings and agricultural activities (Red Willow Research Inc. 2000, pp. 8, 11). In Idaho, Roberts (2001, p. 18) concluded that there was no clear evidence that livestock grazing is detrimental to pygmy rabbits. In Idaho, White and Bartels (2002, pp. 6, 15) surveyed 11 grazing allotments. Of the 6 allotments where pygmy rabbit sign was observed, 2 allotments supported active burrows, 2 allotments contained inactive burrows, and 2 allotments supported burrows of undetermined status. BLM (2005a, p. 2) found during their surveys, conducted between 2002 and 2005 that pygmy rabbits occurred on their lands containing portions of grazing allotments. In Idaho, North Wind (2004, p. 12) mentioned livestock grazing occurred in all areas where pygmy rabbit sign or sightings occurred. In Idaho, Waterbury (2005, p. 9) mentioned that an occupied site where a pygmy rabbit was observed (Goldburg site) in the upper Pahsimeroi Valley was subjected to livestock grazing.

In Montana, Rauscher (1997, pp. 14, 17) found that most pygmy rabbit sites were grazed to some extent. Pygmy rabbits were found to be "surviving and even thriving" at current grazing levels in certain areas.

In Wyoming, Katzner reported that according to Dorn *et al.* (1984, cited in Katzner 1994, p. 5), pygmy rabbits did not occur in his study area (Historical Quarry Trail region) at Fossil Butte National Monument, Lincoln County in 1983 at the time when domestic livestock grazing was terminated in the monument. Katzner and Parker (1997, p. 1071) stated that the apparent dependence of pygmy rabbits on a dense understory, provided in part by dead shrubs and extensive canopies, may explain population declines in the pygmy rabbit in grazed sagebrush-steppe habitat in the western United States. Lands grazed intensively by domestic herbivores often have relatively low structural complexity and may not support pygmy rabbit populations adequately. The physical destruction of dense, structurally-diverse patches of sagebrush, and the corridors that connect them, result in fragmented, unsuitable big sagebrush habitat for pygmy rabbits (Katzner and Parker 1997, p. 1071). For a species that eludes predators in sagebrush habitat, a reduction in canopy cover would increase the vulnerability of pygmy rabbits to predation (Bailey 1936, p. 111; Orr 1940, p. 197; Wilde 1978, pp. 115-116; Katzner 1994, pp. 50, 52-53). Clark and Stromberg (1987, p. 76) remarked that overgrazing, which has increased the sagebrush-grass ratio, may decrease pygmy rabbit populations.

In Nevada and California, Larrucea (2006 p. 8) stated that livestock grazing at inappropriate levels can be detrimental for the degradation of sagebrush habitat. At reasonable levels it may be beneficial (Larrucea 2006, p. 8; Larrucea 2007, p. 34). Most of the pygmy rabbit burrows on the BLM lands in the Surprise FO were in areas available to grazing (Larrucea 2006, p. 8). In Nevada and California, Larrucea and Brussard (2008b, p. 1638) found cattle grazing occurred at 83 percent of historical pygmy rabbit sites; 38 percent showed current pygmy rabbit activity. If sites with additional impacts were eliminated and only cattle grazing impacts are considered, this increased to 62 percent of sites that supported current pygmy rabbit activity (Larrucea and Brussard 2008b, p. 1639). Grazing was compatible with pygmy rabbits if grazing occurs at levels that left sagebrush plants intact and soils were not overly compacted (Larrucea 2007, p. 58). Larrucea and Brussard (2008a, p. 697) found increasing amounts of understory stem density was associated negatively with current pygmy rabbit presence at a site. Pygmy rabbits, by foraging for forbs and grasses near their burrows, may create areas of little understory. An understory that is free of grasses and forbs may be beneficial by reducing movement restrictions and increasing pygmy rabbit's ability to detect predators (Weiss and Verts 1984, p. 568). The Southern Nevada Water

Authority (SNWA) (2008, p. 15) stated that data collected during their surveys conducted in 2005 and 2006 in Nevada (SNWA 2007, entirety) found 84 percent of the sites with documented pygmy rabbit occurrence existed in areas of moderate grazing. SNWA (2008, p. 15) suggested that given that recent occurrence data overlaps with grazing practices, there is little evidence to suggest that light to moderate grazing is significantly detrimental to pygmy rabbit in Nevada.

In Utah, Janson (2002, p. 31) did not attempt to measure grazing intensity during his earlier studies. While he observed a scarcity of grasses and forbs in the Cedar City area compared to the Blue Springs area, efforts to collect and observe pygmy rabbits seemed to be similar on either site. The difference between the amount of shrubs to herbaceous vegetation between the two sites, due to grazing or some other factor, did not seem to affect the populations. He did state that grazing intensities high enough to break down the sagebrush plants and reduce their density would be detrimental to pygmy rabbits. Although it is unclear how many of the four sites he considered overgrazed, Larsen *et al.* (2006, p. 5) found historical pygmy rabbit sites in Tooele County, Utah that showed evidence of overgrazing.

Trampling of burrows by livestock has been reported in Montana by Rauscher (1997, p. 14) and in Idaho by Red Willow Research Inc. (2002, p. 54). This could cause the death of young rabbits in natal burrows or injury or death of adults. Red Willow Research Inc., (2002, pp. 54-55) reported a burrow system in Idaho that was subjected to cattle trailing on at least two separate occasions within a period of two months or less. After the initial event, only two of ten active burrows were still open. A second visit showed additional trailing activities, and no open burrows or recent sign were found, indicating "that domestic livestock can have an immediate and detrimental effect upon burrow systems" (Red Willow Research Inc., 2002, pp. 54). This assumes that no other influences were involved, and there was no further monitoring of the area to determine if pygmy rabbits returned to the area at a later date.

*Summary of Livestock Grazing Impacts*

Livestock grazing occurs in all seven States where pygmy rabbits occur. Researchers suggest that livestock grazing, particularly overgrazing, may negatively impact some sagebrush habitat used by pygmy rabbits and may result in some localized population declines. The potential effects of livestock grazing on sagebrush habitat and pygmy rabbit populations, while widespread across the pygmy rabbit's range have not been documented to impact pygmy rabbits at the population level or result in documented measurable population declines as a result of overgrazing.

As described above, there are several examples where pygmy rabbits have been document to continue to occupy areas grazed by livestock, which may indicate an apparent compatibility between livestock grazing and area use by pygmy rabbits under certain grazing conditions. Other documentation suggests possible habitat loss or degradation, site abandonment, habitat fragmentation, increased predation, or injury of pygmy rabbits due to livestock overgrazing and trampling. However, based on survey information, there is no indication of a causal relationship between livestock grazing and pygmy rabbit site abandonment or avoidance. Studies do not indicate that there is a level of livestock grazing that influences pygmy rabbit site occupancy. While the Service is aware of a report of burrow trampling, we are not aware of any studies relating actual site abandonment, increased predation, death, or injury due to livestock grazing or trampling. Reduced grasses and forbs may increase the pygmy rabbits' ability to see and evade predators. Some survey reports suggest that livestock grazing is degrading pygmy rabbit habitat in some locations. Our review of the best available scientific data indicate that measureable population decreases attributed to habitat modifications from livestock grazing are not occurring across the range. Therefore, we conclude that livestock grazing is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Nonnative Invasive Plants*

Paige and Ritter (1999, p. 8) suggest that the greatest change to sagebrush shrub lands has been the invasion of the nonnative grasses and forbs, especially cheatgrass. Cheatgrass is a rapid colonizer of disturbed areas and is persistent in replacing native species (Mack 1981, Yensen 1981, and Whisenant 1990, cited in Paige and Ritter 1999, p. 8). Cheatgrass alters fire and vegetation patterns in sagebrush habitats as it creates a continuous fine fuel that easily carries fire (Paige and Ritter 1999, p. 8). Where it dominates, it can carry fires over large distances, and it burns more frequently than native vegetation (Paige and Ritter 1999, p. 8). It also matures and dries earlier than native vegetation, increasing the likelihood of a fire earlier in the season (Young and Evans 1978, Whisenant 1990, and Knick and Rotenberry 1997, cited in Paige and Ritter 1999, p. 8).

The total acreage of invasive plant infestations has been reported with varying estimates. Pellant and Hall (1994, p. 109) reported on the 1992 distribution of cheatgrass and *Taeniatherum asperum* (medusa head), the primary alien grass invaders of disturbed and fire-altered rangelands in the Intermountain area of the western United States. Approximately 3.3 million ac (1.3 million ha) of rangeland administered by the BLM in Nevada, Oregon, Utah, Washington, and Idaho are dominated by these two species (Pellant and Hall 1994, p. 109). Another 76.1 million ac (30.8 million ha) of public rangeland was classified as infested or susceptible to infestation by these two species (Pellant and Hall 1994, p. 109). It has been estimated that 3 million ac (1.2 million ha) of public lands in the Great Basin have been converted to a cheatgrass monoculture with another 14 million ac (5.7 million ha) assumed to be infested, and it is likely that conversion is inevitable (Knapp 1996, West 1999, cited in Larrucea 2007, p. 61). Though estimates of total area supporting cheatgrass vary widely, cheatgrass is a significant presence in western rangelands (75 FR 13935).

BLM (1996, p. 6) estimated invasive plant species covered at least 8 million ac (3.2 million ha) of BLM lands as of 1994 and predicted 19 million ac (7.7 million ha) would be infested by 2000. A qualitative BLM survey in 1991 covering 98.8 million ac (40 million ha) of BLM-managed land in Washington, Oregon, Idaho, Nevada, and Utah reported introduced annual grasses were a dominant or significant presence on 17.2 million ac (7 million ha) of sagebrush ecosystems (Connelly *et al.* 2004, pp. 5-10). In reference to the same BLM survey, Zouhar (2003, p. 3 cited in 75 FR 13935) estimated an additional 62 million ac (25 million ha) had less than 10 percent cheatgrass understory, but were considered to be a risk of cheatgrass invasion. BLM has reported that as of 2000, invasive plants occupied about 29 million ac (11.7 million ha) of BLM lands in the Washington, Oregon, Idaho, Utah, Nevada (BLM 2007a, pp. 3-28 as cited in 75 FR 13935).

Connelly *et al.* (2004, p. 7-15) estimated the risk of cheatgrass invasion into sagebrush and other natural vegetation in a portion of the southern and northern Great Basin. They projected, based on elevation, landform, and south-facing slope parameters, that 80 percent of the land area in the Great Basin is susceptible to displacement by

cheatgrass and of that area, greater than 65 percent is estimated to be at moderate or high risk within 30 years (Connelly *et al.* 2004, pp. 7-16 to 7-17). Wyoming-basin big sagebrush and salt desert scrub, which occupy over 40 percent of the Great Basin, are the vegetation types most susceptible to cheatgrass displacement (Connelly *et al.* 2004, p. 7-17).

Restoration or rehabilitation of areas to sagebrush after invasive plant species, especially annual grasses, become established is difficult. Only about 3 to 34 percent of recent vegetation treatments performed by BLM in areas of annual grassland monocultures were successful (Carlson 2008b, pers. comm., cited in 75 FR 13937). The success of treatments often depends on factors such as precipitation received at the treatment site (Pyke, in press, p. 30).

Nonnative invasive plant species may impact pygmy rabbits throughout their range by replacing native grasses and shrubs used by pygmy rabbits, hindering their ability to see or move, and increasing detection by predators. In Oregon, only 2 of 51 sites occupied by pygmy rabbits in 1982 contained appreciable amounts of cheatgrass (Weiss and Verts 1984, p. 568). This led the authors to suspect that pygmy rabbits avoid areas containing annual grasses because it can restrict their movements or ability to see, especially when they are attempting to escape predators. However, it is unclear whether annual grasses are playing a role in pygmy rabbits not occupying a site. The authors did not indicate whether or not unoccupied sites surveyed had cheatgrass.

In Idaho, invasive plants were reported at all nine study areas investigated by Red Willow Research Inc. (2002, pp. 38, 45, 59, 65, 72, 80, 87, 92, 97). Gabler (1997, p. 94) predicted 10 study sites would be used by pygmy rabbits, but later found large patches of cheatgrass on 8 of those sites, and that the pygmy rabbit did not use these sites. Other factors, such as large amounts of dead sagebrush, and/or sparse, short sagebrush, and thick grass cover, may have contributed to pygmy rabbit absence in those sites (Gabler (1997, p. 94). BLM (2005a, p. 2) indicated that no evidence of pygmy rabbits was found at any of the sites (no number provided) in Idaho surveyed in 2005 where cheatgrass was a major component of the understory. Burak (2006, p. 68) found that cheatgrass made up little of the grass community within his entire study area; areas occupied by pygmy rabbit had approximately 1 percent cheatgrass cover and unoccupied areas had less than 1 percent.

In Nevada and California, Larrucea and Brussard (2008b, p. 1641) stated that wide expanses of cheatgrass monocultures may provide a barrier to pygmy rabbit dispersal as they rely on shrub cover for protection from predators. Larrucea and Brussard (2008a, p. 697) found cheatgrass presence was negatively associated with pygmy rabbit presence at a site. Once established it may be difficult for pygmy rabbits to burrow into the dense root mats (Larrucea and Brussard 2008a, p. 697). SNWA overlaid a Nevada Natural Heritage Program invasive annual grass index map (most of which was cheatgrass) (NHP 2006, cited in SNWA 2008, p. 14) with 2000 to 2007 pygmy rabbit occurrence data from various sources. The overlay indicates a large portion of pygmy rabbit occurrences are within areas of relatively low cheatgrass cover. This map serves as a relative density index of cheatgrass rather than actual current ground cover because of the remote sensing and statistical models from which it is derived. While the underlying models tend to underestimate index values for sites with high invasive annual grass densities, the general pattern of low to high densities is well represented on the map. The map is quite accurate for sites where invasive annual grass cover is low or nonexistent. SNWA concluded that cheatgrass has not had a major impact on pygmy rabbit occurrence or geographic range in east-central Nevada (SNWA 2008, p. 14).

Larsen *et al.* (2006, p. 5) visited four historical pygmy rabbit sites in Tooele County, Utah that were unoccupied by pygmy rabbits. They mentioned these sites showed evidence of cheatgrass invasion, but it is unclear if all four sites supported cheatgrass.

*Summary of Nonnative Invasive Plant Impacts*

Based on information for a few specific areas, presence of invasive plant species has been documented and may have some impact on pygmy rabbit presence or their movements in Oregon, Idaho, Nevada, California, and Utah. These examples, as discussed above, are few in number and are not considered to be indicative of a widespread habitat condition. It is unclear whether the presence of cheatgrass or other invasive plant species caused pygmy rabbits to not occupy an area or if other factors may have also played a role. The scope of loss or modification of sagebrush habitat in general due to nonnative plant invasion does not equally relate to the loss or modification of pygmy rabbit habitat because pygmy rabbit's habitat is patchily distributed across the landscape.

Varying estimates have been made regarding the amount of area invaded by invasive plant species in the western United States, and some predictions indicate it could take decades for cheatgrass to invade sagebrush and other natural vegetation in a portion of the Great Basin. The Service recognizes that invasion of sagebrush habitat by nonnative plant species is a concern based on their ability to outcompete sagebrush, the difficulty in controlling them once established, and their interaction with other threats, such as fire. However, there is no indication of a significant loss or modification of habitat, and measureable population decreases attributed to habitat loss or modification due to nonnative plant species, especially cheatgrass, and pygmy rabbit site abandonment or avoidance are not occurring across the range. Available information does not provide a causal relationship between a reduction in pygmy rabbit visual capabilities and ease of movement due to nonnative plant species. Therefore, based on the best available scientific and commercial information, we conclude that nonnative invasive plant species in pygmy rabbit habitat is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Fire*

The effect of fire on sagebrush habitats depend on the sagebrush species present, the composition of understory species, and the size, frequency, and intensity of the fire. Estimates of mean fire intervals indicated in the literature vary widely: 12 to 15 years for mountain big sagebrush (Miller and Rose 1999, p. 556), 13 to 25 years (Frost 1998, cited in Connelly *et al.* 2004, p. 7-4), greater than 50 years for big sagebrush communities (Whisenant 1990, cited in McArthur 1994, p. 347), 20 to 100 years (Peters and Bunting 1994, p. 33), 35 to 100 years (USFS 2000, p. 7), and 10 to 110 years depending on sagebrush species and geographic area (Kilpatrick 2000, p. 1).

Natural fires in sagebrush stands characteristically result in incomplete burns leaving areas of unburned sagebrush (Huff and Smith 2000, cited in 70 FR 2264). These unburned areas appear to be important in the future recolonization of the sagebrush community by providing sources of sagebrush seed (Huff and Smith 2000, cited in 70 FR 2264). Prior to European immigrant settlement, fire patterns in sagebrush communities were patchy,

particularly in Wyoming big sagebrush, due to the limited and discontinuous fuels and unburned areas that remained after a fire (Miller and Eddleman 2001, p. 17).

In parts of the Great Basin, a decline in fire occurrence since the late 1800's has been reported in several studies coinciding with fire suppression and reduction of fuels by introduced livestock (Miller and Rose 1999, pp. 556-557; Kilpatrick 2000, p. 6; Connelly *et al.* 2004, p. 7-5). Long fire intervals and fire suppression can result in increased dominance of conifer species, such as western juniper (*Juniperus occidentalis*) (Wrobleski and Kauffman 2003, p. 82) resulting in almost complete loss of shrubs in localized areas (Miller and Eddleman 2001, p. 20).

Burning can also damage perennial grasses, allowing cheatgrass to increase (Stewart and Hull 1949; Wright and Britton 1976, cited in Yensen 1982, p. 28). The presence of cheatgrass extends the fire season and carries a fire into areas where burning would not normally occur or can make fires difficult to control (Yensen 1982, pp. 28-29; Billings 1994, p. 24). The invasion of nonnative annuals, such as cheatgrass and medusa head has resulted in increases in the frequency and number of fires within sagebrush habitats (USFS 2000, p. 153; Connelly *et al.* 2004, pp. 5-9 to 5-10). Sagebrush does not quickly re-establish after fires, while nonnative grasses can recover quickly and increase, effectively preventing sagebrush return. Due to this relationship between fire and the spread of invasive plants, large areas of sagebrush in the western United States have been converted to cheatgrass (Connelly *et al.* 2004, p. 7-14).

Generally, fire tends to extensively reduce the sagebrush component within the burned areas. The most widespread species of sagebrush, big sagebrush (*A. tridentata* spp.) (McArthur 1994, p. 347), is killed by fire. It does not re-sprout after burning (Agee 1994, p. 14; Braun 1998, p. 9) and can take over 30 years to recolonize an area (Wambolt *et al.* 2001, pp. 244, 247). Depending on the species, sagebrush can reestablish itself within 5 years of a burn, but it may take 15 to 30 years to return to pre-burn densities (Bunting 1984; and Britton and Clark 1984, cited in Paige and Ritter 1999, p. 6). Billings (1994, p. 26) documented slow shrub succession following a burn in western Nevada, with little sagebrush recovery after 45 years. This suggests that these sagebrush subspecies evolved in an environment where wildfire was infrequent (30 to 50 year intervals) and patchy in distribution (Braun 1998, p. 9).

Connelly *et al.* (2004, p. 7-6) summarized fire statistics from records of wild and prescribed fires in the sagebrush biome and found the total area burned and the number of fires increased from 1960 to 2003. In the 100 million ac (40.5 million ha) sagebrush-steppe ecoregion or drier sagebrush areas, fire regimes have become more frequent (USFS 2000, p. 195). Miller *et al.* (2008, p. 39) also mapped fires from 1960 through 2007 and found that the number of fires and total area burned across the Greater Sage-grouse Conservation Area increased in each of the geographic subdivisions except the Snake River Plain from 1980 through 2007. Average fire size increased only in the Southern Great Basin during this period. Location of fires since 1960 was related to cheatgrass distribution particularly within the Snake River Plain and Northern Great Basin (Miller *et al.* 2008, p. 39).

Wildfires have removed large areas of sagebrush in recent years. Although fire occurs throughout the sagebrush ecosystem, fire has disproportionately affected Idaho, Nevada, Oregon, and Utah (Baker, in press, p. 20). In these states combined, about 27 percent of the sagebrush habitat has burned since 1980 (Baker, in press, p. 43). Total area burned each year on or adjacent to BLM-administered lands was variable from 1997 through 2006 (Miller *et al.* 2008, pp. 39-40); most total area burned was in cheatgrass regions in Oregon, Idaho, and Nevada (Miller *et al.* 2008, p. 40). A number of fires have occurred in Idaho that have exceeded 100,000 ac (40,469 ha) (Roberts 2003a, p. 14). The largest contiguous patch of sagebrush habitat in southern Idaho covered about 700,000 ac (283,000 ha) (Michael Pellant, BLM, quoted in Healy 2001, p. 3), and during 1999 to 2001 about 500,000 ac (202,000 ha) of this area burned. In Nevada, 1,277 fires in 2001 impacted 654,253 ac (264,773 ha) on public and private lands (BLM 2001, p. 3). In 2002, BLM reported 771 fires that impacted 77,551 ac (31,384 ha) on public and private lands in Nevada (BLM 2002, p. 3). In 2006, over 988,400 ac (400,000 ha) of sagebrush steppe and potential pygmy rabbit habitat was burned in Elko County (Larrucea and Brussard 2008b, p. 1641). Over 9 fire seasons in Nevada (1999-2007), about 2.5 million ac (1.0 million ha) of sagebrush habitat were burned. This represents about 12 percent of the extant sagebrush in Nevada (Espinosa and Phenix 2008, p. 3). Most of these fires occurred in northeast Nevada (75 FR 13933). The amount of occupied pygmy rabbit habitat impacted by these fires is unknown.

Sagebrush restoration efforts following fire are complicated by invasive, nonnative, annual plant species, costs, equipment limitations, availability of suitable seeds, limited knowledge of appropriate methods, and abiotic factors (Hemstrom *et al.*, 2002, pp. 1250-1251, Pyke, in press, p. 29). Habitat rehabilitation following fire has increased in recent years from 69,436 ac (28,100 ha) in 1997 to 3.9 million ac (1.6 million ha) in 2002 with treatments primarily occurring in Oregon, Idaho, and Nevada (Connelly *et al.* 2004, p. 7-35). While not all burned habitat is rehabilitated, fires which occur on public lands will likely experience some level of post-fire restoration (75 FR 13934).

Fire, either wild or prescribed, has been documented within the range of the pygmy rabbit and could result in long-term habitat loss or modification of pygmy rabbit habitat across its range. Possible impacts to pygmy rabbits include injury or death, reduction in forage and shelter, increased habitat fragmentation, increased predation, barriers to movement, or home range abandonment. Although information is available relating fire and its impact to pygmy rabbits, several studies have shown pygmy rabbit presence after fires.

In Idaho, researchers have noted burn areas on the lands they have surveyed for pygmy rabbits. For example, Roberts (1998, p. 11) stated that of the 583,600 ac (236,175 ha) he inventoried, about 2,500 ac (1,012 ha) had been temporarily removed due to fire (a loss of 0.4 percent). White and Bartels (2002, pp. 8-9) indicated of the 133,067 ac (53, 851 ha) they surveyed, 23,660 ac (9,575 ha) had been affected by wildfire within the last 15 years and that historical pygmy rabbit locations had been impacted. The sagebrush had been burned and habitat for the pygmy rabbit was not available. In these studies, researchers did not indicate how much of this acreage might have been occupied by pygmy rabbits and the number of historical sites where habitat may have been removed is unknown. However, Welch (2005, p. 10) visited historical pygmy rabbit sites in Utah and Idaho and documented some sites (2 of 13) were, or were likely impacted by fire.

Other researchers have reported impacts of fire on local pygmy rabbit populations. For example, Gates and Eng (1984, cited in Tesky 1994, p. 8) reported the deaths of "several" pygmy rabbits in an area where the fire advanced rapidly within a prescribed burn in Idaho. They thought pygmy

rabbits may be capable of escaping slow-moving fires but could be burned or die of asphyxiation in others (Gates and Eng 1984, cited in Tesky 1994, p. 8). Gates and Eng (1984, cited in Tesky 1994, p. 9) also reported that 2 months following a fire in big sagebrush-grassland community, only 3 of 11 radio-collared pygmy rabbits were alive. Of the eight lost, seven were due to predation. They speculated that the loss of big sagebrush from their home ranges probably increased vulnerability to predation. Some of the surviving pygmy rabbits (presumably other uncollared pygmy rabbits) abandoned their home ranges and moved to new home ranges in adjacent unburned sites (Gates and Eng 1984, cited in Tesky 1994, p. 9). Roberts (2001, p. 17) mentioned a 1966 burn near Gilmore Summit, Idaho, that had not regenerated to suitable habitat, and pygmy rabbits had not recolonized the area. Rachlow and Witham (2006, p. 6) suggested that large fires that removed sagebrush in the Camas Prairie of south central Idaho near the locations of known populations may reduce or eliminate successful movement of pygmy rabbits among some populations.

In Nevada, the Service (1995, p. 2) reported that a survey conducted after a prescribed fire on the Sheldon National Wildlife Refuge in an area previously inhabited by pygmy rabbits found no evidence of their use afterwards. Larrucea (2006, p. 5) found no active pygmy rabbit sites in areas burned between 1981 and 2002 within the Surprise FO boundary; however, few fires occurred, and they were small in size (Figure 5 in Larrucea 2006, p. 14). Larrucea and Brussard (2008b, p. 1641) found 16 percent of the 105 historical pygmy rabbit sites in Nevada and California had been impacted by fire. Larrucea (2007, p. 61) found fire to be the strongest predictor of loss of pygmy rabbits from a site in Nevada and California; the greater the fire's intensity, the fewer the patches of intact sagebrush will remain. Pygmy rabbits were found on the edges of large burned areas (Midas-Tuscarora Road, NV), but the burned areas had not reverted to suitable pygmy rabbit habitat (Larrucea 2007, pp. 61-62).

In contrast to the above studies, other researchers have mentioned burned areas that showed use by pygmy rabbits. In Idaho, a pygmy rabbit sighting reported by Red Willow Research Inc. (2000, p. 8) on BLM lands that had been impacted by wildfire in 1999 showed active use of the site. White and Bartels (2002, p. 13) mentioned that wildfires in the 1990's severely affected the pygmy rabbit population, though some individuals remained. At one of her study sites, Waterbury (2005, p. 11) found occupied burrows in an area where prescribed burns had occurred during 1993 to 1995. Waterbury (2006, p. 13) discovered a pygmy rabbit population in an old burn area in upper Spar Canyon.

In Montana, Rauscher (1997, p. 14) reported that a prescribed burn in 1980 near Badger Pass, Montana, had been recolonized by pygmy rabbits. He did not know how long this process had taken or if pygmy rabbit densities had reached preburn levels. Bockting (2007 p. 1) found prescribed burns of about 500 ac (202 ha) have been implemented in pygmy rabbit habitat to reduce *Pseudotsuga menziesii* (Douglas fir) encroachment. Fire patterns minimized burning in the dense sagebrush. A mosaic burn pattern was allowed. Mechanical treatments (chainsaws) have also been used to remove Douglas fir. Within one unit, pygmy rabbit burrows were identified prior to the burn and revisited after the burn. Where the sagebrush habitat was not burned over, the burrows were still occupied (Bockting (2007 p. 1). It appears that small burns that create a mosaic do not significantly impact pygmy rabbits as long as surrounding habitat is maintained and the entire population is not lost.

In Nevada, SNWA (2008, pp. 14-15) overlaid BLM's 1980 to 1996 and 1997 to 2007 wildlife data (BLM 2007b, cited in SNWA 2008, p. 14) with Nevada's 2000 to 2007 pygmy rabbit occurrence data from various sources. They stated that review of their map indicates that a large portion of Nevada pygmy rabbit occurrence data falls in areas with relatively low numbers and sizes of wildfires, especially in east-central Nevada. Large numbers and sizes of wildfires have not occurred throughout most of the historical and current pygmy rabbit range in east-central Nevada. They concluded that wildfires have not caused major declines in pygmy rabbits or their habitat, or pygmy rabbit occurrence or geographic range in east-central Nevada.

*Summary of Fire Impacts*

Fire has impacted sagebrush ecosystems in the past and will continue to do so in the future, likely in increasing frequency and size of burned area. This increase in frequency is likely to be attributed to increases in invasive plant species cover, especially cheatgrass, as discussed above, as well as possible impacts of climate change as discussed below. Some studies summarized above have shown pygmy rabbits to have been negatively affected in some specific areas within their range. However, other studies have shown pygmy rabbits are not affected or are able to recolonize burned areas. Based on reports from site-specific areas in Idaho, Montana, California, Nevada, and Utah, fire has resulted in some loss of sagebrush habitat used by pygmy rabbits and has likely resulted in some population declines. Of the available examples showing loss of habitat, these are few in number across the range and are not indicative of systematic or widespread loss of habitat that may have been or is now suitable for pygmy rabbits. The scope of loss or modification of sagebrush habitat in general due to fire does not equally relate to loss or modification of pygmy rabbit habitat because the pygmy rabbit habitat occurs in a patchy distribution across the landscape. Some fires have resulted in loss of individuals, forage, and shelter for pygmy rabbits which may have led to an increased vulnerability to predation (Gates and Eng 1984, cited in Tesky 1994, pp. 8-9). Abandonment of home ranges has been indicated at some specific sites but with the surviving individuals moving to adjacent unburned areas (Gates and Eng 1984 cited in Tesky 1994, p. 9).

Recolonization or use of burned areas has occurred in other site-specific areas. It also appears that the adverse impacts of fire may be minimized if burns are small, reducing possible habitat fragmentation and barriers to movement; if they occur in a mosaic pattern; if surrounding habitat is maintained to provide habitat; and if all members of a population are not lost. Additionally, studies in Montana and Idaho have indicated previously burned areas used or recolonized by pygmy rabbits (Rauscher 1997, Red Willow Research Inc. 2000, White and Bartels 2002, Waterbury 2005, 2006). Also in Montana a study indicated that a small mosaic fire, leaving some surrounding habitat, remained occupied by pygmy rabbits (Bockting 2007). Fire effects on sagebrush habitats depend on the sagebrush species, the composition and density of understory species, as well as the size, frequency, speed, burn pattern, and intensity of the fire. While it is not possible to predict the location or extent of future fires within pygmy rabbit habitat, the numbers of fires are likely to increase in the future; however, pygmy rabbits have shown an ability to survive and recolonize areas after some fire events. Based on our review of the best available scientific information, we conclude habitat loss or modification as a result of fire is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Pinyon-Juniper Woodlands Encroachment*

Pinyon-juniper woodlands have increased in the Intermountain West an estimated 10 fold since European immigrant settlement (Miller and Tausch 2001, p. 15) resulting in the loss of many sagebrush-bunchgrass communities. The major factor cited for this increase is the decrease in fire return intervals (Miller and Tausch 2001, p. 25). Other factors attributed to this expansion include historical livestock grazing patterns, which reduced fine fuel buildup that more readily carried fire, and possibly climate change (Miller and Rose 1999, p. 551; Miller and Tausch 2001, p. 15).

Connelly *et al.* (2004, pp. 7-8 to 7-12) estimated the risk of pinyon-juniper displacement of sagebrush within 30 years for a large portion of the Great Basin based on site elevation, proximity to extant pinyon-juniper, precipitation, and topography. They projected that 60 percent of the sagebrush in the Great Basin was at low risk of being displaced by pinyon-juniper, 6 percent was at moderate risk, and 35 percent was at high risk (Connelly *et al.* 2004, p. 7-12). It appeared that mountain big sagebrush was the type most at risk for pinyon-juniper displacement (Connelly *et al.* 2004, p. 7-13). They cautioned that additional field research is necessary to support their projections (Connelly *et al.* 2004, pp. 7-14).

Surveys (BLM 2006a, pp. 4-5) conducted in Oregon found junipers at 6 of 7 sites surveyed, and pygmy rabbits occupied 5 of these sites with an additional site being inconclusive in terms of occupancy. In areas where pygmy rabbit burrows were found close to junipers, tree density ranged from 5 to 15 mature (70 to 120 years old) trees per ac (2 to 6 per ha), and trees more than 20 years old were common. The areas still had a sagebrush and grass understory. Burrows were within 50 yd (45.7 m) of junipers. . BLM (2007b, pp. 7-8) mentioned juniper control may benefit the pygmy rabbit populations at two of the eight occupied sites surveyed in Oregon. Juniper control may benefit pygmy rabbit populations at these sites before canopy closure affects the understory (BLM 2006a, p. 4; 2007b, p. 7).

Welch (2005, p. 10) indicated 1 of 13 historical pygmy rabbit sites visited in Utah and Idaho were impacted by juniper encroachment. Larsen *et al.* (2006, p. 5) found historical pygmy rabbit sites in Tooele County, Utah, showed evidence of pinyon-juniper encroachment, but he did not indicate if all four sites had been encroached by pinyon-juniper or whether there was remaining suitable pygmy rabbit habitat.

Pinyon-juniper encroachment may have a negative impact on pygmy rabbits. In Nevada, pinyon-juniper woodland populations have increased almost 250 percent in distribution during the last 150 years (Tausch *et al.* 1981, cited in Larrucea and Brussard 2008b, p. 1640). These conifers slowly replace the sagebrush and convert it to woodland habitat, eliminating the understory (Miller *et al.* 2000, cited in Larrucea and Brussard 2008b, p. 1640).

Larrucea and Brussard (2008b, p. 1640) found that a few of these trees at a site generally meant that pygmy rabbits were not present. Larrucea and Brussard (2008b, p. 1639), surveying sites in California and Nevada, showed that 14 percent of historical pygmy rabbit sites showed signs of pinyon-juniper woodland conversion. Of these sites, only one had current pygmy rabbit activity (Larrucea and Brussard 2008b, p. 1639). At 6 of the 14 extirpated pinyon-juniper sites, pygmy rabbits were known to occur lower in the valley where sagebrush habitat existed (Larrucea and Brussard 2008b, p. 1640). However, based on the information available a significant loss or modification of habitat and measureable population decreases from site abandonment or avoidance attributed to pinyon-juniper encroachment are not occurring across the range.

*Summary of Pinyon-Juniper Woodlands Encroachment Impacts*

Based on our review of the best available information, we found few studies which document negative effects of pinyon–juniper expansion on pygmy rabbit populations. Based on the studies cited above, pinyon-juniper expansion has occurred in some occupied pygmy rabbit habitat in Oregon, Idaho, California, Nevada, and Utah; however, pygmy rabbits continued to be present at a number of these sites. Larrucea and Brussard (2008b, p. 1639), surveyed sites in California and Nevada and found only 14 percent of historical sites showed signs of pinyon-juniper woodland conversion, and one had current activity. BLM (2006a, p. 4) conducted surveys in Oregon and found junipers at 6 of 7 sites, and pygmy rabbits continued to occupy a majority of these sites. Welch (2005, p. 10) found only 1 of 13 historical sites in Utah and Idaho showed signs of juniper encroachment. Larsen *et al.* (2006, p. 5) found four historical sites in Utah may have showed pinyon-juniper encroachment. The encroachment of pinyon-juniper into occupied pygmy rabbit habitat is a slow process, and pygmy rabbits may be able to inhabit those areas or shift their home range to adjacent areas if pinyon-junipers habitat becomes established at a site. Therefore, based on the best available scientific and commercial information, we conclude that pinyon-juniper expansion is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Urban and Rural Development*

Historical destruction of sagebrush habitat for urban development has occurred (Braun 1998, pp. 6-7) with more recent expansion into rural areas causing additional loss (Braun 1998, pp. 6-7). Since 1950, the western United States has experienced rapid human population growth with regional rates higher than the national average (Brown *et al.* 2005 cited in Leu and Hanser in press, p. 4). Fifty percent of all population growth in the United States from 1990 to 2000 occurred in western states (Perry and Mackun 2001 cited in Anderson and Woosley 2005, p. 6). The amount of uninhabited area in the Great Basin (Idaho, California, Nevada, and Utah) has decreased from 90,000 $km^2$ (34,749 $mi^2$) in 1990 to less than 12,000 $km^2$ (4.633 $mi^2$) in 2004 (Knick *et al.* in press, p. 20). The petitioner contended that power lines, fences, and roads that are associated with urban and rural development may have also resulted in the direct loss of sagebrush habitat and subsequently affected pygmy rabbits.

Urban and rural development has impacted and may impact pygmy rabbit populations on a local scale. Possible effects to pygmy rabbits include loss of food and shelter, home range abandonment, injury or death at the time of vegetation clearing, habitat fragmentation, and population declines. Power poles and fences can provide hunting and roosting perches and nesting support, for many raptor species that are known to prey upon pygmy rabbits. In addition to direct habitat loss, roads may disrupt pygmy rabbit dispersal movements, and exacerbate potential impacts due to habitat fragmentation.

Some research indicates that pygmy rabbits can occur where humans are present, while other research indicates that the human-developed habitat is not inhabited by pygmy rabbits. For example, Red Willow Research Inc. (2000, p 6) observed a pygmy rabbit under a conifer near a main ranch house in Idaho. In Nevada and California, Larrucea and Brussard (2008b, p. 1639) found 21 percent of historical sites showed signs of urbanization and still had pygmy rabbits present. White and Bartels (2002, pp. 7-8) found urban development had impacted 3 of 13

historical pygmy rabbit locations in Idaho, and no active pygmy rabbit burrows were found. Janson (2002, p. 32) discovered that one of his 1940's pygmy rabbit study areas was impacted by residential and commercial development near Cedar City, Utah, when it was revisited in 2001. He reported that his study area had been "taken over" by development and no pygmy rabbits or recent sign was seen.

The petitioners contend that power lines and fences associated with urban and rural development result in loss of pygmy rabbit habitat, predation, displacement, and creation of movement barriers to pygmy rabbit populations. The available information does not document that power lines or fences are causing these impacts to pygmy rabbit populations.

Estes-Zumpf and Rachlow (2009, p. 367) found that several radio-collared pygmy rabbits crossed gravel roads and creeks in Idaho. Rauscher (1997, p. 14) reported the use of a subnivian (layer between snow and soil surface) tunnel that extended across a back country road near Badger Pass, Montana. Western EcoSystems Technology, Inc. (2008, p. 28) reported observations of pygmy rabbits crossing open areas, including desert grasslands with limited shrub cover, roads, and between shrub lands surrounded by grasslands in Wyoming. These few studies indicate that roads do not significantly affect pygmy rabbit movements.

*Summary of Urban and Rural Development Impacts*

Although loss of sagebrush habitat due to development has been documented and will continue in the future, the amount of suitable or occupied pygmy rabbit habitat lost (or the magnitude of that loss across the range) is minimal in scale compared to overall sagebrush habitat and will likely remain so. Based on the best available information, pygmy rabbits have been reported to have been impacted by some development in a few site-specific areas in Idaho and Utah, but they have also continued to be present in some other areas. The scope of loss or modification of sagebrush habitat in general due to urban and rural development does not equally relate to the loss or modification of pygmy rabbit habitat because pygmy rabbits are patchily distributed across the landscape.

While power lines, fences, and roads associated with development are also known to occur across sagebrush habitat within the range of the pygmy rabbit, we have no information regarding the amount of pygmy rabbit habitat that has been impacted across the range. The best available scientific information does not indicate that power lines, fences, and roads are threats to the pygmy rabbit. We do not have reports of raptors associated with power lines or fences impacting pygmy rabbit populations. The best available scientific information indicates that pygmy rabbits will cross roads, suggesting roads may be less of a barrier to pygmy rabbit movements than previously thought. Therefore, based on the best available scientific and commercial information, we conclude that urban and rural development, including associated power lines, fences, and roads, in the sagebrush ecosystem are not significant threats to the pygmy rabbit now or in the foreseeable future.

*Mining*

Sagebrush habitat throughout the west has been impacted by gold, coal, and uranium mining (Braun 1998, pp. 5-6). Mining, livestock grazing, and ranching are decreasing as a percent of the economics in some parts of the western United States (Hansen *et al.* 2002, 2005 cited in Knick *et al.* in press, p. 56). Immediate impacts from mining to sagebrush habitat include direct loss from mining and construction of associated facilities, roads, and power lines (Braun 1998, pp. 5-6). In western North America, development of mines and energy resources began before 1900 (Robbins and Wolf 1994, cited in Braun 1998, p. 5).

While comprehensive information on the number or surface extent of mines across the range of the pygmy rabbit is not known, the development of mineral resources is occurring on a large-scale and important to the economies of a few of the states in the range. For example, Nevada ranked second in the United States in terms of value of overall nonfuel mineral production in 2006 (U.S. Geological Survey 2007, p. 10); Wyoming is the largest coal producer in the U.S. (Wyoming Mining Association 2008, p. 2).

Between 2006 and 2007, surface coal production increased by 1.6 percent in Wyoming (EIA, *http://www.eia.doe.gov/cneaf/coal/page/acr/table1.pdf*, accessed October 19, 2008). The number of Wyoming coal mines increased from 19 in 2005 to 23 in 2007 (Wyoming Mining Association 2005, p 5; 2008, p. 6). Most of these mines are located in the Powder River Basin (Wyoming Mining Association 2008, p. 2) which is not within the known range of the pygmy rabbit in that State.

Possible impacts from mining to pygmy rabbits could include injury or death, loss or reduction of forage or shelter, temporary or permanent home range abandonment, increased habitat fragmentation, increased dispersal barriers, increased predation, and population declines. Red Willow Research Inc. (2000, p. 6) reported a pygmy rabbit sighting near the Historical Tallman Pit on the Sawtooth National Forest, Idaho. The individual was observed entering the rocks and boulders on the east edge of the pit. In California, pygmy rabbits have been observed in the area around Bodie, a mining town that was abandoned in the mid 1930's (Severaid 1950, p. 2). In Oregon, two survey areas supported active pygmy rabbit burrows at inactive diatomaceous earth mines (BLM 2008d, pp. 3, 6). One pygmy rabbit was observed at one of the sites (BLM 2008d, p. 6). Still, the best available scientific information does not indicate whether pygmy rabbits occupied these areas prior to or during the active mining period or if the observed individuals colonized or recolonized the areas after mining activities ceased.

*Summary of Mining Impacts*

Though mining activities occur within sagebrush habitat, we do not have an estimate of habitat lost to mining impacts; however the impact to pygmy rabbit habitat is likely small compared to the overall range of the species and will likely continue to remain so in the future. Noted increases in the number of Wyoming coal mines occurred mostly in the Powder River Basin outside the known range of the pygmy rabbit in that State. We do have some information that indicates pygmy rabbits have been observed at specific mining areas in Idaho, California, and Oregon which may indicate pygmy rabbits are adaptable and can exist near mining sites or reestablish use of mining areas after mining activities have ceased. The best available scientific information indicates that significant loss or modification of habitat and measureable population decreases due to habitat loss or modification from mining impacts are not occurring across the range. Therefore, based on the best available scientific and commercial information, we conclude that habitat loss or modification due to mining is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Energy Exploration and Development*

Energy exploration and development of non-renewable resources (oil, gas, coal) has occurred in sagebrush habitat since the late 1800's (Connelly *et al.* 2004, p. 7-38). Energy development and its associated facilities (well pads, access roads, pipelines, compressor

stations, pumping stations, and power lines) can impact sagebrush habitats.

The exploration and development of fossil fuels in sagebrush habitats has increased recently as prices and demand are spurred by geopolitical uncertainties and legislative mandates (National Petroleum Council 2007, pp. 5-7). Legislative mandates include those of the Energy Policy and Conservation Act of 1975 (EPCA), 42 U.S.C. 6201, *et seq.*, to secure energy supplies and increase the availability of fossil fuels. The EPCA was re-authorized and amended by the Energy Policy Act of 2000, P.L. 106-469, and the Energy Policy Act of 2005, PL 109-58, mandating inventory of Federal nonrenewable resources, economic incentives for energy development, identification of impediments to timely granting of leases and post-leasing development, and increased development of renewable energy resources (DOE 2005). In addition, the Energy Policy Act of 2005 mandated designation of federal lands for energy transport corridors (DOE 2005).

Present and future exploration and development is highly likely to focus on areas of highest potential return. Pursuant to the EPCA mandates, the BLM as lead Federal agency for EPCA implementation, released results in 2003 of the first of a 4-phase survey intended to identify onshore oil and gas resources. Phases II and III were published in 2006 and 2008, respectively. Phase III supersedes the previous phases (DOI *et al.* 2008, p. 6).

Available EPCA inventories indicate energy resources (oil and gas) in 11 geological basins within the range of the greater sage-grouse as identified in the 2006 Conservation Strategy (Stiver *et al.* 2006, p. 1-11) for the greater sage grouse. Some of these basins also correspond with pygmy rabbit range: the Wyoming Thrust Belt of Wyoming, Utah and Idaho; Southwestern Wyoming Basin including portions of Wyoming and Utah; and Eastern Great Basin in Nevada, Utah, and Southern Idaho.

We are aware that many land parcels within the range of the pygmy rabbit are leased for oil and gas development. Oil fields have been developed in east-central Nevada and western and central Utah. Major oil and gas production areas occur in eastern Utah, southwest Wyoming, and central California (USFS 2008a, p. 25). We are aware of a number of projects related to oil, gas, and coalbed methane production in sagebrush habitats—-most notably in Wyoming—-as can be seen from the following list of NEPA documents:

- Final Environmental Impact Statement (EIS) for the Jack Morrow Hills Coordinated Activity Plan/Proposed Green River Resource Management Plan Amendment, (BLM 2004a), for Sweetwater, Fremont and Sublette Counties, Wyoming;
- Scoping Notice for South Piney Natural Gas Development Project, (BLM undated), for Sublette County, Wyoming;
- Final Supplemental EIS for the Pinedale Anticline Oil and Gas Exploration and Development Project, (BLM 2008a), for Sublette County, Wyoming;
- Record of Decision Jonah Infill Drilling Project, (BLM 2006b), for Sublette County, Wyoming;
- Record of Decision EIS for the Atlantic Rim Natural Gas Field Development Project, (BLM 2007d), for Carbon County, Wyoming;
- Finding of No Significant Impact and Decision Record for the Bitter Creek Shallow Oil and Gas Project, Sweetwater County, Wyoming (BLM 2005b);
- Decision Record, Finding of No significant Impact and Environmental Assessment for the Copper Ridge Shallow Gas Exploration and Development Project, (BLM 2003b), for Sweetwater County, Wyoming;
- Environmental Assessment, Finding of No significant Impact and Decision Record for the Pacific Rim Shallow Gas Exploration and Development Project, Sweetwater County, Wyoming (BLM 2004b);
- Record of Decision for White Pine and Grant-Quinn Oil and Gas Leasing Project, (USFS 2007), for White Pine, Nye, and Lincoln Counties, Nevada;
- Final EIS Greater Deadman Bench Oil and Gas Producing Region, (BLM 2008b), for Uintah County, Utah.

Currently, pygmy rabbits could be most affected by an energy resources development concentration in the Southwest Wyoming Basin. For example, the BLM published the Record of Decision in 2008 for Pinedale Anticline Project Area in southwest Wyoming (BLM 2008e). The project description included up to 900 drill pads, including dry holes, over a 10 to 15–year development period (BLM 2008a, p. 4-4). Approximately 250 new well pads are proposed in addition to pipelines and other facilities (BLM 2008e, p. 36). Total initial direct disturbance acres for the entire Pinedale project are approximately 25,800 ac (10,400 ha) with over 18,000 ac (7,200 ha) in sagebrush land cover type (BLM 2008a, pp. 4-52).

The Jonah Gas Project also occurs in the Pinedale Anticline area of the Southwest Wyoming Basin. In 2006, the BLM issued a Record of Decision (BLM 2006b, entire) and a final EIS (BLM 2006c, entire) to extend the existing project to an additional 3,100 wells and up to 16,200 ac (6,556 ha) of new surface disturbance (BLM 2006c, p. 2-4). Specific features include: at least 64 well pads per 640 ac (259 $km^2$), up to 473 mi (761 km) of pipeline and roads, and 140 ac (56 ha) of new surface disturbance for ancillary facilities (BLM 2006c, pp. 2-4 to 2-5).

The Pinedale Anticline and Jonah Gas Field Projects as analyzed by the BLM's EISs are not the only oil and gas development occurring in Wyoming. According to the Wyoming Oil and Gas Commission completed wells in Wyoming counties with sagebrush habitats increased from a total of 37,144 in 2005 to 42,510 in 2007. An additional 6,209 applications for permit to drill were approved from January through September 2008 in these counties (WOGC 2008, *http://wogcc.state.wy.us*, accessed September 29, 2008).

The Ruby Pipeline Project, as proposed, involves the construction and operation of a 675-mi-(1,086-km)-42-inch (106.7-cm)-diameter natural gas pipeline. The pipeline would transport natural gas from western Wyoming, through northern Utah and Nevada, to south central Oregon (Federal Energy Regulatory Commission (FERC) 2010, pp. 1-2- 1-3). The project would cross known occupied pygmy rabbit habitat in Wyoming, Utah, and Nevada (FERC 2010, p. 4-126). Approximately 62 ac (25 ha) of suitable pygmy rabbit habitat was delineated along the pipeline route in these three states (FERC 2010, p. 4-147). The Applicant has committed to minimize impacts to pygmy rabbits by conducting preconstruction surveys, realignment of portions of the pipeline to avoid occupied habitat, construction buffers, construction timing restrictions, and specific re-vegetation activities, among other commitments (FERC 2010, pp. 4-132; 4-159; 5-9).

Possible impacts to pygmy rabbits due to nonrenewable energy exploration and development include injury or death, loss of habitat, habitat fragmentation, dispersal barriers, noise, and disturbance due to increased human presence. Lance (2008, pp. 5-6) provided information on oil and gas development in southwestern Wyoming as it relates to pygmy rabbits. He indicated that the greatest number of wells drilled to date has occurred in the Pinedale/Jonah fields in southern Sublette County (Big Piney area south to Granger; in the Overthrust Belt along the Wyoming/Utah border; the Wamsutter area). While oil and gas development has been intensive in some portions of

the pygmy rabbit's predicted range in Wyoming, the majority of the range has been subjected to scattered oil and gas exploration and/or development, or no exploration or development at all. The pygmy rabbit's predicted range in Wyoming is based on a predictive distribution model that uses habitat variables and confirmed pygmy rabbit records (sightings) from the Wyoming Natural Diversity database (Lance 2008, pp. 2-3). Lance (2008, p. 5) estimated that 9,200 oil and gas wells have been drilled within the predicted range. Based on an average disturbance of 25 ac (10.1 ha) per well (accounting for pad, production facility, roads, pipelines, etc.), it was estimated that 4 percent of the predicted range in Wyoming has been disturbed by conventional oil and gas development.

Coal bed methane development is expected in isolated portions of the pygmy rabbit's predicted range in Wyoming. The areas potentially suitable for coal bed methane development include the area around Atlantic Rim and Baggs in Carbon County, and in the vicinity of Hay Reservoir in Sweetwater County.

While some power lines may cross habitat occupied by pygmy rabbits, localized and insignificant impacts are expected given the linear nature of these projects (Lance 2008, p. 6). Power poles could be used as perches by avian predators preying on pygmy rabbits; however, as discussed above, we were not able to find evidence documenting this.

Purcell (2006, pp. 2, 34) expressed concern for loss of sagebrush communities at energy production sites in Wyoming. Purcell (2006, p. 110) mentioned that oil and gas development in southwestern and south central portions of Wyoming may contribute to degradation of suitable areas used by pygmy rabbits due to destruction of sagebrush and sodium contamination of the soil; and recommended that research be conducted to determine pygmy rabbit response to these disturbances.

In contrast, two studies indicate energy projects and pygmy rabbits can co-exist. Hayden-Wing Associates, Inc. (2008b, p. 2) compiled pygmy rabbit observations of all sign (visuals, burrows and pellets, burrows only, pellets only) they collected during 1994 to 2007 surveys in Wyoming. All of their observations were within 109 yd (100 m) of roads (Hayden-Wing Associates, Inc. 2008b, p. 3). Observations were recorded in the Continental Divide-Wamsutter and Creston-Blue Gap natural gas project areas in Carbon and Sweetwater Counties; Moxa Arch natural gas development area in Lincoln, Uinta, and Sweetwater Counties; Jonah gas field in Sublette County; and Lake Ridge 3D seismic area in Lincoln County (Hayden-Wing Associates, Inc. 2008b, p. 2). They recorded 1,151 pygmy rabbit observations (visuals, n=216; burrows and pellets, n=422, pellets only, n=513) (Hayden-Wing Associates, Inc. (2008b, p. 3). The majority of observations (50 percent) occurred in Moxa, 26 percent occurred within the Continental Divide-Wamsutter and Creston-Blue Gap areas, 17 percent in the Jonah gas field, and 6.5 percent in the Lake Ridge 3D seismic area (Hayden-Wing Associates, Inc. 2008b, p. 3). They acknowledge biases with road-based surveys and possible uncertainties in assigning pellets to pygmy rabbits, but concluded that energy development and pygmy rabbits do coexist throughout portions of Wyoming (Hayden-Wing Associates, Inc. 2008b, p. 3). Pygmy rabbit locations were farther away from well pads, but the analysis, in general, suggests that pygmy rabbits are capable of tolerating some level of disturbance (Hayden-Wing Associates, Inc. 2008b, p. 4). The authors suggest that research needs to be conducted to quantify the mechanisms that affect pygmy rabbits due to energy development, to understand thresholds at which negative impacts occur, and to determine ways the industry can avoid impacting populations (Hayden-Wing Associates, Inc. 2008b, p. 4).

Estes-Zumpf *et al.* (2009, p. 4) began a pygmy rabbit monitoring program in the Pinedale Anticline Project Area (PAPA) (359 plots) and in a neighboring Boulder reference area (85 plots), Sublette County, Wyoming, in 2009. Surveys confirmed recent or current pygmy rabbit use at 83 percent of the plots, and there were 120 confirmed pygmy rabbit sightings across both study areas (Estes-Zumpf *et al.* 2009, p. 9). The Boulder reference area contained a greater proportion of active plots (81 percent) compared to the PAPA (54 percent) (Estes-Zumpf *et al.* 2009, p. 9). One hundred and twelve plots were surveyed in the PAPA that occurred within the five oil and gas development areas (Estes-Zumpf *et al.* 2009, p. 10). The proportion of active (52 percent) and recently active (25 percent) plots within the development zone was similar to the proportion of active (54 percent) and recently active (26 percent) plots throughout the PAPA (Estes-Zumpf *et al.* 2009, p. 10). Thirty-two known plots were surveyed inside the development zone and 19 known plots were surveyed in the remainder of the PAPA; the proportion of known plots in the development zone that were still active (88 percent) was similar to the proportion of known plots still active (74 percent) in the remainder of the PAPA (Estes-Zumpf *et al.* 2009, p. 10). Only 2 (6 percent) of previously known active plots within the development zone showed recent, but not current, pygmy rabbit activity (Estes-Zumpf *et al.* 2009, p. 10).

Past and present renewable energy development (wind, solar, and geothermal) in sagebrush habitats could impact pygmy rabbits. Possible impacts to pygmy rabbits could include injury or death, loss of habitat, habitat fragmentation, dispersal barriers, noise, and disturbance due to increased human presence. The Department of Interior (DOI) and Department of Energy (DOE) (2003, pp. 2-17) assessed the potential for renewable energy being developed on public lands in 11 western States. This assessment also indicated which BLM planning areas within these States offered the highest potential for each type of renewable energy (DOI and DOE 2003, pp. 18-24).

BLM published a Final Programmatic EIS on Wind Energy Development on BLM-administered Lands in the Western United States (BLM 2005c, entire). This EIS addresses the environmental, social, and economic impacts associated with wind energy development on BLM-administered lands in 11 western States under the direction of increasing renewable energy production on public lands while minimizing environmental and socio-cultural impacts (BLM 2005c, p. ES-1). Future proposed wind energy projects may impact sagebrush habitats, and therefore, pygmy rabbits within the seven States. The 12–month finding for the greater sage-grouse (75 FR 13950) provides acreage of sagebrush habitat with wind energy development potential by Greater Sage-grouse Management Zone. Selecting those management zones that most appropriately overlap with the pygmy rabbit range, the estimated percent of sagebrush with developable wind potential in the species range is 3 to 9 percent (Greater Sage-grouse Management Zones III, IV, V). Greater Sage-grouse Management Zone II has 42 percent of sagebrush habitat with developable wind potential, but this incorporates a much larger area of Wyoming than is known to be occupied by pygmy rabbits.

Wind development could occur in the future in the eastern portion of the predicted range in Wyoming; most projects are expected to be located east of Rawlins, and some may occur between Rawlins and Wamsutter in pygmy rabbit habitat with localized impacts (Lance 2008, p. 6).

Eastern Nevada and the Pinedale area of Wyoming are the areas within the pygmy rabbit range with good potential for commercial solar development (EIA 2009e, entire cited in 75 FR 13953). The BLM is developing a programmatic EIS for leasing and development of solar energy on BLM lands (75 FR 13953).

Geothermal energy facilities occur in pygmy rabbit range in California, Nevada, Utah, and Idaho. Geothermal potential occurs across pygmy rabbit range in the four mentioned states above as well as in southeast Oregon and west central Wyoming (EIA 2009e, entire cited in 75 FR 13953).

A Programmatic EIS for the Designation of Energy Corridors on Federal Land in the 11 Western States (DOE 2008) was published in 2008. This EIS addresses section 368 of the Energy Policy Act of 2005 which directs the designation of corridors for oil, gas, and hydrogen pipelines, and electricity transmission and distribution facilities on Federal lands. Federal agencies are required to conduct environmental reviews to complete the designation and incorporate the designated corridors into agency land use and resource management plans or equivalent plans. This EIS proposes only designation of corridors, and no environmental impacts are attributed to this action. Section 368 does not require agencies to consider or approve specific projects, applications for rights-of-way (ROW), or other permits within any designated corridor nor does section 368 direct, license, or permit any activity on the ground. Any interested applicant would need to apply for a ROW authorization and the agency would consider each application under the requirements of various laws and related regulations (DOE 2008, S-1-S-2). The proposed action would designate more than 6,000 mi (9,600 km) with an average width of 3,500 ft (1 km) of energy corridors across the West (DOE 2008, p. S-17). Federal land not presently in transportation or utility right-of-way is proposed for use in Idaho (102 mi or 164 km), Montana (149 mi or 240 km), Nevada (373 mi or 600 km), Oregon (253 mi or 407 km), Utah (166 mi or 268 km), Wyoming (70 mi or 113 km), and California (unclear as miles in existing right-of-way is greater than miles of proposed corridors) (DOE 2008, p. S-18). Although we do not have data on how much of the corridor is in sagebrush habitat within the range of pygmy rabbits, based on the proposed location, habitat in Wyoming, Idaho, Utah, Nevada, and Oregon would be most affected.

*Summary of Energy Exploration and Development Impacts*

Energy (nonrenewable and renewable) exploration and development has been documented within sagebrush habitat. Pygmy rabbits have been reported to occur in areas impacted by energy development in Wyoming and have continued to be present in these areas but with unknown impacts to population trends and long-term population persistence. The scope of loss or modification of sagebrush habitat in general due to energy exploration and development does not equally relate to the loss or modification of pygmy rabbit habitat because of the pygmy rabbit's patchy habitat distribution across the landscape. Available information indicates that significant loss or modification of habitat and measureable population declines from injuries or mortalities, temporary home range abandonment or permanent home range shift to adjacent areas, increased habitat fragmentation, increased dispersal barriers, noise, or increased human presence due to energy development (nonrenewable and renewable) are not occurring across the range.

Energy exploration and development is occurring, especially within a portion of the pygmy rabbit's range in Wyoming. Yet, the available information does not indicate that this potential threat is negatively impacting pygmy rabbits. Therefore, based on the best available scientific and commercial information, we conclude that habitat degradation and loss due to energy exploration and development is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Habitat Fragmentation*

Habitat fragmentation is the separating of previously contiguous, functional habitat components that are used by a particular species. Habitat fragmentation can result from direct losses that leave remaining habitat in discontinuous patches or from alteration of habitat such that the habitat becomes unusable to the species (i.e., functional habitat loss). This type of loss can result from disturbances that change a habitat's successional state or remove one or more of its habitat functions; barriers that prevent use of suitable areas; and activities that prevent use of habitat due to behavioral avoidance. Most extant sagebrush habitat has been altered since European immigrant settlement of the West (Braun 1998, p. 2; West and Young 2000, Miller and Eddleman 2001, cited in Knick *et al.* 2003, p. 614; Connelly *et al.* 2004, p. 7-1). Sagebrush habitat continues to be fragmented (Knick *et al.* 2003, p. 625) through various factors (natural and anthropogenic) and will into the future. Cumulative effects of habitat fragmentation have not been quantified over the range of sagebrush and most fragmentation cannot be attributed to specific land uses (Knick *et al.* 2003, pp. 614-616). Review of the human-footprint intensity within the greater sage-grouse management zones showed that the Northern and Southern Great Basin and Snake River Plain sage-grouse management zones contained a greater proportion of low-intensity human footprint area compared to the range-wide intensity (Leu and Hanser in press, p. 14). Sage-grouse management zones with a higher proportion of high-intensity human footprint area (Colorado Plateau, Great Plains, and Columbia Basin) compared to the range-wide intensity (Leu and Hanser in press, p. 14) occurred outside of the range occupied by the pygmy rabbit. Thus, in sage-grouse management zones, the range of the pygmy rabbit occurs mostly within a low-intensity human footprint area.

In general, habitat fragmentation has been mentioned as a potential threat to pygmy rabbits by several researchers (White and Bartels 2002, p. 13; Bartels 2003, p. 99; Roberts 2003a, p. 9). Potential impacts to pygmy rabbits include loss of habitat, increased dispersal distance, increased predation, and increased isolation. Weiss and Verts (1984, p. 570), in Oregon, stated that fragmentation of sagebrush posed a threat to pygmy rabbit populations by reducing the size of this vegetative community and increasing the distances between suitable areas; however, the severity of this threat to pygmy rabbits cannot be adequately assessed without improved understanding of the dispersal abilities of this species and minimum sagebrush patch size requirements. Katzner and Parker (1997, p. 1071) stated that fragmentation of habitat can influence size, stability, and success of pygmy rabbit populations because of their low dispersal capabilities. However, subsequent studies by researchers, as indicated below, demonstrate dispersal capabilities of pygmy rabbits are greater than initially thought and that potential barriers such as perennial creeks and roads do not appear to be barriers to gene flow among some populations.

Pygmy rabbits depend on sagebrush, but there is no information available to indicate minimum sagebrush patch size required to support populations. In Washington, the Service (2007, p. 54) estimated that a subpopulation of at least 500 Columbia Basin DPS pygmy

rabbits would need an area of between 454 and 3,250 ac (184 and 1,316 ha) of suitable habitat. Some studies indicate that pygmy rabbit populations may not be as isolated as previously thought. This has implications for recolonization and genetic exchange between nearby areas. In Montana, movement data has shown pygmy rabbits will cross relatively small open areas (1,500 ft (457 m)) to reach suitable habitat (Rauscher 1997, p. 5). In Wyoming, Katzner and Parker (1998, p. 73) reported a pygmy rabbit traveled long-distance (2.2 mi (3.5 km)) through open habitat likely unsuitable for long-term habitation. In Idaho, Estes-Zumpf and Rachlow (2009, p. 367) found median dispersal movements of 0.93 mi (1.5 km) and 3.9 mi (6.2 km) and maximum dispersal movements of 4.0 mi (6.5 km) and 7.4 mi (11.9 km) by male and female juvenile pygmy rabbits, respectively. Crawford (2008, p. 54) in Nevada and Oregon reported that 24 radio-marked rabbits moved greater than 0.3 mi (0.5 km) with a maximum long-distance movement of 5.3 mi (8.5 km) recorded by a juvenile female.

Continued survey efforts in recent years have found new populations throughout the pygmy rabbit's range. Rachlow and Witham (2006, p. 6) found that the locations of the 32 new sites in the Camas Prairie of south central Idaho indicated the possibility that movement can occur among several of these sites. The sites are separated by distances of less than 3.1 to 4.3 mi (5 to 7 km) which are within dispersal capabilities shown by Estes-Zumpf and Rachlow (2009) and Rachlow and Witham (2006, p. 6). Because most surveys for pygmy rabbits are limited to a single state, it is noteworthy that some reports mention occupied sites near state lines. This suggests the possibility that additional unreported genetic exchange may be occurring where ranges overlap two states. This would further reduce the concern of habitat fragmentation and isolation. Roberts (2003a, p. 9) reported that 6 of the 9 active burrow systems found were within 15 mi (24.1 km) of the Idaho State line. One was within 3 mi (4.8 km) of the Montana border at the head of Medicine Lodge Creek, Clark County. Two active burrow sites were within 8 mi (12.9 km) of both Wyoming and Utah borders on Pegram Creek, Bear Lake County. One active burrow site found on the Curlew National Grasslands was about 15 mi (24.1 km) north of the Utah border and two active burrows sites were about 15 mi (24.1 km) north of the Nevada border near Riddle, Idaho. In Montana, Hendricks *et al.* (2007, p. 13) mentioned that two new active sites found during their survey occurred in gaps between other locations and suggested pygmy rabbits may exist in additional locations in Big Hole Valley. Continued occupancy of previously known locations along the east side of Big Hole Valley may benefit through connectivity with populations in Grasshopper Valley, Argenta Flats, and Horse Prairie located to the south.

Estes-Zumpf *et al.* (2010, p. 212) obtained genotypes for 249 pygmy rabbits from 8 sample locations in Lemhi Valley (5) and Camas Prairie (3), Idaho. They did not document strong evidence of genetic substructure based on nuclear microsatellites among pygmy rabbit populations within the study areas (Estes-Zumpf *et al.* 2010, p. 215). Lack of strong population structure within the study areas indicates that perennial creeks and roads do not appear to create substantial barriers to gene flow (Estes-Zumpf *et al.* 2010, pp. 215-216). Levels of genetic diversity in pygmy rabbits were relatively high in the study areas (Estes-Zumpf *et al.* 2010, pp. 214). Sample locations within 8.1 mi (13 km) of one another in each study area showed sufficient gene flow to constitute single populations (Estes-Zumpf *et al.* 2010, pp. 215).

In Utah, Flinders (2007, pp. 2-3) found fairly extensive populations in Hamlin Valley located on the Utah/Nevada border in Iron and Beaver Counties (Utah). He thought that this area may provide an important habitat corridor between the two States as he found pygmy rabbit use for several miles on both sides of the border.

*Summary of Habitat Fragmentation Impacts*

Although we cannot estimate the amount of suitable or occupied pygmy rabbit habitat lost or the magnitude or extent of that loss due to habitat fragmentation, the habitat used by pygmy rabbits is naturally fragmented and populations occur in a patchy distribution across their range. Because of this patchy habitat distribution across the range, the scope of loss or modification of sagebrush habitat in general due to fragmentation does not equally relate to the loss or modification of pygmy rabbit habitat. Naturally fragmented sagebrush habitat occupied by pygmy rabbits may not have been more prevalent or more contiguous prior to human settlement. Local distribution of this habitat and the distribution of the pygmy rabbit likely shifts over time due to disturbances from factors such as fire, agriculture production, flooding, grazing, and weather patterns.

Pygmy rabbit populations may be less isolated than previously thought based on studies in Idaho, Montana, Wyoming, Nevada, and Utah. For example, studies related to movement data indicate pygmy rabbits, including juveniles, can move greater distances than initially thought (Green and Flinders 1979, p. 88; Gahr 1993, p. 108; Katzner and Parker 1998, p. 73; Crawford 2008, p. 54; Estes-Zumpf and Rachlow 2009, p. 367).

Other studies by Rachlow and Witham (2006, p. 6) and Roberts (2003a, p. 9) in Idaho, Hendricks *et al.* (2007, p. 13) in Montana, and Flinders (2007, pp. 2-3) in Utah, as detailed above, suggest connectivity may occur among several areas and between states. Understanding dispersal capabilities of pygmy rabbits plays an important role in addressing the possibility for genetic exchange among occupied sites as well as determining whether the characteristics of a metapopulation apply to this species.

The best available scientific information does not indicate that fragmented sagebrush habitat is negatively impacting pygmy rabbit populations across their range. Available information indicates through genetic analysis that current habitat sagebrush distribution does not appear to affect dispersal distances, predation, or isolation among pygmy rabbit populations. Although the necessary patch size to support pygmy rabbit populations has not been determined, this species has been reported to historically survive in a naturally fragmented habitat. Survey efforts demonstrate that pygmy rabbits have been found in areas impacted or fragmented by various potential threats as discussed in Factor A and continue to exist in or adjacent to many of these areas suggesting that habitat fragmentation is not a significant threat to this species. While its habitat may be impacted to some degree by current habitat fragmentation, based on the best available scientific and commercial information, we conclude that habitat fragmentation is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Habitat Manipulation Conducted to Benefit Greater Sage-Grouse*

There has been a recent and widespread interest in the protection and restoration of sagebrush habitats with an emphasis on greater sage-grouse conservation (BLM 2004c). It is uncertain whether efforts implemented to improve greater sage-grouse habitat will benefit pygmy rabbits. Some habitat manipulation to benefit greater sage-grouse could benefit pygmy rabbit (e.g.,

pinyon-juniper removal) (Larrucea 2007, p. 127).

Connelly *et al.* (2000, pp. 977, 980) recommend managing sagebrush canopy cover for greater sage-grouse habitat at 10 to 25 percent for brood-rearing, 15 to 25 percent for breeding habitat, and 10 to 30 percent for winter habitat. Pygmy rabbits, in general, prefer taller, denser sagebrush cover relative to the surrounding landscape (Green and Flinders 1980b, p. 138; Weiss and Verts 1984, p. 567), which can be greater than the 10 to 30 percent range suggested for greater sage-grouse habitat needs during their various life history stages. Burak (2006, pp. 63-64) found total shrub cover values ranged from 41 to 67 percent and sagebrush cover values ranged from 12 to 60 percent in areas occupied by pygmy rabbits. Reducing dense sagebrush cover to benefit greater sage-grouse may be in conflict with habitat needs of pygmy rabbits.

In Nevada, Larrucea (2006, p. 7) raised a concern that sagebrush management plans which target areas of mature sagebrush for treatment to promote succession (e.g., Greater Sage-Grouse Conservation Plan for Nevada and Eastern California (NDOW 2004), cited in Larrucea 2006, p. 7) do not protect pygmy rabbit habitat. The goal of these plans is to create a mosaic of sagebrush stands of differing ages. These plans allow for mature sagebrush at the end of the succession, but pygmy rabbits use their burrows over many seasons and require stable, long lasting, mature sagebrush. Larrucea (2006, p. 7) suggested a modification of these plans which would allow protection of habitat for pygmy rabbits and recommends either: 1) surveying for areas to be managed for pygmy rabbit habitat; or 2) specifying areas of mature, clumped, larger than average sagebrush stands within the area to be managed and taking a portion of these areas to be mapped and managed as stable, mature sagebrush sites with no treatments applied. The combination of these two actions (successional and stable) would create a mosaic of ages. This would incorporate both the succession desired by other plans while protecting the stable type of habitat needed by pygmy rabbits. The stable, mature sagebrush would be available for colonization and the earlier successional stages would be available for pygmy rabbit dispersal. These untreated areas of late-successional sagebrush should be included in the actively managed rotational-successional plan (i.e., NDOW 2004). Larrucea (2006) does not provide details of any specific project implemented within sagebrush habitats to improve greater sage-grouse habitat and its possible impact to pygmy rabbits or their populations.

*Summary of Habitat Manipulation Conducted to Benefit Greater Sage-Grouse*

Sagebrush habitat manipulations to benefit greater sage-grouse have occurred within the range of the pygmy rabbit. Habitat manipulation to benefit greater sage-grouse or other species was raised as a concern by the petitioners and a researcher, but the available information does not provide an example of the effects of this activity on pygmy rabbits. Additionally, the available information does not indicate there has been a systematic or widespread loss of habitat due to habitat manipulation that may have been or is suitable habitat for pygmy rabbits. Because of the pygmy rabbit's patchy habitat distribution across the landscape, the scope of loss or modification of sagebrush habitat in general due to habitat manipulation for greater sage-grouse does not equally relate to the loss or modification of pygmy rabbit habitat.

Large-scale sagebrush manipulations to benefit greater sage-grouse may benefit pygmy rabbit. Based on the similarities with sagebrush treatments discussed earlier, the size and design of the manipulated area may minimize adverse impacts to pygmy rabbits. If designed appropriately, these projects may be beneficial to pygmy rabbits by opening up areas for new vegetation growth or to provide dispersal areas. Pygmy rabbits have been found in mosaics where large areas of sagebrush were left intact and remained connected to adjacent sagebrush or where treated areas were small and travel distances between them were minimal. Therefore, based on the best available scientific and commercial information, we conclude that habitat degradation and loss due to habitat manipulations for other species is not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Conservation Strategies and Actions*

All seven States mention the pygmy rabbit in their Comprehensive Wildlife Conservation Strategies. These strategies confer no regulatory mechanisms, but indicate that the species or its habitat deserves special management considerations (Oregon Department of Fish and Wildlife 2006; Idaho Department of Fish and Game 2005; Montana Fish, Wildlife & Parks 2005; Wyoming Game and Fish Department 2005; California Department of Fish and Game 2005; Nevada Department of Wildlife 2006; Utah Division of Wildlife Resources 2006).

We are not aware of any States implementing conservation actions specifically for the pygmy rabbit, though we are aware of initiatives to restore the sagebrush ecosystem within the range of the pygmy rabbit. For example, the State of Utah Division of Wildlife Resources launched the Watershed Initiative in 2003 to implement restoration projects designed to prevent and reverse habitat loss. Emphasis has been placed on restoration and protection of shrub-steppe and riparian habitats in Utah due to their importance to a diversity of wildlife species. Completed, current, and proposed projects within the range of pygmy rabbit total 35,335 ac (14,300 ha). Monitoring is an important component to assessing these treatments (Karpowitz 2008, p. 3). In addition, research is being conducted to address impacts of treatments for greater sage-grouse, mule deer, and pronghorn on pygmy rabbit populations. Preliminary results indicate that at least a 131.2 ft (40-m) buffer should be established between active pygmy rabbit burrows and treatments. Future designs should also implement a mosaic pattern and preserve long and wide swaths of undisturbed mature big sagebrush with corridors of connectivity between all residual stands. All current and future habitat projects in pygmy rabbit habitat follow these recommendations (Karpowitz 2008, p. 3). Although it is not known whether pygmy rabbits are benefiting from these types of habitat restoration actions across their range, some actions implemented for other species may benefit pygmy rabbits (e.g., pinyon-juniper removal for greater sage-grouse) (Larrucea 2007, p. 127).

At the State level, control of invasive plant species is sometimes encouraged. Some States require landowners to control noxious weeds on their property, but the types of plants considered to be noxious weeds vary by state. For example, only Oregon, California, Colorado, Utah, and Nevada list medusa head as a noxious, regulated weed, but medusa head can be problematic in other states (e.g., Idaho). Cheatgrass is not considered an official noxious weed within the range of the pygmy rabbit. Although we do not know how these regulations affect sagebrush habitats, States have regulations regarding invasive species in place.

*Summary of Conservation Strategies and Actions*

All seven States within the range of the pygmy rabbit mention this species in their Comprehensive Wildlife Conservation Strategies and indicate

that the species or its habitat deserves special management considerations now and in the future. While we are not aware of any States implementing conservation actions specifically for the pygmy rabbit, we are aware of initiatives to restore the sagebrush ecosystem within the range of the pygmy rabbit over time. Many states encourage the control of invasive plant species. Conservation strategies and actions carried out in consideration of the pygmy rabbit will benefit it now and in the future.

Therefore, based on the best available scientific and commercial information, we conclude that conservation strategies and actions for pygmy rabbits or their habitat do not pose a significant threat to the pygmy rabbit now or in the foreseeable future.

*Summary of Factor A*

We have assessed the best available scientific and commercial data on the magnitude and extent of the impacts of agriculture, sagebrush treatment, livestock grazing, nonnative and invasive plant species, fire, urban and rural development (and associated facilities), mining, energy exploration and development (and associated facilities), habitat fragmentation, greater sage-grouse conservation actions and other conservation actions on pygmy rabbit habitat. We find that these threats do not significantly, either singly or cumulatively, impact the pygmy rabbit to such an extent within the foreseeable future such that listing under the Act as an endangered or threatened species is warranted. While sagebrush habitat loss and fragmentation has occurred within the range of the pygmy rabbit due to various anthropogenic and natural activities as discussed above and likely will continue at some level in the future; our review of the best available information reveals only a handful of specific areas where sagebrush loss or degradation is occurring in occupied pygmy rabbit habitat. Due to the pygmy rabbit's patchy habitat distribution across the landscape, the scope of loss or modification of sagebrush habitat in general does not equally relate to loss or modification of pygmy rabbit habitat. The activities listed above are likely to continue into the future with some increases occurring. However, pygmy rabbit populations continue to occur throughout the species' current known range, including historically occupied locations, and some new populations have been found in recent years, despite numerous activities occurring within its habitat.

We conclude that the best scientific and commercial information available indicates that the pygmy rabbit is not now, or in the foreseeable future, threatened by the present or threatened destruction, modification, or curtailment of its habitat or range to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

*Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

We have no information that the pygmy rabbit is being used for commercial or educational purposes.

Hunting

Impacts due to hunting include injury or death with the potential for impacting population numbers. Some individuals have suggested that pygmy rabbits were not readily hunted in the past. Bailey (1936, p. 112) indicated an individual from Nevada reported that pygmy rabbits were not eaten by locals because of the strong sage taste. Later Larrison (1967, p. 64) said, "[Pygmy rabbits] flesh tastes of sagebrush, rendering it unfit as food."

In Idaho, Fisher (1979, p. 29) recommended that bag limits be monitored, especially where habitat was declining, because with the pygmy rabbit's lower reproductive potential as compared to other rabbits, fewer surplus animals may be available to hunters. Sanchez (2007, p. 90) reports of an illegal harvest of two pygmy rabbits in her Idaho study area during 2004 to 2005. Rauscher (1997, pp. 10-11) reported pygmy rabbit hunting in southwestern Montana, but stated that hunting did not appear to be a significant mortality factor. Williams (1986, p. 52) stated that although hunting impacts were not known in California, he thought that hunters probably did not kill many pygmy rabbits because the species was quite secretive and rarely left dense brush. Pritchett *et al.* (1987, p. 231) reported that, according to locals near Loa, Wayne County, Utah, pygmy rabbits have been "extensively hunted" along with black-tailed jackrabbits (*Lepus californicus*) and cottontails. Where he was able to access portions of his previous study area outside Cedar City, Utah, Janson (2002, p. 32) found spent shotgun shells. He thought it was probable that some pygmy rabbits were shot because most hunters cannot distinguish between pygmy rabbits and cottontails.

We are aware that rabbit drives occurred (Bacon *et al.* 1959, p. 281; Jackman and Long 1964, p. no page number), but there is little documentation on the impacts to pygmy rabbits. For example, Bacon *et al.* (1959, p. 281) collected rabbits, mostly by organized drives of hunters who shot them, to gather ectoparasitic (parasite on outer surface of an animal) information on wild rabbits and rodents in eastern and central Washington between 1951 and 1956; of the 1,040 rabbits collected, representing four species, only one was a pygmy rabbit. It is unknown if the single collection indicates pygmy rabbits are less vulnerable to drives or if numbers were reduced in that area at the time.

Jackman and Long (1964, p. no page number) documented, with a photograph, that a rabbit drive occurred in Oregon in 1911. The drive resulted in 1,811 rabbits being captured, but the species of rabbits were not identified nor was the location of the drive. The photograph is courtesy of the Schminke Museum, Lakeview, Lake County, Oregon, so the drive could have occurred in that county. We do not have any additional information on rabbit drives occurring within the range of the pygmy rabbit.

Currently, only three (California, Nevada, and Montana) of the seven States within the species range allow hunting of pygmy rabbits. For these States, the State Wildlife Boards of Commissioners set hunting regulations yearly. In California, for the 2009 to 2010 Upland Game Season, hunting of pygmy rabbits is allowed from July 1 to January 31 with a bag limit of 5 per day and 10 in possession (California Department of Fish and Game 2010, *http://www.dfg.ca.gov/regulations/09-10-upland-sum.html*, accessed July 20, 2010). The 2009-2010 pygmy rabbit hunting season in Nevada opened October 10 and closed February 28 with a daily limit of 10 and a possession limit of 20 (Nevada Department of Wildlife, 2009, no page numbers). For Montana, the pygmy rabbit is considered a nongame species and there is no protection from hunting. Pygmy rabbits can be hunted year-round with no bag limits (Montana Department of Fish Wildlife and Parks 2010, http://fwp.mt.gov/wildthings/livingWithWildlife/rabbits/rab_ctrl.html). For these three States, harvest data are collected through hunter surveys but the various rabbit species are not distinguished from one another so the number of pygmy rabbits harvested in these States per year is not known.

Summary of Hunting Impacts

While it has been reported that pygmy rabbits have been hunted over the years and specifically in Idaho, Nevada, and Utah, only three (Montana, California,

and Nevada) of the seven States within the range of the pygmy rabbit currently allow hunting of this species. Historical harvest records are not available, but information indicates a reluctance to eat pygmy rabbits due to their strong sage taste as well as difficulty in hunting them due to their secretive nature. The number of pygmy rabbits taken more recently through hunting is not discernable because of the method by which present-day data are collected in States that allow hunting. Based on the best scientific information available, we conclude that hunting is not a significant threat to the pygmy rabbit now or in the foreseeable future.

Research

Research activities on pygmy rabbits that involve trapping, handling, and holding them for a period of time can result in mortality from exposure, injury, trap predation, intra-specific fighting, and capture stress (Bailey 1936, pp. 111-112; Severaid 1950, p. 2; Wilde 1978, p. 96; Gahr 1993; Rauscher 1997, p. 9). Mortality rates for captured pygmy rabbits have been reported as 3 percent (Gahr 1993, p. 37), 5 percent (Wilde 1978, p. 96), and 19 percent (Rauscher 1997, p. 9). Individuals may be killed for specimen collections (Grinnell *et al.* 1930, pp. 553-555; Bailey 1936, p. 111; Severaid 1950, p. 2). Investigations may also involve digging out burrows, stepping on burrows accidentally, measuring vegetation and other site characteristics near burrows, and other general disturbance in the study area (Janson 1946, p. 69; Bradfield 1974, pp. 17, 21-22, 26; Green 1978, pp. 4-6; Gahr 1993, pp. 54-60; Katzner 1994, pp. 6-12; Rauscher 1997, pp. 6, 12). Katzner (1994, p. 111) reported that all of his collared rabbits (10) died. He suggested the weight of the radio collars, and increased grooming as a result of their presence, may have increased a rabbits' vulnerability to predation. Rachlow and Witham (2004a, p. 3) reported 1 pygmy rabbit mortality out of the 15 trapped during their survey efforts. The trap contained a long-tailed weasel (*Mustela frenata*), and it was unclear if the weasel killed the rabbit prior to entering the trap, entered the trap after the rabbit was captured in the trap, or entered the trap with the rabbit simultaneously. Sanchez (2007, p. 90) reported two deaths related to her study due to collars entrapping the lower jaw of the pygmy rabbit. Flinders *et al.* (2005, p. 36) captured two pygmy rabbits, placing radio-collars and ear tags on them. They reported one died due to a loose collar; the other bit the collar off but was captured by a remote camera 339 yd (310 m) away from the initial capture site.

Summary of Research Impacts

The documented mortalities due to research activities are relatively few in number, occur in limited areas, and occur over limited time periods. Most of these reported mortalities are documented in studies conducted before 1997 and few mortalities have been reported in recent documents. Therefore, based on our review of the best available scientific information, we conclude that research activities are not a significant threat to the pygmy rabbit now or in the foreseeable future.

*Summary of Factor B*

Currently only three States allow hunting of pygmy rabbits; this is a reduction from the historic condition where all of the states considered in this finding allowed hunting. We found no data regarding long-term historical or recent hunting data that would clarify past or current hunting pressure on the pygmy rabbit across its range. While there is a potential for populations at low levels to be harmed by hunting and poaching mortality, our review of the best scientific and commercial information indicates hunting is not a significant threat to the pygmy rabbit.

Research activities have been a source of mortality for pygmy rabbits, although our review of the best scientific information suggests this is a very minor level of mortality and does not pose a significant threat to the species.

We have assessed the best available scientific and commercial data on the magnitude and extent of the impacts of hunting and research activities on pygmy rabbits. Based on that information, we conclude that the best scientific and commercial information available indicates that the pygmy rabbit is not now, or in the foreseeable future, threatened by the overutilization for commercial, recreational, scientific, or educational purposes to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

*Factor C: Disease or Predation*

Disease

Possible effects of disease include weakening of individuals which may increase their vulnerability to predation. Serious disease outbreaks can impact population size and number. Pygmy rabbits reportedly can harbor high parasite loads (Janson 1946, p. 90; Wilde 1978, p. 107; Gahr 1993; WDFW 1995; 66 FR 59734). These parasites include ticks (e.g., *Dermacenter paramapterus, D. anersoni*, *Haemaphysalis leporis-palustris*), fleas (e.g., *Cediopsylia inaequalis, Odontopysilys dentatus*), lice (not specified), and bot flies (e.g., *Cuterebra maculata*) (Davis 1939, p. 365; Janson 1940, pp. 25-27; Janson 1946, p. 90; Larrison 1967, p. 64; Wilde 1978, pp. 13-16; Gahr 1993; Rauscher 1997, p. 12) which can be vectors of disease.

Plague and tularemia can be found in leporid populations, but they have not been confirmed in pygmy rabbits. Plague is a bacterial disease that is transmitted by fleas infected with the bacterium, *Yersinia pestis*. Tularemia is caused by the bacterium *Francisella tularensis* and is commonly transmitted by ticks. These diseases often spread rapidly and can be fatal (Quan 1993, p. 54). Hall (1946, p. 618), in Nevada, thought that pygmy rabbits were killed by tularemia based on his general observations which were not specified. Gahr (1993, p. 22) found bot flies on two pygmy rabbits located in the grazed area of her study in Washington, indicating cattle may act as a vector for spreading parasites and possibly disease. She commented that parasitism by bot flies is not necessarily detrimental to the rabbit, and additional study is needed to determine if cattle presence increases the incidence of ectoparasites for pygmy rabbits.

Red Willow Research Inc. (2002, p. 108) expressed concern that the transport and transmission of diseases by domestic livestock to pygmy rabbits could be a threat. Red Willow Research Inc. (2002, p. 108) raised the concern that a calicivirus, such as Rabbit Hemorrhagic Disease (RHD), could explain declines in pygmy rabbit populations and suggests additional research is needed. The Committee for the High Desert *et al.* (2003, p. 150) indicated that West Nile Virus is a growing concern for native wildlife, including pygmy rabbits. We have no reports of disease epizootics (outbreaks) occurring in pygmy rabbits in the range considered in this finding. Janson (2002, p. 30) did not observe any obviously diseased pygmy rabbits in his earlier work in the 1940's. Oliver (2004, p. 36) reported that in Utah, the effects of parasites and disease on pygmy rabbit populations are not known. Parasites and disease have not been regarded as a major threat to pygmy rabbits (Wilde 1978, p. 141; Green 1979, p. 25). The final rule for the Columbia Basin DPS pygmy rabbit indicated disease, including plague, was a significant potential threat to the remaining, small populations (68 FR 10405). A number of captive Columbia Basin pygmy rabbits have died of mycobacteriosis and

coccidiosis (WDFW 2005a; Harrenstien *et al.* 2006 cited in Service 2007, p. 21). It is unclear if these two diseases were introduced into the captive breeding population from wild caught individuals or by some other means. Mycobacteriosis and coccidiosis have not been reported in pygmy rabbits occurring in the rest of its range.

Summary of Disease Impacts

Though pygmy rabbits can harbor high parasite loads, there is no evidence that this is negatively impacting pygmy rabbit populations. Through our review of the best scientific and commercial information we found no reports of disease epizootics occurring in pygmy rabbit populations anywhere within the range of the species. Therefore, based on our review of the best available information, we conclude that disease is not a significant threat to the pygmy rabbit now or in the foreseeable future.

Predation

Predation of pygmy rabbits has been reported in Idaho, Nevada, and Utah. According to Green (1979, p. 25) predation is the main cause of pygmy rabbit mortality. The annual mortality rate of adult pygmy rabbits may be as high as 88 percent, and one researcher found that more than 50 percent of juveniles can die within about 5 weeks of their emergence (Wilde 1978, pp. 139-140). Estes-Zumpf and Rachlow (2009, p. 367) found mortality rates were 69 percent and 88.5 percent for male and female juvenile pygmy rabbits, respectively, in their study area in east-central Idaho. The mortality rate was highest within two months of emerging from the natal burrow. However, mortality rates for adult and juveniles can vary considerably between years and for juveniles between cohorts within years (Wilde 1978, pp. 85-95, 138-140).

While pygmy rabbits have numerous predators, they have adapted to their presence (Janson 1946, pp. 28-29; Gashwiler *et al.* 1960, p. 227; Green 1978, p. 37; Wilde 1978, pp. 141-143). Junipers provide perches for avian predators and may provide habitat for mammalian predators (Larrucea and Brussard 2008b, p. 1640). However, Larrucea and Brussard (2008b) do not provide actual losses of pygmy rabbits to predators utilizing pinyon-juniper habitat. If levels of predation are too high, local populations may be suppressed below a point at which they can be maintained. Sagebrush habitat with damaged structural components may increase the pygmy rabbit's vulnerability to predation. Weiss and Verts (1984, p. 569) thought that use of denser and taller sagebrush habitats by pygmy rabbits was related to predator avoidance. Katzner (1994, p. 52) documented that raptors were a cause of mortality and denser sagebrush cover deterred these avian predators. In Idaho, Sanchez (2007, pp. 90-91) attributed 42 percent of natural mortalities to mammalian and avian predation; the cause of death in 58 percent of the mortalities could not be determined.

Summary of Predation Impacts

Pygmy rabbits are a prey species and predation has been stated by some researchers as the main cause of mortality. Annual mortality rates for adult and juvenile pygmy rabbits can be high, but these rates can vary considerably between years and between juvenile cohorts within particular years. Predation is a natural part of population dynamics for any species and results in the death of individuals. Based on our review of the best available scientific information, we did not find any indication of predation being a significant threat to the pygmy rabbit in all or a significant portion of its range. The Service is not aware of any predators that potentially pose a significant threat to the species. We therefore conclude that the available information indicates that the pygmy rabbit is not threatened by predation now or in the foreseeable future.

*Summary of Factor C*

Disease and predation may be significant threat factors to local or isolated pygmy rabbit populations; however, based on our review of the best available scientific information, we did not find any information to indicate significant threats from either disease or predation Habitat degradation and fragmentation may increase the effects of parasites, disease, and predation on some populations. We do not have any reports indicating that RHD or West Nile Virus is a significant threat to pygmy rabbits, nor are we are aware of reports of disease epizootics occurring in wild pygmy rabbits anywhere within the species' range. Therefore, we conclude that the best scientific and commercial information available indicates that the pygmy rabbit is not now, or in the foreseeable future, threatened by disease or predation to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

*Factor D: Inadequacy of Existing Regulatory Mechanisms*

Local Laws and Regulations

We are not aware of any county or city ordinances that provide protection specifically for pygmy rabbits or their habitat on private lands. We recognize that county or city ordinances that address agricultural lands, transportation, and zoning for various land uses have the potential to influence pygmy rabbits or their habitat (zoning that protects open space might retain suitable pygmy rabbit habitat; a housing development and associated roads might destroy or fragment habitat). We found no detailed information regarding the nature or extent of zoning efforts within the species' range and its direct or indirect effects on pygmy rabbit habitat or populations.

State Laws and Regulations

Currently, hunting of pygmy rabbits is allowed in three of the seven States within the species' range (California, Nevada, and Montana). In California, for the 2009 to 2010 Upland Game Season, hunting of pygmy rabbits is allowed from July 1 to January 31 with a bag limit of 5 per day and 10 in possession (California Department of Fish and Game, 2010, *http://www.dfg.ca.gov/regulations/09-10-upland-sum.html*, accessed July 20, 2010). In Nevada, the 2009-2010 pygmy rabbit hunting season opened on October 10 and closed on February 28 with a daily limit of 10 and a possession limit of 20 (Nevada Department of Wildlife, 2009, no page numbers). For Montana, the pygmy rabbit is considered a species of concern, nongame species and there is no protection from hunting. Pygmy rabbits can be hunted year-round with no bag limits (Montana Department of Fish Wildlife and Parks 2010, http://fwp.mt.gov/wildthings/livingWithWildlife/rabbits/rab_ctrl.html). Due to the manner of data collection, the numbers of pygmy rabbits harvested in these States each year is not known.

Hunting of pygmy rabbits is not allowed in Idaho or Wyoming where they are considered a species of special concern, or in Utah where they are considered a sensitive species. Nor is hunting allowed in Oregon where the pygmy rabbit is considered a sensitive species and protected under State law.

In Wyoming, many oil and gas development projects occurring on private lands fall under the jurisdiction of the Wyoming Industrial Siting Act (cited in Lance 2008, p. 6). This requires the Industrial Siting Administration to consult with Wyoming Game and Fish

Department to address impacts; and appropriate mitigation is required prior to issuance of permits (Lance 2008, pp. 5-6). As mentioned above, monitoring for restoration and mitigation activities are in the early stages. We do not know whether pygmy rabbits are benefiting from any mitigation that may have been required under reviewed projects, but restoration of sagebrush habitat is likely to positively impact pygmy rabbits.

Summary of State Laws and Regulations Impacts

Hunting of pygmy rabbits is allowed in three of the seven States. In Wyoming, many oil and gas projects located on private lands will be reviewed by that state's wildlife agency with appropriate mitigation required that may benefit pygmy rabbits. The best available information indicates that the inadequacy of existing State laws do not threaten the pygmy rabbit.

Federal Laws and Regulations

A large portion of the sagebrush community with the potential to support pygmy rabbits occurs on BLM lands. The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) is the primary Federal law governing most land uses on BLM-administered lands. Section 102 (a)(8) of FLPMA specifically recognizes that wildlife and fish resources are the uses for which these lands are to be managed.

We acknowledge that data to evaluate the effectiveness of BLM's programs on pygmy rabbit conservation are not available. Whether the various BLM stipulations issued related to oil and gas activities specific to the greater sage-grouse (75 FR 13978) also reduce impacts from these activities to pygmy rabbits and their habitats is unknown. The BLM has management and permitting authorities to regulate and condition oil and gas lease permits under FLPMA and the Mineral Leasing Act (MLA) (30 U.S.C. 181 *et seq.*). BLM usually incorporates stipulations as a condition of issuing leases. The BLM's planning handbook has program-specific guidance for fluid materials (including oil and gas) that specifies that Resource Management Plan (RMP) decision-makers will consider restrictions on areas subject to leasing, including closures, and lease stipulations (BLM 2000, Appendix C, p. 16). The handbook also specifies that all stipulations must have waiver, exception, or modification criteria documented in the plan, and indicates that the least restrictive constraint to meet the resource protection objective should be used (BLM 2000, Appendix C, p. 16).

BLM's RMPs are the basis for all actions and authorizations involving BLM-administered land and resources. They establish allowable resource uses; resource condition, goals and objectives to be attained; program constraints and general management practices needed to attain the goals and objectives; general implementation sequences; and intervals and standards for monitoring and evaluating each plan to determine its effectiveness and the need for amendment or revision (43 CFR 1601.0-5(k)).

RMPs provide a framework and programmatic guidance for site-specific activity plans. These plans address livestock grazing, oil and gas field development, travel management (managing vehicle routes and access), wildlife habitat management, and other activities. Activity plan decisions normally require National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) analysis.

BLM has designated the pygmy rabbit as a special status species/bureau assessment species in five (Idaho, Montana, Nevada, Oregon, and Wyoming) of the seven States in which it occurs. BLM policy and guidance for species of concern occurring on BLM managed land is addressed under BLM's 6840 Manual, "Special Status Species Management" (BLM 2008c entirety). This manual provides agency policy and guidance for the conservation of special status plants and animals and the ecosystems on which they depend, but it is not a regulatory document. The objectives for BLM special status species are " to conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species and to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA." (BLM 2008c, p. 3).

There has been an increased focus on the roles that state, county, and private entities have in controlling invasive plants. For example, the Noxious Weed Control and Eradication Act was passed in 2004 and incorporated into the Plant Protection Act. This Act is intended to assist eligible weed management entities to control or eradicate harmful nonnative weeds on both public and private lands. Additionally, Executive Order 13112 was signed on February 3, 1999, establishing an interagency National Invasive Species Council in charge of creating and implementing a National Invasive Species Management Plan. The Management Plan directs federal efforts, including overall strategy and objectives, to prevent, control, and minimize invasive species and their impacts (National Invasive Species Council 2008, p. 5). However, the Order also directs the Council to encourage planning and action at local, tribal, state, regional, and eco-system levels to achieve the goals of the National Invasive Species Management Plan, in cooperation with stakeholders (e.g., private landowners, states) and existing organizations addressing invasive species.

Noxious and invasive weed treatments on BLM lands involving reseeding can occur through the Emergency Stabilization and Burned Area Rehabilitation Programs. Invasive species control is a stated priority in many RMPs. For example, 76 of the RMPs included in BLM's response to a data call claim that the RMP (or supplemental plans/guidance applicable to the RMP) require treatment of noxious weeds on all disturbed surfaces to avoid infestations of BLM-managed lands in the planning area (Carlson 2008a cited in 75 FR 13977). We also note that it is possible that more RMPs specifically address invasive species under another general restoration category (75 FR 13977).

BLM commonly uses herbicides on lands to control invasive plant species. In 2007, the BLM completed a programmatic EIS (BLM 2007c) and Record of Decision for vegetation treatments on BLM-administered lands in the western United States. This program approves the use of four new herbicides, provides updated analysis of 18 currently used herbicides, and identifies herbicides that the BLM will no longer use on public lands. Information is unavailable on how frequently the programmatic EIS has been used for most states or whether actions implemented under this EIS have been effective; and while not authorizing any specific on-the-ground actions, it guides the use of herbicides for field-level planning. Site-specific NEPA analysis is still required at the project level (BLM 2007c, p. ES-1 to ES-2).

Another voluntary approach to control invasive plant species is the development of Cooperative Weed Management Areas (CWMAs). CWMAs are partnerships between federal, state, and local agencies, tribes, individuals, and interested groups to manage both regulatory noxious weeds and invasive plants in a county or multi-county geographical area. They function under a mutually developed memorandum of understanding and a locally developed

strategic plan. The CWMAs can utilize federal funds for invasive plant control on non-federal land. As of 2005, Oregon, Nevada, and Utah had between 75 and 89 percent of their state covered by CWMAs and/or county weed districts, while Idaho, Montana, Wyoming, and California had between 90 and 100 percent coverage (Center for Invasive Plant Management 2008, *www.weedcenter.org/weed_mgmt_areas/wma_overview.html*).

BLM regulatory authority for grazing management is provided at 43 CFR part 4100 (Regulations on Grazing Administration Exclusive of Alaska). Livestock grazing permits and leases contain terms and conditions determined by BLM to be appropriate to achieve management and resource condition objectives on the public lands and other lands administered by the BLM, and to ensure that habitats are, or are making significant progress toward being restored or maintained for BLM special status species (43 CFR 4180.1(d)). Grazing practices and activities include the development of grazing related portions of implementation or activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction, and development of water for livestock.

BLM grazing administration standards for a particular state or region must address habitat for endangered, threatened, proposed, candidate, or special status species, and habitat quality for native plant and animal populations and communities (43 CFR 4180.2 (d)(4) and (5). The guidelines must address restoring, maintaining or enhancing habitats of BLM special status species to promote their conservation, and maintaining or promoting the physical and biological conditions to sustain native populations and communities (43 CFR 4180.2(e)(9) and (10).

Information regarding assessments of rangelands is not available. During 2004 through 2008, BLM conducted a national data call to collect information on the status of rangelands, rangeland health assessments, and measures that have been implemented to address rangeland health issues under their jurisdiction. The information collected was unusable to make broad generalizations about the status of rangelands or management actions because of inconsistency across the range regarding how questions were interpreted and answered. This limited the ability to use this information in understanding habitat conditions on BLM lands (75 FR 13976).

Since 2005, the BLM has developed or is in the process of developing guidances to minimize impacts of renewable energy production on public lands. A Record of Decision for "Implementation of a Wind Energy Development Program and Associated Land Use Plan Amendments" was issued in 2005. The Record of Decision outlines the Best Management Practices for the siting, development, and operation of wind energy facilities on BLM lands. A final programmatic EIS and Record of Decision for geothermal development were issued in 2008. The BLM is in the process of developing programmatic-level guidance for the development of solar energy projects. The draft programmatic EIS for solar energy is under development –available at *http://www.blm.gov/wo/st/en/prog/energy/epca_chart.html*).

Although we are uncertain which management direction the USFS is taking for the pygmy rabbit or whether pygmy rabbit habitat objectives and conservation measures have been incorporated into grazing allotment plans or Land and Resource Management Plan (LRMPs), the pygmy rabbit is designated as a USFS Sensitive Species in the Intermountain Region (R4) (USFS 2008b, p. 1). This includes southern Idaho, western Wyoming, Utah, and Nevada; the Northern Region (R1) which includes Montana (USFS 2005, p. 2); and the Pacific Northwest Region (R6) which includes Oregon (USFS 2008c, p. 2). Sensitive species receive special management to ensure viability and to preclude trends that may lead to the need for Federal listing. There must be no impacts to sensitive species without an analysis of the significance of adverse impacts on populations, habitat and on the viability of the species as a whole (USFS Manual 2672.1, cited in USFS 2008b, p. 1).

Management of Federal activities on National Forest System lands is guided principally by the National Forest Management Act (NFMA) 16 U.S.C. 1600-1614, August 17, 1974, as amended. NFMA specifies that all national forests and grasslands must have a LRMP (16 U.S.C. 1604(a)) to guide and set standards for natural resource management activities. NFMA also requires the USFS to incorporate standards and guidelines into LRMPs (16 U.S.C. 1604(c)). This has historically been done through a NEPA process. In order to meet overall multiple-use objectives, provisions are developed to manage plant and animal communities for diversity, based on the suitability and capability of a specific land area.

The 1982 NFMA implementing regulations for land and resource management planning under which all existing forest plans were prepared, requires the USFS to manage habitat in order to maintain viable populations of existing native vertebrate species on National Forest System lands (47 FR 43037, September 30, 1982). A new USFS planning regulation was published on April 21, 2008 (73 FR 21,468) which superseded the 1982 rule. Plans developed under the new regulations would be more strategic and less prescriptive in nature than those developed under the 1982 planning rule. However, on June 30, 2009, the U.S. District Court for the Northern District of California vacated the new rule, and as a result, the rule is not currently in use by the USFS.

Through the NFMA, LRMPs, and the On-Shore Oil and Gas Leasing Reform Act (1987; implementing regulations at 36 CFR 228, subpart E), the USFS has the authority to manage, restrict, or include protective measures to mineral and other energy permits on their lands. Similar to BLM, existing protective standard stipulations on USFS lands occur for greater sage-grouse (75 FR 13980). The USFS is a partner agency with the BLM on the draft programmatic EIS for geothermal energy development mentioned above. If finalized, the programmatic EIS will amend relevant LRMPs and will expedite the leasing of USFS lands with geothermal energy potential.

Pygmy rabbit habitat also occurs on lands managed by other Federal agencies such as the Service and National Park Service (NPS). The National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) provides guidelines and directives for administration and management of all areas in the National Wildlife Refuge system. Refuges are managed for species conservation, consistent with direction in the National Wildlife Refuge System Administration Act, as amended, and related Service policies and guidance. The National Park Service Organic Act (16 U.S.C. §1, *et seq.*) states that the NPS will administer areas under their jurisdiction "*** by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historical objects and the wildlife within and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Summary of Federal Laws and Regulations Impacts

A large portion of pygmy rabbit habitat occurs on lands administered by Federal agencies, including BLM, USFS, Service, and NPS. Numerous policies, guidance, and laws have been developed to assist the different agencies in management of these lands. The Bureau of Land Management policies and guidance address species of concern, actions covered by RMPs, and regulatory authority for grazing and oil and gas leasing and operating. The USFS policies and guidance address sensitive species and actions covered by LRMPs. The Service uses guidelines and directives under the National Wildlife Refuge System Administration Act for management of lands in the National Wildlife Refuge system. The National Park Service Organic Act provides management guidance to the NPS for management of lands administered by this agency.

As discussed under Factors A and E, the best available information indicates that activities such as livestock grazing, mining, energy exploration and development, and recreational activities that are regulated by various policies, guidance, and laws on Federal lands are not significantly impacting pygmy rabbits. Therefore, we conclude that available information indicates that the existence of inadequate Federal laws and regulations are not a significant threat to the pygmy rabbit.

*Summary of Factor D*

Our assessment of threats based on the best available scientific and commercial data regarding the past, present and future loss or modification of pygmy rabbit habitat as discussed in Factor A, hunting activities as discussed in Factor B, and intra and inter-specific competition or recreational and non recreational vehicle use as discussed under Factor E lead us to conclude that the inadequacy of existing regulatory mechanisms is not a threat to the pygmy rabbit. Therefore, the best available scientific and commercial information indicates that the pygmy rabbit is not now, or in the foreseeable future, threatened by the inadequacy of existing regulatory mechanisms to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

*Factor E: Other Natural or Manmade Factors Affecting the Species Continued Existence*

Several other potential threats have been mentioned as possibly negatively impacting pygmy rabbit populations including: (1) intra- and inter-specific competition; (2) small or isolated populations; (3) natural stochastic (random) events such as floods and drought; (4) climate change; (5) recreational activities; (6) mortality caused by collisions with vehicles; and (7) life history traits of a habitat specialist.

Intra- and Inter-specific Competition

While intra-specific competition likely occurs both under normal and stressful environmental conditions, we are not aware of any scientific information documenting or suggesting that such competition for food and space is negatively impacting pygmy rabbits at this time.

As pygmy rabbits are habitat specialists, inter-specific competition with other herbivores for sagebrush such as jackrabbits, pronghorn, and mule deer could occur. Numerous researchers have mentioned other leporid species, namely black-tailed and white-tailed (*Lepus townsendii*) jackrabbits, and mountain cottontails (*Silvilagus nuttallii*) as occurring in the same areas with pygmy rabbits throughout their range.

In Oregon, Anthony (1913, p. 23) mentioned that cottontails and black-tailed jackrabbits were observed in the same areas with pygmy rabbits. Bartels (2003, p. 93) also mentioned these two species were observed in areas used by pygmy rabbits.

In Idaho, Merriam (1891, p, 13) mentioned white- and black-tailed jack rabbits and mountain cottontails in Pahsimeroi Valley where the pygmy rabbit also occurred. Roberts (2004, p. 4) mentioned that at one site in the Birch Creek area he flushed pygmy rabbits along with cottontails. Waterbury (2006, p. 10) found other rabbit and hare species (black-tailed and white-tailed jackrabbits, mountain cottontails) in association with pygmy rabbits in several locations, including Pahsimeroi and Big Lost River Valleys.

In Montana, Rauscher (1997 p. 11) mentioned mountain cottontails and jack rabbits were observed at most pygmy rabbit sites. It was unclear if cottontails and pygmy rabbits were sharing burrows, if cottontails were replacing pygmy rabbits at burrows, or if cottontails were taking advantage of burrow availability.

In California and Nevada, Larrucea and Brussard (2008a, p. 697) found cottontail rabbits may compete with pygmy rabbits and influence the relationship between understory growth and pygmy rabbit presence. Cottontails appear to occur more in areas with greater understory (Larrucea and Brussard 2008a, p. 697). Though pygmy rabbits consume primarily sagebrush, they will also eat forbs and grasses (Green and Flinders 1980b, p. 138).

In California, Severaid (1950, p. 4) commented that white- and black-tailed jackrabbits and cottontails occupied the same habitats as pygmy rabbits. In northern Utah, Janson (1946, p. 40) also mentioned that these three species were occupying the same areas as pygmy rabbits.

Grinnell *et al.* (1930, pp. 557-558) also noted the overlap of pygmy rabbit's range with other leporids, namely mountain cottontail and black-tailed jackrabbit ranges. The other species occurred within or near the same territories as pygmy rabbits throughout all of their ranges, but mountain cottontails and black-tailed jackrabbits ranged over a much larger area than the pygmy rabbit. They suggested that the differentiation of each is mainly due to conditions outside of the range of the pygmy rabbit and these conditions may limit the territory of the pygmy rabbit.

Conde (1982, p. 4) compared pygmy rabbit and black-tailed jackrabbit use in sagebrush-greasewood habitat in Cassia County, Idaho. She found in summer that pygmy rabbits selected areas with abundant grass while jackrabbits selected areas with abundant forbs. During the fall-winter period shrubs played an important role for both species, but pygmy rabbits fed on sagebrush leaves and young stems (Johnson 1979, cited in Conde 1982, p. 19) and jackrabbits on 2–year old woody stems (Currie and Goodwin 1966, cited in Conde 1982, p. 19). Spatial distribution and exploitation of different vegetation in the summer allowed a sympatric relationship to occur between these two species (Conde 1982, p. 3).

Grazing competition with livestock will depend on the range conditions and grazing practices that vary across the range of the pygmy rabbit. While researchers have documented pygmy rabbit in livestock use areas and the potential impacts to pygmy rabbits under Factor A, we are unaware of studies documenting aspects of potential forage competition between the two species within the range of the pygmy rabbit. We are aware of one study conducted at Sagebrush Flat, Washington, by Siegel Thines *et al.* (2004, p. 532) that found Columbia Basin pygmy rabbits selected ungrazed areas over grazed areas when constructing burrows. Livestock grazing during late summer and fall reduced the availability of grass (and likely forbs) by about 50 percent in the grazed units until the following growing season. Grasses provided greater than 50

percent and forbs greater than 30 percent of the pygmy rabbit's diet in winter at Sagebrush Flat. They did not find that Columbia Basin pygmy rabbits ate less grass in grazed areas or that they chose different diets relative to the availability between ungrazed and grazed areas before the yearly grazing. However, after yearly grazing the Columbia Basin pygmy rabbits may have had a harder time finding grasses and forbs in the grazed areas. Grazing reduced the nutritional quality of grasses in winter and spring. On grazed areas, grasses had less protein and more fiber than ungrazed areas. Shrubs were more fibrous in grazed areas than ungrazed areas in winter. However, grasses may not have been providing a more nutritious food source for Columbia Basin pygmy rabbits in winter as they provided about 50 percent less of the crude protein and 50 percent more fiber than sagebrush or rabbit brush. It is unclear why the Columbia Basin pygmy rabbits avoided grazed areas and may not be due to diet-related reasons not measured in the study. Other impacts of cattle grazing in pygmy rabbit habitat have been previously discussed under Factor A.

In Montana, there is spatial overlap between big game (elk *Cervus elaphus*, mule deer *Odocoileus hemionus*, antelope *Antilocapra americana*) winter range, jack rabbits and greater sage-grouse, and the range of pygmy rabbits. Hence, inter specific competition with pygmy rabbits may result (Janson 2002, pp. 16-17).

Summary of Intra- and Inter-specific Competition Impacts

Most authors only mention observing these other rabbit and hare species while they were studying or searching for pygmy rabbits in Oregon, Idaho, Montana, California, Nevada, and Utah; few authors suggest that there is possible competition between or among the species that negatively impacts pygmy rabbits. One study demonstrates a sympatric relationship between pygmy rabbits and black-tailed jackrabbits in Idaho. It has been suggested in Montana that competition may occur between big game species and pygmy rabbits where they coexist. While livestock grazing occurs throughout the range of the pygmy rabbit, its impact on the species remains unclear as discussed under Factor A. Any possible negative impacts to pygmy rabbits may be related more to loss or degradation of sagebrush structure as opposed to loss or reduction of the grass or forbs understory. The best scientific and commercial information available does not provide any documentation that pygmy rabbits are adversely affected by intra-specific competition for food or space across their range. We know from numerous reports that there appears to be a long history of pygmy rabbits co-existing across their range, with other species, especially other rabbit and hare species. The available information does not document adverse effects of inter-specific competition on pygmy rabbits from other species of rabbits or hares or other species. Therefore, based on the best available scientific and commercial information, we conclude that the intra- or inter-specific competition is a not a significant threat to the pygmy rabbit now or in the foreseeable future.

Small or Isolated Populations

Small, restricted populations are more vulnerable to risks and more susceptible to extinction from naturally occurring stochastic environmental causes than populations with large numbers occurring over a large area (Shaffer 1981, pp. 131-132). Small, isolated populations are also at a greater risk to the deleterious effects of demographic and genetic problems (Schaffer 1981, p. 133). Random demographic effects (e.g., skewed sex ratios) and loss of genetic variability may result in individuals and populations being less able to cope with environmental change.

As discussed in the Background Section, accurately estimating pygmy rabbit population size is complex because the number of active burrows may not be directly related to the number of individuals in a given area. Some individual pygmy rabbits appear to maintain multiple burrows and conversely some individual burrows are used by multiple individuals (Janson 1940, p. 21; Janson 1946, p. 44; Gahr 1993, pp. 66, 68; Heady 1998, p. 25). Pygmy rabbits may also use more than one burrow or burrow system at a specific time or during different times of the year (Purcell 2006, p. 96).

It is possible that pygmy rabbits have a metapopulation structure and therefore, populations located across the range are not small or isolated because they are able to interact with neighboring populations if distance is not too great. Recent studies as mentioned in the Background section above, indicate that pygmy rabbit home ranges and dispersal capabilities are greater than previously thought. Genetic research has occurred in some areas of the species' range, and we have information documenting little population substructure in areas supporting pygmy rabbit in Idaho indicating these populations are not isolated (Estes-Zumpf *et al.* 2010, p. 215).

Summary of Small or Isolated Populations

The impacts of various potential threats can be more pronounced on small or isolated populations. However, the best available scientific and commercial information does not indicate that pygmy rabbit populations are isolated or occurring in small populations across the range, or that these are significant threats now or in the foreseeable future.

Stochastic Events

Natural stochastic events can significantly impact populations if they result in high mortality, habitat loss, or offer little or no possibility of recolonization. They are most significant for small or fragmented populations (Gilpin and Soule 1986, p. 25). Flooding which may cause burrow abandonment, mortality, and erosion of deep soils has been mentioned as a concern for pygmy rabbits. Pygmy rabbits are known to use deeper soils found along drainages for their burrows (Flath and Rauscher 1995, p. 2). Bartels (2003, p. 103) mentions a large flood event in pygmy rabbit habitat in the Harney Basin, Oregon, in 1984, though it is not reported if animals were actually killed. Drought can reduce vegetative cover, potentially resulting in increased soil erosion and subsequent reduced soil depths, decreased water infiltration, and reduced water storage capacity (Connelly *et al.* 2004, p. 7-19), Pygmy rabbit populations could be impacted directly by loss of habitat (food and shelter) or indirectly through possible increased predation. Drought has not been reported as having a direct negative effect on pygmy rabbits.

Summary of Stochastic Events Impacts

While natural stochastic events most certainly have occurred within the range of the pygmy rabbit and may have impacted specific populations, such as in Oregon during a flood, they have not been documented as types of events that have played a significant role in population distribution, abundance, and/or trends for the pygmy rabbit within its range. The best available scientific and commercial information does not indicate that stochastic events are a significant threat to the pygmy rabbit now or in the foreseeable future.

Climate Change

The Service acknowledges that environmental changes resulting from climate change could facilitate invasion and establishment of invasive species or exacerbate the fire regime, possibly accelerating the loss of sagebrush habitats (Connelly *et al.* 2004, p. 7-18).

Increases in the expansion of pinyon and juniper woodlands in the Great Basin may have resulted from poor habitat management and climate change (Connelly *et al.* 2004, p. 7-7). However, the encroachment of pinyon-juniper into occupied pygmy rabbit habitat is a slow process, and pygmy rabbits may be able to inhabit those areas or shift their home range to adjacent areas if pinyon-junipers habitat becomes established at a site.

One researcher has addressed potential impacts to pygmy rabbits due to climate change. In California and Nevada, Larrucea and Brussard (2008b, p. 1640) found extant historical pygmy rabbit sites averaged 515 ft (157 m) higher than extirpated sites. With local downward shift effect accounted for, overall upward elevation shift of extant sites was 721.8 ft (220 m); the researchers attributed this to climate. Over the last century, a 0.7 degree Celsius temperature increase has occurred, which correlates with a predicted elevational shift upwards of 383.9 ft (117 m) (Peters 1989, cited in Larrucea and Brussard 2008b, p. 1640). Warmer temperatures are also expected to increase fire intensity and frequencies (Westerling *et al.* 2006, cited in Larrucea 2007, pp. 63-64). Warming temperatures may continue to shift upward the lower elevational boundary of habitable pygmy rabbit sites.

The prehistoric record for pygmy rabbits in the Great Basin indicates a wider distribution than today and declines have occurred since the end of the Pleistocene (Kurten and Anderson 1972, p. 21; Findley *et al.*, 1975, Gillespie 1984, Harris 1985, 1993a cited in Grayson 2006 pp. 2969-2970). The beginning of the middle Holocene in the Great Basin also saw a decline in pygmy rabbit abundance (Grayson 2006, pp. 2971-2972). The decline is attributed to this period experiencing elevated temperatures and decreased precipitation in the Great Basin (Grayson 2006, p. 2972). A third decline in pygmy rabbit abundance in the Great Basin is associated with the development of pinyon-juniper woodland within the region (Grayson 2006, pp. 2973-2974). Establishment of pinyon-juniper in this area and its associated decline in pygmy rabbit numbers is best explained by the loss of sagebrush-grass habitat (Grayson 2006, p. 2974). Pygmy rabbits occur in the prehistoric record in New Mexico (Grayson 2006, p. 2970), but they are not currently known to occur in the State, though sagebrush habitat does exist there. The habitat may have changed to such an extent since prehistoric times that it no longer provides appropriate habitat for pygmy rabbits. Butler (1972, p. 52) stated that the population of pygmy rabbits on the Eastern Snake River Plain was greater prior to 7,000 years ago. The decline in abundance of pygmy rabbits and pocket gophers (common in grassy meadows) at the beginning of the 7$^{th}$ millennium B.P. and accompanied by a proportional increase in the pygmy rabbit may indicate a change in climate that had more impact on grasses and forbs than on sagebrush (Butler 1972, p. 52).

A warming trend in the mountains of western North America is expected to decrease snow pack, accelerate spring runoff, and reduce summer flows (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 11). Increased summer temperatures may increase the frequency and intensity of wildfires (IPCC 2007, p. 13). Recent warming is linked, in terrestrial ecosystems, to pole-ward and upward shifts in plant and animal ranges (IPCC 2007, p. 2). Climate projections predict the Great Basin region is likely to become warmer and drier (Peters and Lovejoy 1992, cited in Larrucea 2007, p. 63).

It is difficult to predict local climate change impacts due to substantial uncertainty in trends of hydrological variables, limitations in spatial and temporal coverage of monitoring networks, and differences in the spatial scales of global climate models and hydrological models (Bates *et al.* 2008, p. 3). Climate change models that are currently available are not yet capable of making meaningful predictions of climate change for specific, local areas (Parmesan and Matthews 2005, p. 354). Thus, while the best available information indicates that climate change has the potential to affect habitats used by pygmy rabbits in the Great Basin in the long-term, there is much uncertainty regarding which habitat attributes (including sagebrush, grass, and forbs communities) could be affected, and the timing, magnitude, and rate of their change as it relates to pygmy rabbits and their needs.

Summary of Climatic Change Impacts

Extant historical populations may indicate an upward shift in elevation due to climatic changes or this shift may be due to other unknown factors. The prehistoric record shows the range of the pygmy rabbit occurred over a larger area than today, and the range contraction has been attributed, in part, to increased temperatures and decreased precipitation. It is reasonable to assume that pygmy rabbits of today may be likewise affected in the Great Basin due to possible warmer and drier conditions. Climate change could also facilitate the establishment of invasive plant species or exacerbate the fire regime. Pinyon and juniper woodland expansion may increase, however this may be a slow process and may result in less sagebrush habitat being available for the pygmy rabbit in the future. However, while there is some evidence to suggest there may be an upward shift in elevation or contracted range due to climatic changes, we have no information to suggest that climate change will significantly affect the pygmy rabbit. Based on our review of the available information, there is no demonstrated direct link between predicted climate change and reduced abundance and survival of pygmy rabbits. The best scientific and commercial information currently available does not indicate that climate change is a significant threat to the species now or in the foreseeable future.

Recreational Activities

Recreational activities, especially off-highway vehicle/off-road vehicle (OHV/ORV) and snowmobile use, have the potential to be a threat to pygmy rabbits and their sagebrush habitat by disturbing individuals through excessive noise, damaging sagebrush, or damaging burrows or subnivian tunnels. Additionally, recreation could increase the spread of weeds, and human presence and pets in a particular area. Much of the sagebrush habitat across the range of the pygmy rabbit is open to recreational use. Based on our review of the best available information, we found one document that indicates pygmy rabbits occupy an area used by OHV/ORV users in Oregon (BLM 2008d, p. 6). In addition, in Idaho, Bradfield (1974, pp. 35-36) suggested that the pygmy rabbit depends on its hearing for predator detection and may be less active during windy periods when predator detection may be reduced. This study may suggest noise from a passing vehicle could make pygmy rabbits more vulnerable to predation.

Summary of Recreational Activities Impacts

Recreational activities occur in sagebrush habitat within the range of the pygmy rabbit, however, our review of the best scientific and commercial information available identified only one instance of recreational activities or areas where these activities may be directly or indirectly impacting pygmy rabbits. This area continued to support a number of active pygmy rabbit burrows. Therefore, we conclude that the best scientific and commercial information available does not indicate that recreational activities are a

significant threat to the pygmy rabbit now or in the foreseeable future.

Vehicle Collisions

Roads are known to exist throughout the range of the pygmy rabbit. Jones (1957, p. 274) mentions a pygmy rabbit winter road kill in California north of Crowley Lake, Mono County, and in Wyoming a study mentions a previously reported road kill near Pinedale (Purcell 2006, p. 8). Bradfield (1974, p. 3) suggested that pygmy rabbits were reluctant to cross open areas based on the lack of observed highway mortality (Gordon 1932, Sperry 1933, Smith 1943, cited in Bradfield 1974, p. 3). We are not aware of any documentation of pygmy rabbit mortalities due to snowmobiles or OHVs and ORVs. Additionally, there is no indication that vehicle mortalities have increased, or will increase in the future, as the density of roads have increased across the range of the species.

Summary of Vehicle Collisions Impacts

While we are aware of reports of road mortalities in Wyoming and California related to pygmy rabbits, they are few in number with low mortalities documented. We conclude that populations are able to recover from these types of limited, individual losses. Based on our review of the best available information, we conclude that mortality due to vehicular collisions is not a significant threat to the pygmy rabbit now or in the foreseeable future.

Habitat Specialist

Because the pygmy rabbit is a habitat specialist and its habitat is fragmented across the landscape, the species' life history traits could affect population viability. Pygmy rabbits appear to have small home ranges, are not evenly distributed across the species' range, and may have poor dispersal capabilities (though recent information indicates home ranges and dispersal capabilities are greater than originally thought) influencing genetic diversity or its ability to move to a more favorable location if necessary in reaction to natural or manmade factors. Pygmy rabbits do not respond to abundant spring food supply by producing additional litters like other rabbits and therefore, may have lower reproductive capabilities (Wilde 1978, p. 145). These life history traits could contribute to population declines as habitat size and quality are reduced, however, they should not be a limiting factor to pygmy rabbits across large geographic areas when suitable habitat is extensive and in good condition.

Summary of Habitat Specialist Impacts

The pygmy rabbit is a habitat specialist. Life history traits such as small home ranges, uneven distribution across its range, poor dispersal capabilities and lower reproductive potential compared to other leporid species might suggest a concern for the long-term survival of the pygmy rabbit. However, recent studies as mentioned in the Background section above indicate that pygmy rabbit home ranges and dispersal capabilities are greater than previously thought. Genetic research (Estes-Zumpf *et al.* 2010, p. 214) has occurred in some areas of the species' range, and available information indicates the pygmy rabbit exhibits relatively high genetic diversity. The best available scientific and commercial information does not indicate that the pygmy rabbit is negatively impacted by current habitat fragmentation. The information available indicates pygmy rabbit populations continue to occur over a wide distribution of their current range.

The pygmy rabbit survives almost exclusively on sagebrush for food (especially in winter) and shelter. Sagebrush are long-lived, stable species, resistant to most environmental impacts, except fire and some insects, and thus do not fluctuate widely in availability. The best available information does not indicate how the lack of producing additional litters specifically during times of abundant plant growth is detrimental to the species. However, as indicated in the background section, female pygmy rabbits are capable of producing an average of six young per litter with three litters possible in a year. The best available information shows that the pygmy rabbit's natural life history characteristics have not limited the species across its range. Therefore, we conclude that being a habitat specialist is not a significant threat to the pygmy rabbit now or in the foreseeable future.

Other Potential Threats

In our 90–day petition finding, we identified other natural or manmade factors (facilities associated with grazing (tanks, pipelines, roads) may allow predators, OHV/ORV users, and hunters to access new terrain; activities on military facilities; and predator control to benefit livestock increases predation on pygmy rabbits) that might pose a threat to pygmy rabbits. However, for this analysis, we could find no supporting information to indicate that any of these factors are threatening pygmy rabbit populations.

*Summary of Factor E*

We have assessed the best available scientific and commercial data on the magnitude and extent of the potential threats of intra- and inter-specific relationships, small or isolated populations, stochastic events, climate change, recreational activities, vehicle collisions, and habitat specialist life history requirements of the pygmy rabbit. As discussed above, intra- and inter-specific relationships between and among pygmy rabbits and other species are natural and occur but do not constitute a significant threat to the species. The best available scientific and commercial information does not document that natural or anthropogenic pressures are negatively affecting these relationships. The best available information indicates that pygmy rabbit populations are not small or occurring in isolation across the range. While stochastic events have occurred and will continue to occur throughout the range of the species, there is no indication that these events are a significant threat to the pygmy rabbit largely due to the patchy distribution of the species and its preferred habitat. Vehicle collisions, while a potential threat, have been rarely reported, and we do not consider them to be a significant source of mortality. Projected climate change impacts across the range of the pygmy rabbit are generalized and are not considered to be a significant threat. The potential impact of pinyon-juniper woodland expansion into pygmy rabbit habitat is predicted to be slow with pygmy rabbits demonstrating a variety of responses. Recreational activities occur within the range of the pygmy rabbit, but no information is available to qualify or quantify the effect on populations, and we do not considered these activities to be a significant threat. There is no indication from the available information that the pygmy rabbit has been limited across its range based on its natural life history characteristics. There are many natural and manmade factors or activities that have occurred and will continue to occur within pygmy rabbit habitats within its range. As discussed in the distribution and trend section, the available information indicates pygmy rabbit populations continue to occur over a wide distribution of their current range, including historical locations, despite these various factors. Based on the best available scientific and commercial information, the pygmy rabbit is not now, or in the foreseeable future, threatened by other natural or manmade factors affecting the species to the extent that listing as endangered or

threatened under the Act is warranted at this time.

**Finding**

As required by the Act, we considered the five factors in assessing whether the pygmy rabbit is endangered or threatened throughout all or a significant portion of its range. We carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the pygmy rabbit. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized pygmy rabbit experts and other Federal, State, and tribal agencies.

We have identified and evaluated the potential threats as discussed under Factor A (agriculture, sagebrush treatment, livestock grazing, nonnative invasive plants, fire, urban and rural development, mining, energy exploration and development, habitat fragmentation, and greater sage-grouse conservation actions), and we acknowledge that most of these threats have occurred within the range of the pygmy rabbit and may have impacted some areas known to be, or to have been, occupied by pygmy rabbits based on site-specific information. Some or all of these activities are likely to continue at some level in the future. Available information does not indicate that the sagebrush lost or degraded due to agriculture, sagebrush treatment, urban and rural development, mining, habitat fragmentation, greater sage-grouse conservation actions, or other conservation actions has impacted large areas of suitable or occupied pygmy rabbit habitat resulting in significant occupied habitat or population losses. The impacts attributed to livestock grazing, while widespread across the pygmy rabbit's range, have not resulted in documented measurable declines in pygmy rabbit numbers or populations. Based on the information available, we find that the potential threat of increasing energy exploration and development as well as the relationship between invasive nonnative plant species and fire regimes are not significant threats to the pygmy rabbit now or in the foreseeable future. There is no available information that indicates the magnitude or extent of pygmy rabbit sites that may have been lost or reduced in area or in population size due to these activities. Some of these events or actions that can result in the complete loss of sagebrush over large areas (i.e., sagebrush conversion to agriculture, sagebrush treatments, fire) likely resulted in the reduction of occupied habitat and loss of some pygmy rabbit populations. However, there is no evidence that this will significantly threaten the species in the foreseeable future. Therefore, based on our review of the best available scientific information, we find these potential threats, either singly or in combination with one another, are not significant threats now or in the foreseeable future, to pygmy rabbit habitat across its range.

We have identified and evaluated the risks from overutilization for commercial, recreational, scientific or educational purposes. Available information indicates that historical or recent hunting pressure has not played an important role in population dynamics for the pygmy rabbit across its range. Three of the seven States discussed in this finding currently allow hunting of pygmy rabbits; this is a reduction from the past. Based on the best available information we find that hunting was not and is not a significant threat to pygmy rabbit populations across its range nor will it be in the foreseeable future.

Research activities may result in adverse impacts to a species (e.g., injury, death, stress, or general habitat disturbance). Negative impacts to pygmy rabbits that have been caused by research activities have been few in number, occurred in limited areas, and occurred over short periods of time. We encourage research activities to continue in the future to increase our understanding of this species. With planning and care, adverse impacts of research activities can be minimized. Based on the best available information we find that research activities are not a significant threat now or in the foreseeable future, to the pygmy rabbit across its range.

Disease epizootics in pygmy rabbits have not been reported within its range considered in this finding. Research is needed to determine if disease could be a threat in the future. Predation has been reported as the main cause of mortality in pygmy rabbits. Numerous species have been identified as predators of pygmy rabbits. Based on the best available information, we find that neither disease nor predation are significant threats now or in the foreseeable future, to the pygmy rabbit across its range.

Based on our analysis of the existing regulatory mechanisms, we determined that States are managing pygmy rabbit hunting in three States while four others protect them hunting as species of concern or sensitive species. In Wyoming, many oil and gas projects will be reviewed and mitigation provided that may benefit pygmy rabbits.

A large portion of pygmy rabbit habitat occurs on lands administered by Federal agencies and numerous policies, guidance, and laws have been developed to assist in managing these lands. We determined in the evaluation that other threats would not significantly affect the pygmy rabbit now or in the foreseeable future. Thus, we find the inadequacy of existing regulatory mechanisms is not a significant threat to the pygmy rabbit across its range now or in the foreseeable future.

Other natural or manmade factors have occurred within the range of the pygmy rabbit, and these habitat impacts or actions will likely continue at some level in the future. As indicated above, intra- and inter-specific relationships between pygmy rabbits and among pygmy rabbits and other species are natural and occur across the range, but there is no indication that these relationships are negatively impacting the pygmy rabbit. Though impacts to pygmy rabbits have occurred related to stochastic events and vehicle collisions, they have been rarely reported. The best available information indicates that pygmy rabbit populations are not small or isolated across the range. Potential impacts due to climate change are general, and there is no demonstrated connection between climate change and reduced abundance or survival of pygmy rabbits. Recreational activities occur throughout the range of the pygmy rabbit, but there is no indication these activities are significantly impacting pygmy rabbit populations. The best available information indicates that the pygmy rabbit, as a habitat specialist, has not been limited across its range.

During our status review for this species, it has become evident that many of the threat issues raised have been speculative and direct impacts to historical and extant pygmy rabbit populations have not been documented. Threats exist but do not appear to be significant across the range of the species. While the sagebrush ecosystem has been and will continue to be impacted by various natural and manmade events and activities in parts of the pygmy rabbit's range, we have determined, based on the species' current range and distribution, that pygmy rabbit populations continue to persist in much of its range, despite the numerous activities occurring within their habitat. Pygmy rabbits are represented across their current range which is not dissimilar from what is known of their historical distribution as

discussed in the Distribution and Trend section. Our understanding of the pygmy rabbit's range has improved, and the current known range has been extended in Montana, Nevada, and most notably Wyoming based on recent survey efforts.

Based on our review of the best available scientific and commercial information, we find that the threats are not of sufficient imminence, intensity, or magnitude to indicate that the pygmy rabbit is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened) throughout its range. Therefore, listing the pygmy rabbit as an endangered or threatened species under the Act is not warranted at this time.

**Distinct Vertebrate Population Segment (DPS)**

After assessing whether the species is endangered or threatened throughout its range, we next consider whether any distinct vertebrate populations segment (DPS) exists and meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened).

Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the taxon to which it belongs;

(2) The significance of the population segment to the taxon to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting (removal from the list), or reclassification (i.e., is the population segment endangered or threatened).

In this analysis, we will evaluate whether pygmy rabbits in Mono County, California, meet the criteria to be considered a DPS. This analysis is being conducted because studies have indicated that pygmy rabbit populations in Mono County may be separated from the rest of the pygmy rabbit range (Grayson 2006, pp. 2969-2970; Larrucea and Brussard 2008a, pp. 694, 696).

*Discreteness*

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We note that the standard set forth in the DPS policy is that a DPS be "markedly separated" from other populations—thus, while absolute separation is not required, neither are "large numbers" of individuals migrating between populations. Nor is absolute isolation required for populations to be markedly separated.

Pygmy rabbits in Mono County appear to be markedly separated from other pygmy rabbit populations. The nearest known populations to Mono County populations are in western Nevada, approximately 100 mi (162 km) away (Larrucea and Brussard 2008a, p. 694). There are no known historical pygmy rabbit records for Lyon, Mineral, and Emeralda Counties, Nevada, which could provide possible connections between California and Nevada in this area. Surveys conducted during 2003 and 2006 in Lyon and Mineral Counties did not find evidence of pygmy rabbits (Larrucea 2007, pp. 165-179). It is possible that the Mono County populations have been separated from the rest of the species' range since the end of the Pleistocene (Grayson 2006, pp. 2969-2970).

We determine, based on a review of the best available information, that the Mono County populations of pygmy rabbit are markedly separated from other pygmy rabbit populations as a consequence of physical factors and thus meet the discreteness criterion of the 1996 DPS policy.

There are no international governmental boundaries associated with this species that are significant. The pygmy rabbit is found wholly within the United States. Because this element is not relevant in this case for a finding of discreteness, it was not considered in reaching this determination.

*Significance*

If a population segment is considered discrete under one or more of the conditions described in our DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete populations segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy does provide four possible reasons why a discrete population may be significant. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, the list of criteria is not exhaustive; other criteria may be used as appropriate.

*(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;*

The available information does not suggest that the ecological setting occupied by pygmy rabbits in the Mono County, California, portion of its range is unusual or unique when compared to the remainder of its range. The available information does not suggest that the vegetation, elevation, topography, or climate of the habitat occupied by the Mono County, California populations of the pygmy rabbit is unusual or unique to the taxon; nor is there any information indicating there are physiological or behavioral factors of the Mono County populations that are unusual or unique to the taxon.

*(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;*

The Mono County populations are located on the western periphery of the pygmy rabbit's range. We have determined that they occupy less than 1 percent of the species' range. If the populations in Mono County were to be extirpated, the portion of the range lost would be small when compared to the remainder of the species' range. Loss of these populations would not result in a gap in the pygmy rabbit's range as they are located on the edge of the range and may not be providing connectivity to other portions of its range. Therefore, we conclude that loss of these populations would not be result in a significant gap in the range of the species.

*(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or*

The Mono County populations do not represent the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range. The pygmy rabbit's current distribution is similar to its historic distribution, and the species has not been introduced to areas outside of its historic range. The Mono county populations represent a small portion of the total extent of the species' range.

*(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.*

As indicated above, pygmy rabbits in Mono County have not been genetically tested. Therefore, there is no information to indicate that these populations differ markedly from other populations of this species in its genetic characteristics.

We therefore conclude that pygmy rabbit populations in Mono County do not meet the significance element of the Service's DPS policy because they do not occur in an ecological setting unusual or unique to the taxon; their loss would not result in a significant gap in the range of the taxon; they do not represent the only surviving natural occurrence of the taxon; and there is no evidence available indicating that Mono County populations differ markedly in genetic characteristics.

Conclusion of Distinct Population Segment Review

Based on the best scientific and commercial information available, we find that pygmy rabbit populations found in Mono County, California, meet the discreteness element of our DPS policy but fail to meet the significance element of that policy. Since both discreteness and significance are required to satisfy the DPS policy, we have determined that Mono County pygmy rabbit populations do not qualify as a DPS under our policy. As a result, no further analysis under the DPS policy is necessary.

**Significant Portion of the Range Analysis**

Having determined that the pygmy rabbit is not endangered or threatened throughout all its range, we must next consider whether there are any significant portions of the range where the pygmy rabbit is in danger of extinction or is likely to become endangered in the foreseeable future.

To identify those portions that may be significant portions of the range, we determine whether there is substantial information indicating that: (i) The portions may be significant, and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to be a significant portion of the range. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not be significant portions of the range.

If we identify any significant portions, we then determine whether the species is threatened or endangered in that portion of the range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

Based on our review of survey information, distributional data, and potential threats, we have determined that the pygmy rabbit range in Oregon, Idaho, Montana, Nevada, and Utah does not warrant further consideration to determine if it is a significant portion of the range that is threatened or endangered. We found no areas within this portion of the range where threats are geographically concentrated. The potential factors that may affect the species are essentially uniform throughout this portion of the range. However, we did determine that the Mono County, California, and the Wyoming portions of the pygmy rabbit's range warranted further consideration to determine if they are significant portions of the range that are threatened or endangered. The Mono County, California portion was selected due to the possible lack of connectivity to populations in Nevada, and therefore, threats to it may include population isolation. Regardless of the possible extirpation of pygmy rabbit populations in Modoc and Lassen Counties, California (Larrucea and Brussard 2008a, pp. 694, 696), populations in Mono County may be isolated from the rest of the range. There are no known historical pygmy rabbit records for Lyon, Mineral, and Emeralda Counties, Nevada, which could provide possible connections between California and Nevada in this area. Surveys conducted during 2003 and 2006 in Lyon and Mineral Counties did not find evidence of pygmy rabbits (Larrucea 2007, pp. 165-179). It is possible that the Mono County populations have been separated from the rest of the range since the end of the Pleistocene (Grayson 2006, pp. 2969-2970) (see our discussion regarding DPS above). The Wyoming portion was selected due to the concentration of energy exploration and development in the southwestern and south central areas of the State and the possible threat from these activities to pygmy rabbit populations in those areas.

To assess the significance of these portions of the range, we evaluated whether these two areas occupy relatively large or particularly high-quality, unique habitat that could be affected, or if their locations or characteristics make them less susceptible to certain threats than other portions of the species' range such that they could provide important population refugia in the event of extirpations elsewhere in the species' range. We determined that the Mono County populations occupy less than 1 percent of the species range, and the available information does not suggest that the habitat occupied by pygmy rabbits in this portion is particularly high quality or unique when compared to the remainder of the range. The pygmy rabbit, in addition to Mono County California, occurs in sagebrush habitats located in southeastern Oregon, southern Idaho, southwestern Montana,

western Utah, and northern and eastern Nevada. We did not find that the Mono County populations are less susceptible to certain threats than other portions of the range. We also evaluated the historical value of this portion and how frequently it is used by the species and whether the portion contains important concentrations of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering. We found that the Mono County populations are not significant because the habitats necessary for breeding, feeding, dispersal, or wintering are utilized year round and are found throughout the pygmy rabbit's range. These necessary habitats are not concentrated in Mono County.

We determined that the Wyoming populations occupy about 11.5 percent of the species' range, and available information does not suggest that the habitat occupied by pygmy rabbits in this portion is particularly high quality or unique when compared to the remainder of the range. The pygmy rabbit, in addition to Wyoming, occurs in sagebrush habitats located in southeastern Oregon, southern Idaho, southwestern Montana, western Utah, and northern and eastern Nevada. We did not find that the Wyoming populations are less susceptible to certain threats than other portions of the range. We also evaluated the historical value of this portion of the range and how frequently it is used by the species and whether the portion contains important concentrations of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering. We found that the Wyoming populations are not significant because the habitats necessary for breeding, feeding, dispersal, or wintering are utilized year round and are found throughout the pygmy rabbit's range. These necessary habitats are not concentrated in Wyoming.

Based on the discussion above, we determined that the Mono County, California, and the Wyoming portions of the current range of the pygmy rabbit are not significant to the species and therefore do not warrant further consideration to determine if they are a significant portion of the range that is threatened or endangered.

We do not find that the pygmy rabbit is in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing the pygmy rabbit as threatened or endangered under the Act is not warranted throughout all or a significant portion of its range at this time.

We request that you submit any new information concerning the status of, or threats to, the pygmy rabbit to our Nevada Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the pygmy rabbit and encourage its conservation. If an emergency situation develops for the pygmy rabbit, we will act to provide immediate protection.

## References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **ADDRESSES**).

## Authors

The primary authors of this document are the staff members of the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, Reno, Nevada.

## Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 20, 2010

**Rowan Gould,**

*Acting Director, Fish and Wildlife Service.*

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Federal Register

Thursday,
September 30, 2010

# Part III

# The President

## Proclamation 8570—Family Day, 2010

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8570 of September 27, 2010**

## Family Day, 2010

**By the President of the United States of America**

**A Proclamation**

Committed families shape and guide our children, preparing them for every obstacle they may encounter and encouraging them to overcome life's most demanding challenges. Today, our young people are exposed to negative influences that can lead to dangerous decisions, such as abusing drugs and alcohol. When parents, loved ones, and mentors take the time to educate youth about the risks they face, they can change attitudes and reduce the likelihood their loved ones will use alcohol and illicit drugs. On Family Day, we honor the devotion of parents and family members, and recognize their critical role in teaching our young people positive and healthy behaviors.

Parents across America balance demanding responsibilities at work with family needs, including valuable time spent with their children. America's youth encounter difficult choices in their daily lives, and we must be there for them as they strive to succeed in school and resist pressures to use dangerous substances that can affect their health and limit their potential. Concerned and active parents and guardians play a critical role in keeping our children drug-free, and they can demonstrate by example how to lead a healthy and drug-free life. I encourage all Americans to visit www.TheAntiDrug.com for information and resources to talk with children and warn them against the perils of drug use.

Simple daily activities such as sharing a meal, a conversation, or a book can have an enormous impact on the life of a child. Strong and engaged families help build a strong America, and it is our responsibility as concerned family members to discuss the dangers of substance abuse. On this Family Day, let us recommit to creating a solid foundation for the future health and happiness of all our Nation's children.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 27, 2010, as Family Day. I call upon the people of the United States to join together in observing this day by spending time with your families, and by engaging in appropriate ceremonies and activities to honor and strengthen our Nation's families.

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

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