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Presidential Documents

Title 3—

The President

Proclamation 8737 of October 14, 2011

National Character Counts Week, 2011

By the President of the United States of America

A Proclamation

In times of adversity and triumph alike, the American people have been guided by the strength of our character. With resilience and compassion, we have provided for our neighbors, lifted their spirits, and embraced our shared humanity. During National Character Counts Week, we celebrate our country's core values and commit to passing them on to the next generation.

By setting a positive example for our children, we can inspire in them the virtues that define our Nation: personal integrity, bold ingenuity, and a drive to serve others. America's role models—from parents and teachers to community leaders and coaches—play an integral role in shaping character. They foster patriotism, promote civic pride, and teach young people to live by the Golden Rule by treating others the way they want to be treated. Together, all Americans must cultivate moral fortitude, preach tolerance, and demonstrate the value of respect for those different from ourselves.

Tragic events in our Nation remind us why it is imperative that we create a climate of acceptance and compassion in our schools and communities. Our country has mourned as we have heard heartbreaking stories of promising young men and women subjected to harassment and bullying, driving some out of school, and others to ultimately take their own lives. No family should have to endure such a loss, and no child should feel that alone. Let us honor their memories by striving to make our neighborhoods and schools safe and affirming places for every child to learn, grow, and dream.

Our Nation's character is engrained in our past, central to our present, and key to our future. All of us share a responsibility to preserve and uphold the values that have kept our country strong, prosperous, and free. This week, we resolve to stay true to the American spirit and live according to our highest ideals.

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 October 16 through October 22, 2011, as National Character Counts Week. I call upon public officials, educators, parents, students, and all Americans to observe this week with appropriate ceremonies, activities, and programs.

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

[FR Doc. 2011–27314
Filed 10–19–11; 8:45 am]
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Presidential Documents

Proclamation 8738 of October 14, 2011

National Forest Products Week, 2011

By the President of the United States of America

A Proclamation

America's forests have long played an integral role in shaping and developing our Nation. They help us access clean water and air, drive discovery as natural laboratories, and make our communities more beautiful and vibrant places to live. From renewable energy and biofuels to green building materials, forests also provide a wide variety of products that make up an important part of our economy. During National Forest Products Week, we celebrate the value of our woodlands and recommit to careful stewardship and preservation of these national treasures.

Through the America's Great Outdoors Initiative, my Administration continues to advance a 21st century conservation agenda and ensure we use our precious natural resources sustainably. Meeting the test of environmental stewardship often means finding the best ideas at the grassroots level, and this initiative is guided by the insights of Americans from across our country. From hunters and fishers to tribal leaders and young people, we all have a stake in safeguarding the woodlands we cherish. As we build the foundation for a smarter, more community-driven environmental strategy, we embrace the uniquely American idea that each of us has an equal share in the land around us and an equal responsibility to protect it.

This year, we also join the global community in commemorating the International Year of Forests. By bolstering our commitment to the responsible management and conservation of forests around the world, we sow the seeds of a greener future for our children and grandchildren.

To recognize the importance of products from our forests, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as ''National Forest Products Week'' and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 16 through October 22, 2011, as National Forest Products Week. I call on the people of the United States to join me in recognizing the dedicated individuals who are responsible for the stewardship of our forests and for the preservation, management, and use of these precious natural resources for the benefit of the American people.

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

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Presidential Documents

Proclamation 8739 of October 14, 2011

Blind Americans Equality Day, 2011

By the President of the United States of America

A Proclamation

Generations of blind and visually impaired Americans have dedicated their passion and skills to enhancing our national life—leading as public servants, penning works of literature, lending their voice to music, and inspiring as champions of sport. On Blind Americans Equality Day, we celebrate the achievements of blind and visually impaired Americans and reaffirm our commitment to advancing their complete social and economic integration.

My Administration is dedicated to ensuring Americans with disabilities have every opportunity to reach their full potential. Last year, I signed the Twenty-First Century Communications and Video Accessibility Act to set new standards that enable people living with disabilities to access broadband, digital, and mobile innovations. To help level the playing field for employment, we are working to improve the Federal Government's compliance with Section 508 of the Rehabilitation Act. Making electronic and information technology 508 compliant will give applicants with disabilities a fair chance and allow employees with disabilities to use necessary tools while on the job. By taking these steps, my Administration reaffirms its pledge to openness by making sure that people with disabilities can better access all the information the Federal Government has placed online.

This year also marks the 75th anniversary of the passage of the Randolph-Sheppard Act. For decades, the legislation has provided openings for blind Americans to work as vendors on Federal property, creating meaningful entrepreneurial opportunities and enabling them to contribute to our economy. These jobs have enriched the lives of those participating in the Randolph-Sheppard program and enhanced public understanding of blindness for those who have interacted with the program's vendors.

Though we have made progress in the march to equality for the blind and those with low vision, there is still more work to be done. In addition to improving access to technology and employment opportunities, this January, I signed the Pedestrian Safety Enhancement Act. This landmark legislation requires electric and hybrid car manufacturers to add sounds to alert all pedestrians to the presence of these unusually quiet vehicles. These provisions will help increase the safety and independence of blind and visually impaired Americans.

By joint resolution approved on October 6, 1964 (Public Law 88–628, as amended), the Congress designated October 15 of each year as ''White Cane Safety Day'' to recognize the contributions of Americans who are blind or have low vision. Today, let us recommit to forging ahead with the work of perfecting our Union and ensuring we remain a Nation where all our people, including those living with disabilities, have every opportunity to achieve their dreams.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 15, 2011, as Blind Americans Equality Day. I call upon public officials, business and community leaders, educators, librarians, and Americans across the country to observe this day with appropriate ceremonies, activities, and programs.

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

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Rules and Regulations

Federal Register

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Thursday, October 20, 2011

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2011–1131; Special Conditions No. 23–255–SC]

Special Conditions: Embraer S.A.; Model EMB 500; Single-Place Side Facing Seat Dynamic Test Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the installation of a single-place side facing seat on Embraer S.A. EMB 500 aircraft. Side-facing seats are considered a novel design, and their installation in a part 23 airplane was not envisaged and is not adequately addressed in 14 CFR part 23. The FAA has determined that the existing regulations do not provide adequate or appropriate safety standards for occupants of single-place side-facing seats. In order to provide a level of safety that is equivalent to that afforded to occupants of forward and aft facing seating, additional airworthiness standards, in the form of special conditions, are necessary.

DATES: The effective date of these special conditions is October 12, 2011.

We must receive your comments by November 21, 2011.

ADDRESSES: Send comments identified by docket number [FAA–2011–1131] using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Stegeman, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4140; facsimile (816) 329–4090.

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

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

Background

On December 26, 2009, Embraer S.A. applied for a change to Type Certificate No. A59CE for installation of a side-facing belted passenger seat in the EMB–500 airplane. The implication of the term belted is that the passenger seat will be used during takeoff and landing and so must comply with the provisions of 14 CFR 23.562 and 23.785 (in addition to the certification basis as established in type certificate A59CE) and any additional requirements that the FAA determines are applicable. In this case, the approval of a side facing seat to these provisions is considered new and novel and as such will require special conditions and specific methods of compliance to certificate.

14 CFR part 23 was amended August 8, 1988, by Amendment 23–36, to revise the emergency landing conditions that must be considered in the design of the airplane. Amendment 23–36 revised the static load conditions in § 23.561, and added a new § 23.562 that required dynamic testing for all seats approved for occupancy during takeoff and landing. The intent of Amendment 23–36 is to provide an improved level of safety for occupants on part 23 airplanes. Because most seating is

forward-facing in part 23 airplanes, the pass/fail criteria developed in Amendment 23–36 focused primarily on these seats. Since the regulations do not address side-facing seats, these criteria should be documented in Special Conditions.

The FAA decision to review compliance with these regulations stems from the fact that the current regulations do not provide adequate and appropriate standards for the type certification of this type of seat.

These requirements are substantially similar to other single place side facing seat installations approved for use on several different part 23 and part 25 aircraft.

Type Certification Basis

Under the provisions of § 21.101, Embraer S.A. must show that the model EMB 500, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A59CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The following model is covered by this special condition:

Embraer S.A. EMB 500

For the model listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the side facing seat as installed on this Embraer S.A. model 500 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis in accordance with§ 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Novel or Unusual Design Features

The Embraer S.A., model EMB 500 will incorporate the following novel or unusual design features:

A side facing passenger seat intended for taxi/takeoff and landing

Discussion

The seat is to incorporate design features that reduce the potential for injury in the event of an accident. In a severe impact, the occupant will be restrained by a 2-point seatbelt and bear on an adjacent padded wall. In addition to the design features intended to minimize occupant injury during an accident sequence, the adjacent forward wall/bulkhead interior structure will have padding, which will provide some protection to the head of the occupant.

The Code of Federal Regulations states performance criteria for forward and aft facing seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning side-facing seats. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this seat installation/restraint.

Accordingly, these special conditions are for the Embraer S.A. model EMB 500 side facing seat location. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to the Embraer model 500. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

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

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer S.A., model 500 airplanes.

Single-Place Side Facing Seat Dynamic Test Requirements

In addition to the provisions of 14 CFR 23.562, the following will apply:

The following minimum acceptable standards for dynamic seat certification of the single side-facing seat are as follows:

(a) *Existing Criteria.* As referenced by § 23.785(b), all injury protection criteria of §§ 23.562(c)(1) through (c)(7) apply to the occupants of the side-facing seats. Head injury criteria (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

(b) *Body-to-wall/furnishing contact.* The seat must be installed aft of a structure such as an interior wall or furnishing that will contact the pelvis, upper arm, chest, or head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is required that the contact surface of this structure must be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma.* Testing with a Side Impact Dummy (SID), as defined by 49 CFR Part 572, Subpart F, or its equivalent, must be performed in order to establish Thoracic Trauma Index (TTI) injury criteria. TTI acquired with the SID must be less than 85, as defined in 49 CFR Part 572, Subpart F. SID TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S11.5.

Rational analysis, comparing an installation with another installation where TTI data were acquired and found acceptable, may also be viable.

(d) *Pelvis.* Pelvic lateral acceleration must not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S11.5.

(e) *Shoulder Strap Loads.* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

(f) *Compression Loads.* The compression load measured between the pelvis and the lumbar spine of the ATD may not exceed 1,500 pounds.

(g) *Emergency Evacuation.* The airplane configuration must meet the emergency evacuation requirements of its certification basis with the seat occupied.

(h) *Test Requirements in § 23.562 dynamic loads.* The tests in § 23.562(a) (b) and (c) must be conducted on the side-facing seat. Floor deformation is required except for a seat that is cantilevered to the bulkhead.

The following are the agreed to methods of compliance and testing requirements:

General Test Guidelines

(a) One longitudinal test with the SID anthropomorphic test dummy (ATD) or its equivalent, undeformed floor, no yaw, and with all lateral structural supports (armrests/walls) must be accomplished.

—Pass/fail injury assessments: TTI and pelvic acceleration.

(b) One longitudinal test with the Hybrid II ATD, deformed floor, with 10 degrees yaw, and with all lateral structural supports (armrests/walls) must be accomplished.

—Pass/fail injury assessments: HIC and upper torso restraint load, and restraint system retention.

(c) Vertical (15 G's) test must to be conducted with modified Hybrid II ATDs with existing pass/fail criteria.

(d) The ATD can be tethered for the floor deformation test.

(e) The seatbelt is not required to have a TSO Authorization but will need to comply with the TSO–C22g Minimum Performance Standards (MPS).

Issued in Kansas City, Missouri, on October 12, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27119 Filed 10–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2011–1141; Special Conditions No. 25–451–SC]

Special Conditions: Gulfstream Aerospace Corporation, Model GIV–X Airplane; Aircraft Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation Model GIV–X airplane. This airplane will have novel or unusual design features associated with the architecture and connectivity capabilities of the airplane's computer systems and networks, which may allow access by external computer systems and networks. Connectivity by external systems and networks may result in security vulnerabilities to the airplane's systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 13, 2011. We must receive your comments by December 5, 2011.

ADDRESSES: Send comments identified by docket number FAA–2011–1141 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or by Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

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

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for

comments. We may change these special conditions based on the comments we receive.

Background

On April 21, 2011, Gulfstream Aerospace Corporation (hereafter referred to as ''Gulfstream'') applied for a supplemental type certificate to install a new interior design configuration in the Gulfstream Model GIV–X passenger airplane. The Gulfstream Model GIV–X is a two-engine jet transport airplane with a maximum takeoff weight of 47,600 pounds and an interior configuration for a maximum of 19 passengers.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Gulfstream must show that the Gulfstream Model GIV–X airplane (hereafter referred to as the ''GIV–X''), as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A12EA are as follows:

14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–56, except for the following sections which are limited to showing compliance with the amendments indicated: Part 25 effective February 1, 1965, §§ 25.109, 25.571, and 25.813; part 25 Amendment 25–22, § 25.571; and part 25 Amendment 25–15, § 25.807(c)(2). In addition, the certification basis includes certain special conditions, exemptions, and equivalent safety findings that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GIV–X because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the GIV–X must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The GIV–X will incorporate the following novel or unusual design features: digital systems architecture composed of several connected networks. The proposed architecture and network configuration may be used for, or interfaced with, a diverse set of functions, including:

1. Flight-safety related control, communication, and navigation systems (aircraft control domain);

2. Airline business and administrative support (airline information domain);

3. Passenger information and entertainment systems (passenger entertainment domain), and;

4. The capability to allow access to or by external sources.

Discussion

The GIV–X architecture and network configuration may allow increased connectivity to, and access by, external airplane sources, airline operations, and maintenance systems to the aircraft control domain and airline information domain. The aircraft control domain and airline information domain perform functions required for the safe operation and maintenance of the airplane. Previously these domains had very limited connectivity with external sources. The architecture and network configuration may allow the exploitation of network security vulnerabilities resulting in intentional or unintentional destruction, disruption, degradation, or exploitation of data, systems, and networks critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate these types of airplane system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane systems, data buses, and servers. Therefore, these special conditions are issued to ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GIV–X. Should Gulfstream apply at a later date for a supplemental type certificate to modify any other model included on the Type Certificate No. A12EA to incorporate the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

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

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Model GIV–X airplanes.

1. The applicant must ensure airplane electronic system security protection from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to

protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post Type Certification modifications that may have an impact on the approved electronic system security safeguards.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27196 Filed 10–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2011–1140; Special Conditions No. 25–450–SC]

Special Conditions: Gulfstream Aerospace Corporation, Model GIV–X Airplane; Isolation or Aircraft Electronic System Security Protection From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation Model GIV–X airplane. This airplane will have novel or unusual design features associated with connectivity of the passenger domain computer systems to the airplane critical systems and data networks. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 13, 2011. We must receive your comments by December 5, 2011.

ADDRESSES: Send comments identified by docket number FAA–2011–1140 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or by Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

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

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On April 21, 2011, Gulfstream Aerospace Corporation (hereafter referred to as ''Gulfstream'') applied for a supplemental type certificate to install a new interior design configuration in the Gulfstream Model GIV–X passenger airplane. The Gulfstream Model GIV–X is a two-engine jet transport airplane with a maximum takeoff weight of 47,600 pounds and an interior configuration for a maximum of 19 passengers.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Gulfstream must show that the Gulfstream Model GIV–X airplane (hereafter referred to as the ''GIV–X''), as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A12EA are as follows:

14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–56, except for the following sections which are limited to showing compliance with the amendments indicated: Part 25 effective February 1, 1965, §§ 25.109, 25.571, and 25.813; part 25 Amendment 25–22, § 25.571; and part 25 Amendment 25–15, § 25.807(c)(2). In addition, the certification basis includes certain special conditions, exemptions, and equivalent safety findings that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GIV–X because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the

same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the GIV–X must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The GIV–X will incorporate the following novel or unusual design features: Digital systems architecture composed of several connected networks. The proposed architecture and network configuration may be used for, or interfaced with, a diverse set of functions, including:

1. Flight-safety related control, communication, and navigation systems (aircraft control domain);
2. Airline business and administrative support (airline information domain);
3. Passenger information and entertainment systems (passenger entertainment domain); and
4. The capability to allow access to or by external sources.

Discussion

The GIV–X integrated network configuration may allow increased connectivity with external network sources and will have more interconnected networks and systems, such as passenger entertainment and information services, than previous Gulfstream airplane models. This may allow the exploitation of network security vulnerabilities and increased risks potentially resulting in unsafe conditions for the airplane and its occupants. This potential exploitation of security vulnerabilities may result in intentional or unintentional destruction, disruption, degradation, or exploitation of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate these types of system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities which could be exploited by unauthorized access to airplane networks and servers. Therefore, these special conditions are being issued to ensure that the security (i.e., confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections between airplane systems and networks and the passenger entertainment domain.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GIV–X. Should Gulfstream apply at a later date for a supplemental type certificate to modify any other model included on the Type Certificate No. A12EA to incorporate the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

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

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Model GIV–X airplanes.

1. The applicant must ensure that the design provides isolation from, or airplane electronic system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post Type Certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Renton, Washington, on October 13, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27198 Filed 10–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0010; Airspace Docket No. 11–AAL–1]

Amendment of Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action removes two modified VHF Omnidirectional Range (VOR) Federal airways, V–320 and V–440, from a final rule published in the **Federal Register** of April 28, 2011. That rule amended 29 Air Traffic Service (ATS) routes in Alaska affected by the relocation of the Anchorage VOR navigation aid. The FAA is taking this action as a result of these VOR Federal airways not passing flight inspections to retain existing minimum enroute altitude (MEA) requirements in the vicinity of Anchorage, AK.

DATES: Effective date 0901 UTC October 20, 2011.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations and ATC Procedures Group, Office of Mission Support Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Docket No. FAA–2011–0010, Airspace Docket No. 11–AAL–1 published on April 28, 2011 (76 FR 23687), amends all Federal Airways

affected by the relocation of the Anchorage VOR navigation aid. The FAA subsequently delayed the effective date from June 30, 2011, until further notice (76 FR 35097; June 16, 2011).

The FAA has determined that V–320 and V–440 do not have satisfactory signal reception coverage capable of meeting the existing MEA requirements in the vicinity of Anchorage, AK. Amendments for these airways will be proposed at a future date under a separate rulemaking. Accordingly, this action is taken to remove these two Victor airways in Alaska.

The remaining 27 ATS routes, as amended, are unaffected by this action and the effective date remains delayed until further notice per the final rule, delay of effective date published in the **Federal Register** on June 16, 2011 (76 FR 35097).

VOR Federal airways are published in Paragraph 6010 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in the Order.

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. Therefore, this regulation (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Final Rule Technical Amendment

Accordingly, pursuant to the authority delegated to me, the modified VOR Federal airways V–320 and V–440 legal descriptions as published in the **Federal Register** on April 28, 2011 (76 FR 23687), FR Doc. 2011–10240, page 23688, column 2, line 4, and column 3, line 4, respectively, are removed.

Issued in Washington, DC, on October 13, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–27118 Filed 10–19–11; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408, 416, and 422

[Docket No. SSA–2010–0010]

RIN 0960–AH19

Recovery of Delinquent Debts—Treasury Offset Program Enhancements

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are amending our Tax Refund Offset (TRO) and Administrative Offset regulations. We are conforming our regulations to those of the Department of the Treasury (Treasury) for the following reasons: Treasury removed the 10-year limitation to collect delinquent debts owed the United States by reducing eligible Federal payments, and more States are participating in reciprocal agreements with Treasury to offset State payments, including tax refunds to reduce or extinguish a federally owed debt. These changes will allow us to collect additional Federal debt.

DATES: These rules are effective November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Jennifer C. Pendleton, Office of Payment and Recovery Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–5652. For information on amendments to 20 CFR Part 408, please contact: Benjamin Franco, Office of International Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7342. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are making final the rule for recovery of delinquent debts that we proposed in a Notice of Proposed Rule Making (NPRM) published in the **Federal Register** on March 2, 2011 (76 FR 11402). The preamble to the NPRM discussed the changes from the current rules and our reasons for proposing those changes. To the extent that we are adopting the proposed rule as published, we are not repeating that information here. Interested readers may refer to the preamble to the NPRM.[1]

Changes to Our Regulations

We are changing our regulations to conform to Treasury's regulations. In addition to collecting non-tax debts beyond the original 10-year statute of limitations, we will collect delinquent overpayments under titles II, VIII, and XVI by offset of various State payments, including State tax refunds. Debt Collection Improvement Act (DCIA) of 1996, Public Law 104–134, 110 Stat. 1321–358 *et seq.* (April 26, 1996); 31 U.S.C. 3716; 31 CFR 285.6.

Therefore, we are changing Title 20 §§ 404.520, 404.521, 408.940, 408.941, 416.580, 416.581, and 422.310. Under these sections, we notify the overpaid person and refer overpayments to Treasury for tax refund and administrative offset.

Public Comments on the NPRM

In the NPRM, we provided the public a 60-day comment period, which ended on May 2, 2011. We received two public comments from individuals. Since the comments were long, we have summarized and paraphrased them. We are responding to the significant issues raised by the commenters that were within the scope of this rule.

Comment: One commenter wanted to make sure that our regulations are written with understandable language.

Response: We are committed to writing our documents clearly and welcome feedback if the public does not believe that our documents are clear.

Comment: Another commenter agreed with our proposed rule and suggested that individuals be given ample notice before monies are reclaimed and that individuals be thoroughly informed before entering into a contract that might fall under this rule.

Response: Before referring a person for offset under these sections, we will give him or her at least 60 days prior notice in accordance with §§ 404.521, 408.941, 416.581, and 422.310.

[1] The NPRM is available at *http://www.regulations.gov/#!documentDetail;D=SSA-2010-0010-0001.*

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it applies to individuals only. Thus, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and does not require OMB approval under the Paperwork Reduction Act.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Income taxes, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure; Aged; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI); Veterans.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR chapter III, parts 404, 408, 416, and 422 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart F—[Amended]

■ 1. The authority citation for subpart F of part 404 is revised to read as follows:

Authority: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 2. Amend § 404.520(b) in the second sentence by removing the word ''individuals'' and adding in its place the word ''persons'' and by revising the third sentence to read as follows:

§ 404.520 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

* * * * *

(b) * * * We will refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the length of time the debts have been outstanding.

■ 3. Amend § 404.521 by revising the section heading, introductory text, and paragraphs (a) and (b), and in paragraph (e) by removing the word ''individual'' in two places and adding in its place ''person''.

§ 404.521 Notice to overpaid persons.

Before we request the collection of an overpayment by reduction of Federal and State income tax refunds, we will send a written notice of intent to the overpaid person. In our notice of intent to collect an overpayment through tax refund offset, we will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full; or

(2) Provides evidence to us at the address given in our notice that the overpayment is not past due or legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

* * * * *

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart I—[Amended]

■ 4. The authority citation for subpart I of part 408 is revised to read as follows:

Authority: Secs. 702(a)(5), 808, and 1147 of the Social Security Act (42 U.S.C. 902(a)(5), 1008, and 1320b–17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 5. In § 408.940(b) revise the third sentence to read as follows:

§ 408.940 When will we refer an SVB overpayment to the Department of the Treasury for tax refund offset?

* * * * *

(b) * * * We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

■ 6. In § 408.941 revise the introductory text, and paragraphs (a) and (b) to read as follows:

§ 408.941 Will we notify you before we refer an SVB overpayment for tax refund offset?

Before we request that an overpayment be collected by reduction of Federal and State income tax refunds, we will send a written notice of our action to the overpaid person. In our notice of intent to collect an overpayment through tax refund offset, we will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full; or

(2) Provides evidence to us at the address given in our notice that the overpayment is not past due or legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—[Amended]

■ 7. The authority citation for subpart E of part 416 is amended to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 8. Amend § 416.580(b) by removing the word ''individuals'' in the second

sentence and adding in its place ''persons'' and by revising the last sentence to read as follows:

§ 416.580 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

* * * * *

(b) * * * We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

■ 9. Amend § 416.581 by revising the section heading, the introductory text, and paragraphs (a) and (b), and in paragraph (e), by removing the word ''individual'' in two places and adding in its place ''person''.

§ 416.581 Notice to overpaid person.

We will make a request for collection by reduction of Federal and State income tax refunds only after we determine that a person owes an overpayment that is past due and provide the overpaid person with written notice. Our notice of intent to collect an overpayment through tax refund offset will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full; or

(2) Provides evidence to us at the address given in our notice that the overpayment is not past due or legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

Subpart D—[Amended]

■ 10. The authority citation for subpart D of part 422 continues to read as follows:

Authority: Secs. 204(f), 205(a), 702(a)(5), and 1631(b) of the Social Security Act (42 U.S.C. 404(f), 405(a), 902(a)(5), and 1383(b)); 5 U.S.C. 5514; 31 U.S.C. 3711(e); 31 U.S.C. 3716.

■ 11. In § 422.310 revise paragraphs (a)(1) and (b) to read as follows:

§ 422.310 Collection of overdue debts by administrative offset.

(a) *Referral to the Department of the Treasury for offset.* (1) We recover overdue debts by offsetting Federal and State payments due the debtor through the Treasury Offset Program (TOP). TOP is a Government-wide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal and State payments owed the debtor. Federal payments owed the debtor include current ''disposable pay,'' defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called ''Federal salary offset'' in this subpart.

* * * * *

(b) *Debts we refer.* We refer for administrative offset all qualifying debts that meet or exceed the threshold amounts used by the Department of the Treasury for collection from State and Federal payments, including Federal salaries.

* * * * *

[FR Doc. 2011–27221 Filed 10–19–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2011–N–0003]

New Animal Drugs for Use in Animal Feeds; Melengestrol; Monensin; Tylosin

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 abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The supplemental ANADA provides for use of increased dose levels of monensin in three-way, combination drug Type C medicated feeds for heifers fed in confinement for slaughter containing melengestrol acetate, monensin, and tylosin.

DATES: This rule is effective October 20, 2011.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, *e-mail: john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to ANADA 200–375 for use of HEIFERMAX 500 (melengestrol acetate), RUMENSIN (monensin, USP), and TYLAN (tylosin phosphate) single-ingredient Type A medicated articles to make three-way, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. The supplemental ANADA provides for use of increased dose levels of monensin. The supplemental application is approved as of September 1, 2011, and the regulations in 21 CFR 558.342 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), a summary of safety and effectiveness data and information submitted to support approval of this application 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.

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 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 paragraph (e)(1), remove and reserve paragraph (e)(1)(vii); and in paragraph (e)(1)(xi), in the ''Sponsor'' column, add ''021641''.

Dated: October 14, 2011.

Steven D. Vaughn,

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

[FR Doc. 2011–27139 Filed 10–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9548]

RIN 1545–BH49

Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B) of the Internal Revenue Code (Code). This action is necessary in light of amendments to section 355(b). These final regulations will affect corporations and their shareholders.

DATES: *Effective Date:* These final regulations are effective on October 20, 2011.

Applicability Date: For dates of applicability, see § 1.355–2(i).

FOR FURTHER INFORMATION CONTACT: Russell P. Subin, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 regarding section 355(a)(3)(B).

Section 355(a) provides that, under certain circumstances, a corporation may distribute stock and securities in a corporation it controls to its shareholders and security holders without causing either the distributing corporation (distributing) or its shareholders and security holders to recognize income, gain, or loss.

Sections 355(a)(1)(C) and 355(b)(1) generally require that distributing and the controlled corporation (controlled) each be engaged, immediately after the distribution, in the active conduct of a trade or business. Section 355(b)(2)(A) provides that a corporation shall be treated as engaged in the active conduct of a trade or business if and only if it is engaged in the active conduct of a trade or business.

Section 355(b)(2)(B) requires that the trade or business have been actively conducted throughout the five-year period ending on the date of the distribution (pre-distribution period). Section 355(b)(2)(C) provides that the trade or business must not have been acquired in a transaction in which gain or loss was recognized in whole or in part (taxable transaction) within the pre-distribution period. Section 355(b)(2)(D) provides that control of a corporation that (at the time of acquisition of control) was conducting the trade or business must not have been directly or indirectly acquired by any distributee corporation or by distributing during the pre-distribution period in a taxable transaction.

Section 355(b)(3)(A) provides that for purposes of determining whether a corporation meets the requirements of section 355(b)(2)(A), all members of such corporation's separate affiliated group (SAG) shall be treated as one corporation. Section 355(b)(3)(B) provides that for purposes of section 355(b)(3), the term *SAG* means, with respect to any corporation, the affiliated group that would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply. Section 355(b)(3)(C) provides that if a corporation became a SAG member as a result of one or more taxable transactions, any trade or business conducted by such corporation (at the time that such corporation became such a member) shall be treated for purposes of section 355(b)(2) as acquired in a taxable transaction.

Section 355(a)(3)(B) provides that for purposes of section 355 (other than section 355(a)(1)(D)) and so much of section 356 as relates to section 355, stock of controlled acquired by distributing by reason of any transaction (i) which occurs within five years of the distribution of such stock, and (ii) which is a taxable transaction, shall not be treated as stock of controlled, but as other property.

Section 355(b)(3)(D) provides that the Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of section 355(b)(3), including regulations that provide for the proper application of section 355(b)(2)(B), (C), and (D), and modify the application of section 355(a)(3)(B), in connection with the application of section 355(b)(3).

Pursuant to section 355(b)(3)(D) and section 7805, temporary regulations (TD 9435) under section 355(a)(3)(B) were published in the **Federal Register** (73 FR 75946) on December 15, 2008. A notice of proposed rulemaking (REG–150670–07) cross-referencing the temporary regulation was published in the **Federal Register** on the same day (73 FR 75979). The temporary regulations were intended to harmonize the application of section 355(a)(3)(B) with section 355(b). Generally, the temporary regulations: (1) Disregarded transfers of controlled stock between members of the distributing corporation's SAG (DSAG), (2) did not treat controlled stock as other property if controlled became a DSAG member, and (3) retained the exception of prior regulation § 1.355–2(g) as contained in 26 CFR part 1, revised as of April 1, 2008, for acquisitions from affiliates described in § 1.355–3(b)(4)(iii).

The preamble to the temporary regulations requested comments regarding a variety of issues under section 355(a)(3)(B). One written comment responding to the request was received. No public hearing was requested or held.

Summary of Comment and Guidance

The comment generally agreed with the text of the temporary regulations. In addition, the comment addressed, among other things, the treatment of cash paid to acquire controlled stock in lieu of fractional shares, indirect acquisitions and acquisitions of controlled stock by a predecessor to a member of the DSAG, issuances of controlled stock, and redemptions of controlled stock. After considering the comment, the IRS and Treasury Department have decided not to expand the scope of the final regulation to cover additional situations at this time. These final regulations adopt the substantive rules of the temporary regulations without change.

The IRS and Treasury Department continue to study the interrelationship between section 355(a)(3)(B) and section 355(b). No inference regarding the content of future section 355(b) guidance should be drawn from these final regulations. In addition, further guidance may be issued under section 355(a)(3)(B) in connection with future section 355(b) guidance if it is necessary to harmonize the two provisions.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in

Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that section 355(a)(3)(B) generally applies to parent-subsidiary groups of corporations, which tend to be larger businesses, and that these regulations primarily grant relief from the application of section 355(a)(3)(B) in certain situations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, 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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.355–2(g) and (i) also issued under 26 U.S.C. 355(b)(3)(D). * * *

■ **Par. 2.** Section 1.355–0 is amended by revising the entries under § 1.355–2(g) and (i) to read as follows:

§ 1.355–0 Outline of sections.

* * * * *

§ 1.355–2 Limitations.

* * * * *

(g) Recently acquired controlled stock under section 355(a)(3)(B).

(1) Other property.

(2) Exceptions.

(3) DSAG.

(4) Taxable transaction.

(5) Examples.

* * * * *

(i) Effective/applicability date.

■ **Par. 3.** Section 1.355–1 is amended by revising paragraph (a) to read as follows:

§ 1.355–1 Distribution of stock and securities of a controlled corporation.

(a) *Effective/applicability date of certain sections.* Except as otherwise provided, this section and §§ 1.355–2 through 1.355–4 apply to transactions occurring after February 6, 1989. For transactions occurring on or before that date, see 26 CFR 1.355–1 through 1.355–4 (revised as of April 1, 1987). This section and §§ 1.355–2 through 1.355–4, other than § 1.355–2(g) and (i), do not reflect the amendments to section 355 made by the Revenue Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Technical Corrections Act of 2007. For the applicability date of §§ 1.355–2(g), 1.355–5, 1.355–6, and 1.355–7, see §§ 1.355–2(i), 1.355–5(e), 1.355–6(g), and 1.355–7(k), respectively.

* * * * *

■ **Par. 4.** Section 1.355–2 is amended by revising paragraphs (g) and (i) to read as follows:

§ 1.355–2 Limitations.

* * * * *

(g) *Recently acquired controlled stock under section 355(a)(3)(B)*—(1) *Other property.* Except as provided in paragraph (g)(2) of this section, for purposes of section 355(a)(1)(A), section 355(c), and so much of section 356 as relates to section 355, stock of a controlled corporation acquired by the DSAG in a taxable transaction (as defined in paragraph (g)(4) of this section) within the five-year period ending on the date of the distribution (pre-distribution period) shall not be treated as stock of the controlled corporation but shall be treated as ''other property.'' Transfers of controlled corporation stock that is owned by the DSAG immediately before and immediately after the transfer are disregarded and are not acquisitions for purposes of this paragraph (g)(1).

(2) *Exceptions.* Paragraph (g)(1) of this section does not apply to an acquisition of stock of the controlled corporation—

(i) If the controlled corporation is a DSAG member at any time after the acquisition (but prior to the distribution); or

(ii) Described in § 1.355–3(b)(4)(iii).

(3) *DSAG.* For purposes of this paragraph (g), a *DSAG* is the distributing corporation's separate affiliated group (the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply) that consists of the distributing corporation as the common parent and all corporations affiliated with the distributing corporation through stock ownership described in section 1504(a)(1)(B) (regardless of whether the corporations are includible corporations under section 1504(b)). For purposes of paragraph (g)(1) of this section, any reference to the DSAG is a reference to the distributing corporation if it is not the common parent of a separate affiliated group.

(4) *Taxable transaction*—(i) *Generally.* For purposes of this paragraph (g), a *taxable transaction* is a transaction in which gain or loss was recognized in whole or in part.

(ii) *Dunn Trust and predecessor issues.* [Reserved].

(5) *Examples.* The following examples illustrate this paragraph (g). Assume that C, D, P, and S are corporations, X is an unrelated individual, each of the transactions is unrelated to any other transaction and, but for the issue of whether C stock is treated as ''other property'' under section 355(a)(3)(B), the distributions satisfy all of the requirements of section 355. No inference should be drawn from any of these examples as to whether any requirements of section 355 other than section 355(a)(3)(B), as specified, are satisfied. Furthermore, the following definitions apply:

(i) *Purchase* is an acquisition that is a taxable transaction.

(ii) *Section 368(c) stock* is stock constituting control within the meaning of section 368(c).

(iii) *Section 1504(a)(2) stock* is stock meeting the requirements of section 1504(a)(2).

Example 1. Hot stock. For more than five years, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases additional C stock from X. However, D does not own section 1504(a)(2) stock of C after the year 6 purchase. If D distributes all of its C stock within five years after the year 6 purchase, for purposes of section 355(a)(1)(A), section 355(c), and so much of section 356 as relates to section 355, the C stock purchased in year 6 would be treated as ''other property.'' See paragraph (g)(1) of this section.

Example 2. C becomes a DSAG member. For more than five years, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases additional C stock from X such that D's total ownership of C is section 1504(a)(2) stock. If D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as ''other property'' because C becomes a DSAG member. See paragraph (g)(2)(i) of this section. The result would be the same if D did not own any C stock prior to year 6 and D purchased all of the C stock in year 6. See paragraph (g)(2)(i) of this section. Similarly, if D did not own

any C stock prior to year 6, D purchased 20 percent of the C stock in year 6, and then acquired all of the remaining C stock in year 7, the C stock purchased in year 6 and the C stock acquired in year 7 (even if purchased) would not be treated as ''other property'' because C becomes a DSAG member. See paragraph (g)(2)(i) of this section.

Example 3. Intra-SAG transaction. For more than five years, D has owned all of the stock of S. D and S, in the aggregate, have owned section 368(c) stock but not section 1504(a)(2) stock of C. Therefore, D and S are DSAG members, but C is not. In year 6, D purchases S's C stock. If D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as ''other property.'' D's purchase of the C stock from S is disregarded for purposes of paragraph (g)(1) of this section because that C stock was owned by the DSAG immediately before and immediately after the purchase. See paragraph (g)(1) of this section.

Example 4. Affiliate exception. For more than five years, P has owned 90 percent of the sole outstanding class of the stock of D and a portion of the stock of C, and X has owned the remaining 10 percent of the D stock. Throughout this period, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases P's C stock. However, D does not own section 1504(a)(2) stock of C after the year 6 purchase. If D distributes all of its C stock to X in exchange for X's D stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as ''other property'' because the C stock was purchased from a member (P) of the affiliated group (as defined in § 1.355–3(b)(4)(iv)) of which D is a member, and P did not purchase that C stock within the pre-distribution period. See paragraph (g)(2)(ii) of this section.

* * * * *

(i) *Effective/applicability date.* Paragraphs (g)(1) through (g)(5) of this section apply to distributions occurring after October 20, 2011. For rules regarding distributions occurring on or before October 20, 2011, see § 1.355–2T(i), as contained in 26 CFR part 1, revised as of April 1, 2011.

§ 1.355–0T [Removed]

■ **Par. 5.** Section 1.355–0T is removed.

§ 1.355–2T [Removed]

■ **Par. 6.** Section 1.355–2T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: October 14, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–27240 Filed 10–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 104

[Docket No. CIV 151]

RIN 1105–AB39

James Zadroga 9/11 Health and Compensation Act of 2010

AGENCY: Department of Justice.

ACTION: Final rule; correction.

SUMMARY: The Department of Justice is correcting a final rule that appeared in the **Federal Register** of August 31, 2011 (76 FR 54112). That document issued regulations implementing the amendments made by the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act) with respect to the September 11th Victim Compensation Fund of 2001.

DATES: Effective October 3, 2011.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone 855–885–1555 (TTY 855–885–1558).

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–22160 appearing on page 54112 in the **Federal Register** on Wednesday, August 31, 2011, the following correction is made:

1. On page 54119, in the third column, the paragraph following the heading ''Small Business Regulatory Enforcement Fairness Act of 1996'' is revised to read as follows:

''The Office of Management and Budget has determined that this rule is a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 804. This rule will not result in a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. However, the compensation benefits awarded to eligible claimants will have an annual beneficial impact on the economy of $100,000,000 or more in certain years until the amounts authorized and appropriated for the Victims Compensation Fund are fully distributed.

''Title II of the Zadroga Act reactivates the September 11th Victim Compensation Fund of 2001 and requires a Special Master, appointed by the Attorney General, to provide compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. In view of the need to begin processing compensation claims as soon as possible, it is impracticable for the Department to comply with the requirements of section 801 of the Congressional Review Act, 5 U.S.C. 801, pertaining to delayed effective dates of major rules without unduly delaying the processing of claims. Section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), provides: ''Notwithstanding section 801—* * * (2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.'' Were the Department not to invoke the exception provided in section 808(2) of the Congressional Review Act, eligible claimants would have to wait substantially longer to begin filing their claims, thereby impairing Congress's goal of providing compensation in as expeditious a manner as possible (as evidenced by the short statutory deadline for implementation). Such a delay in implementing the compensation process would be clearly contrary to the public interest. For the foregoing reasons, the Special Master finds pursuant to section 808(2) of the Congressional Review Act, 5 U.S.C. 808, that good cause exists to make this final rule effective October 3, 2011.''

Dated: October 12, 2011.

Sheila L. Birnbaum,

Special Master.

[FR Doc. 2011–27121 Filed 10–19–11; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 211

[Docket ID: DOD–2011–OS–0054; RIN 0790–AI69]

Mission Compatibility Evaluation Process

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Interim final rule.

SUMMARY: The Department of Defense (DoD) is issuing this interim final rule to implement section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. That section requires that the DoD issue procedures addressing the impacts upon military operations of certain types of structures if they pose an unacceptable risk to the national security of the United States. The structures addressed are those for which an application is required to be filed with the Secretary of Transportation. Section 358 also requires the designation of a lead organization to coordinate DoD review of applications for projects filed with the Secretary of Transportation and received by the Department of Defense from the Secretary of Transportation. Section 358 also requires the designation of certain officials by the Secretary of Defense to perform functions pursuant to the section and this implementing rule. Section 358 also requires the establishment of a comprehensive strategy for addressing military impacts of renewable energy projects and other energy projects, with the objective of ensuring that the robust development of renewable energy sources and the expansion of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness. That requirement, however, is not required at this time and is not part of this rule. Other aspects of section 358 not required at this time, such as annual reports to Congress, are also not addressed in this rule. Nor does this rule deal with other clearance processes not included in section 358, such as those applied by the Bureau of Land Management, Department of the Interior.

DATES: This rule is effective upon publication in the **Federal Register**. Comments must be received by December 19, 2011.

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

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: David Belote, (703) 697–7301, or Bill Van Houten, (703) 571–9068, both can be contacted at *DoDSitingClearinghouse@osd.mil.*

SUPPLEMENTARY INFORMATION:

Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111–383, became law on January 7, 2011. In that provision, Congress required, among other things, that the DoD implement new procedures relating to how the DoD reviews and comments on applications filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718. Section 358 also specifies who within DoD may provide such comments to the Secretary of Transportation, that DoD will engage in outreach activities with interested parties, and that Congress must be advised when the DoD objects to an application filed pursuant to 49 U.S.C. 44718.

Section 211.1 of this Interim Rule states the two primary purposes of the rule which are to provide for DoD commenting on applications filed pursuant to 49 U.S.C. 44718 and requests for reviews of projects prior to applications being filed pursuant to 49 U.S.C. 44718.

Section 211.2 addresses the applicability of part 211. This part applies to all components of the DoD, those applicants filing applications pursuant to 49 U.S.C. 44718 when those applications are conveyed by the Secretary of Transportation to the Department of Defense, those requesting reviews of projects prior to applications being filed under 49 U.S.C. 44718 (including State and local officials), and those providing comments to DoD relating to its actions in reviewing applications. It also applies, geographically, to the United States.

Section 211.3 provides definitions. The definition of ''adverse impact on military operations and readiness'' provides that a demonstrable impairment or degradation of the ability of the armed forces to perform their warfighting missions constitutes an adverse impact. The definition of ''applicant'' refers to an entity filing a proper application with the Secretary of Transportation pursuant to 49 U.S.C. 44718, and whose application has been provided by the Secretary of Transportation to the DoD. The definition of ''armed forces'' refers to the definition at 10 U.S.C. 101(a)(4), which includes the Army, Navy, Air Force, and Marine Corps, but excludes the Coast Guard. The definition of ''congressional defense committees'' is taken from section 3 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, which, in turn, adopts by reference the definition of the term in 10 U.S.C. 101(a)(16). The definition of ''military readiness'' is taken from the definition of the term provided in section 358. The definition of ''mitigation'' provides a general description of the term while leaving to individual actions more specific examples of what may constitute mitigation. The definition of ''proposed project'' is the project as submitted to the Secretary of Transportation pursuant to 49 U.S.C. 44718. The definition of ''requester'' refers to a developer of a renewable energy development or other energy project or a state or local official seeking an informal review of a project by the DoD prior to the project being submitted for formal review pursuant to 49 U.S.C. 44718. The definition of ''section 358'' refers to the authorizing provision, section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. The definition of ''unacceptable risk to the national security of the United States'' includes the two existing criteria found in 49 U.S.C. 44718, namely the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill that endangers safety in air commerce or interferes with the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports, but, for purposes of this rule, only when related to the activities of the DoD. The definition also includes an additional criterion consisting of actions that will significantly impair or degrade the capability of the DoD to conduct training, research, development, testing, and evaluation, and operations or to maintain military readiness. The definition of ''United States'' is included to provide the geographical limitation of the part, clarifying that the part does not apply outside of the United States.

Section 211.4 provides the general policy of the part, taken from section 358(a). It also limits the participation of DoD in the Federal Aviation Administration's process under 49

U.S.C. 44718 to the process provided in this rule.

Section 211.5 specifies the officials with authorities and responsibilities under the part pursuant to section 358. The Deputy Secretary of Defense is designated as the senior officer who is authorized to provide a determination to the Secretary of Transportation that a project filed pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States. The Under Secretary of Defense for Acquisition, Technology, and Logistics is designated as the senior official who may make a recommendation to the Deputy Secretary of Defense that such a project would result in such a risk. The Deputy Under Secretary of Defense (Installations & Environment) is designated as the official who, in coordination with the Deputy Assistant Secretary of Defense (Readiness) and the Principal Deputy Director, Operational Test and Evaluation, reviews such a project and provides a preliminary assessment of the level of risk of adverse impact on military operations and readiness that would arise from the project and the extent of mitigation that may be needed to address such risk. The Office of the Deputy Under Secretary of Defense (Installations & Environment) is designated as the lead organization, and the DoD Siting Clearinghouse is established and organized under the Deputy Under Secretary.

Section 211.6 provides the procedures for formal DoD review of a project filed by an applicant with the Secretary of Transportation pursuant to 49 U.S.C. 44718.

Section 211.7 provides the procedures for informal DoD review of a project submitted by a requester prior to submitting a formal application pursuant to 49 U.S.C. 44718.

Section 211.8 directs DoD Components to forward any inquiries or requests they may receive to the Clearinghouse so as to avoid unauthorized action by a Component outside of the process established by this rule.

Section 211.9 provides some of the types of mitigation to be considered by the DoD and the applicant/requester when discussing mitigation.

Section 211.10 provides for the notification to Congress required by section 358 when the senior officer makes a determination that a project presents an unacceptable risk to the national security of the United States.

Section 211.11 provides for a public Web site where the public can review the actions being considered by DoD, track their progress, and offer comments.

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

It has been determined that this rule is not a significant regulatory action. This rule does not:

(1) Have an annual effect to 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 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 obligation 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 Executive Order 12866.

Section 202, Public Law 104–4, Unfunded Mandates Reform Act

It has been certified that 32 CFR part 211 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)

The Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The RFA requires agencies to analyze the economic impact of regulations to determine the extent to which there is anticipated to be a significant economic impact on a substantial number of small entities. DoD anticipates that the Interim Rule could potentially affect a few entities that might otherwise have located structures on public or private lands that would present an unreasonable risk to the national security of the United States. DoD further anticipates that some of these entities will be small entities as defined by the Small Business Administration; however, DoD does not expect the potential impact to be significant because this rule provides procedures to mitigate the impact of such an unreasonable risk to the benefit of both the proponent and DoD.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

Section 211.7 of this interim final rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the 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 the use of automated collection techniques or other forms of information technology.

Title: Information for DoD Informal Review of Renewable Energy Source Projects.

Type of Request: New.

Number of Respondents: 350.

Responses per Respondent: 15.

Annual Responses: 5,250.

Average Burden per Response: 1 hour.

Annual Burden Hours: 5,250 hours.

Needs and Uses: This information is necessary to allow the Department of Defense to assess the impact on military operations and the risk to national security of proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill.

Affected Public: Business or other for-profit; State, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Written comments and recommendations on the information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, DoD Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy to the Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), 3400 Defense Pentagon, Room 5C646, Washington, DC 20301–3400.

Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number [DoD–2011–OS–0113] 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.

To request more information on this information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), 3400 Defense Pentagon, Room 5C646, Washington, DC 20301–3400.

Executive Order 13132, Federalism

It has been certified that this part 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 211

Energy; Evaluation.

■ Accordingly 32 CFR Part 211 is added to read as follows:

PART 211—MISSION COMPATIBILITY EVALUATION PROCESS

Subpart A—General

Sec.
211.1 Purpose.
211.2 Applicability.
211.3 Definitions.

Subpart B—Policy

211.4 Policy.
211.5 Responsibilities.

Subpart C—Project Evaluation Procedures

211.6 Initiating a Formal DoD Review of a Proposed Project.
211.7 Initiating an Informal DoD Review of a Project.
211.8 Inquiries Received by DoD Components.
211.9 Mitigation Options.
211.10 Reporting Determinations to Congress.

Subpart D—Communications and Outreach

211.11 Communications With the Clearinghouse.
211.12 Public Outreach.

Authority: Public Law 111–383, Section 358.

Subpart A—General

§ 211.1 Purpose.

This part prescribes procedures pursuant to section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 to provide:

(a) A formal review of projects for which applications are filed with the Secretary of Transportation under 49 U.S.C. 44718, to determine if they pose an unacceptable risk to the national security of the United States.

(b) An informal review of a renewable energy development or other energy project in advance of the filing of an application with the Secretary of Transportation under 49 U.S.C. 44718.

§ 211.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, 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'').

(b) Persons filing applications with the Secretary of Transportation for proposed projects pursuant to 49 U.S.C. 44718, when such applications are received by the Department of Defense from the Secretary of Transportation.

(c) A State or local official or a developer of a renewable energy development or other energy project seeking a review of such project by DoD.

(d) Members of the general public from whom comments are received on notices of actions being taken by the Department of Defense under this part.

(e) The United States.

§ 211.3 Definitions.

(a) *Adverse impact on military operations and readiness.* Any adverse impact upon military operations and readiness, including flight operations, research, development, testing, and evaluation, and training that is demonstrable and is likely to impair or degrade the ability of the armed forces to perform their warfighting missions.

(b) *Applicant.* An entity filing an application with the Secretary of Transportation pursuant to 49 U.S.C. 44718, and whose proper application has been provided by the Secretary of Transportation to the Clearinghouse.

(c) *Armed forces.* This term has the same meaning as provided in 10 U.S.C. 101(a)(4) but does not include the Coast Guard.

(d) *Clearinghouse.* The DoD Siting Clearinghouse, established under the Deputy Under Secretary of Defense (Installations & Environment).

(e) *Congressional defense committees.* The—

(1) Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(f) *Days.* All days are calendar days but do not include Federal holidays.

(g) *Military readiness.* Includes any training or operation that could be related to combat readiness, including testing and evaluation activities.

(h) *Mitigation.* Actions taken by either or both the DoD or the applicant to ensure that a project does not create an unacceptable risk to the national security of the United States.

(i) *Proposed project.* A proposed project is the project as described in the application submitted to the Secretary of Transportation pursuant to 49 U.S.C. 44718 and transmitted by the Secretary of Transportation to the Clearinghouse.

(j) *Requester.* A developer of a renewable energy development or other energy project or a state or local official seeking an informal review by the DoD of a project.

(k) *Section 358.* Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111–383.

(l) *Unacceptable risk to the national security of the United States.* The construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill that:

(1) Endangers safety in air commerce, related to the activities of the DoD.

(2) Interferes with the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports, related to the activities of the DoD.

(3) Will significantly impair or degrade the capability of the DoD to conduct training, research, development, testing, and evaluation, and operations or maintain military readiness.

(m) *United States.* The several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, Midway and Wake Islands, the U.S. Virgin Islands, any other territory or possession of the United States, and associated navigable

waters, contiguous zones, and territorial seas and the airspace of those areas.

Subpart B—Policy

§ 211.4 Policy.

(a) It is an objective of the Department of Defense to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness.

(b) The participation of the DoD in the process of the Federal Aviation Administration conducted pursuant to 49 U.S.C. 44718 shall be conducted in accordance with this part. No other process shall be used by a DoD Component.

(c) Nothing in this part shall be construed as affecting the authority of the Secretary of Transportation under 49 U.S.C. 44718.

§ 211.5 Responsibilities.

(a) Pursuant to subsection (e)(4) of section 358, the Deputy Secretary of Defense is designated as the senior officer. Only the senior officer may convey to the Secretary of Transportation a determination that a project filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States.

(b) Pursuant to subsection (b)(1) of section 358, the Under Secretary of Defense for Acquisition, Technology, and Logistics is designated as the senior official. Only the senior official may provide to the senior officer a recommendation that the senior officer determine a project filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States.

(c) Pursuant to subsection (e)(1) of section 358, the Deputy Under Secretary of Defense (Installations & Environment), in coordination with the Deputy Assistant Secretary of Defense (Readiness) and the Principal Deputy Director, Operational Test and Evaluation, shall review a proper application for a project filed pursuant to 49 U.S.C. 44718 and received from the Secretary of Transportation and provide a preliminary assessment of the level of risk of adverse impact on military operations and readiness that would arise from the project and the extent of mitigation that may be needed to address such risk.

(d) Pursuant to subsection (b)(1) of section 358, the Office of the Deputy Under Secretary of Defense (Installations & Environment) is designated as the lead organization. Under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, there is, within the Office of the Deputy Under Secretary, a DoD Siting Clearinghouse. The Clearinghouse:

(1) Shall have a governing board organized in accordance with DoD Instruction 5105.18, DoD Intergovernmental and Intragovernmental Committee Management Program.

(2) Has an executive director who is a Federal Government employee, appointed by the Deputy Under Secretary of Defense (Installations & Environment).

(3) Performs such duties as assigned in this part and as the Deputy Under Secretary directs.

Subpart C—Project Evaluation Procedures

§ 211.6 Initiating a Formal DoD Review of a Proposed Project.

(a) A formal review of a proposed project begins with the receipt from the Secretary of Transportation by the Clearinghouse of a proper application filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718.

(1) The Clearinghouse will convey the application as received to those DoD Components it believes may have an interest in reviewing the application.

(2) The DoD Components that receive the application shall provide their comments and recommendations on the application to the Clearinghouse no later than 20 days after they receive the application.

(3) Not later than 30 days after receiving the application from the Secretary of Transportation, the Clearinghouse shall evaluate all comments and recommendations received and take one of two actions:

(i) Determine that the proposed project will not have an adverse impact on military operations and readiness, in which case it shall notify the Secretary of Transportation of such determination.

(ii) Determine that the proposed project may have an adverse impact on military operations and readiness. When the Clearinghouse makes such a determination it shall immediately—

(A) Notify the applicant of the determination of the Clearinghouse and offer to discuss mitigation with the applicant to reduce the adverse impact;

(B) Designate one or more DoD Components to engage in discussions with the applicant to attempt to mitigate the adverse impact;

(C) Notify the Secretary of Transportation that the Department of Defense has determined that the proposed project may have an adverse impact on military operations and readiness, and, if the cause of the adverse impact is due to the proposed project exceeding an obstruction standard set forth in subpart C of part 77 of title 14 of the Code of Federal Regulations, identify the specific standard and how it would be exceeded; and

(D) Notify the Secretary of Transportation and the Secretary of Homeland Security that the Clearinghouse has offered to engage in mitigation discussions with the applicant.

(4) The applicant must provide to the Clearinghouse its agreement to discuss the possibility of mitigation within five days of receipt of the notification from the Clearinghouse.

(b) If the applicant agrees to enter into discussions with the DoD to seek to mitigate an adverse impact, the designated DoD Components shall engage in discussions with the applicant to attempt to reach agreement on measures that would mitigate the adverse impact of the proposed project on military operations and readiness. The Clearinghouse shall invite the Administrator of the Federal Aviation Administration and the Secretary of Homeland Security to participate in such discussions.

(1) Such discussions shall not extend more than 90 days beyond the initial notification to the applicant, unless both the designated DoD Components and the applicant agree, in writing, to an extension of a specific period of time.

(i) If agreement between the applicant and the designated DoD Components has not been reached on mitigation measures by that time and no extension has been mutually agreed to, the designated DoD Components shall notify the Clearinghouse of the results of the discussions and the analysis and recommendations of the Components with regard to the proposed project as it is proposed after discussions.

(ii) If agreement between the applicant and the designated DoD Components has been reached on mitigation measures that remove the adverse impact of the proposed project on military operations and readiness, the DoD Components shall notify the Clearinghouse of the agreement and the applicant shall notify the Secretary of

Transportation of such agreement and amend its application accordingly.

(2) If the applicant and the designated DoD Components are unable to reach agreement on mitigation, the Clearinghouse shall review the analysis and recommendations of the DoD Components and determine if the proposed project as it may have been modified by the applicant after discussions would result in an unacceptable risk to the national security of the United States.

(i) If the Clearinghouse determines that the proposed project as it may have been modified by the applicant after discussions would result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect. If the Clearinghouse determines, contrary to the recommendations of the DoD Components, that the proposed project as it may have been modified by the applicant after discussions would not result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect.

(ii) If the senior official concurs with the recommendation of the Clearinghouse, the senior official shall make a recommendation to the senior officer that is consistent with the recommendation of the Clearinghouse. If the senior official does not agree with the recommendation of the Clearinghouse, the senior official may make a recommendation to the senior officer to that effect.

(iii) The senior officer shall consider the recommendation of the senior official, and, after giving full consideration to mitigation actions available to the DoD and those agreed to by the applicant, determine whether the proposed project as it may have been modified by the applicant would result in an unacceptable risk to the national security of the United States. If the senior officer makes such a determination, the senior officer shall convey that determination to the Secretary of Transportation, identifying which of the three criteria in section 211.3(l) creates the unacceptable risk to the national security of the United States.

(iv) Any mitigation discussions engaged in by the Department of Defense pursuant to this part shall not be binding upon any other Federal agency, nor waive required compliance with any other law or regulation.

(c)(1) If the applicant does not agree to enter into discussions with the DoD to seek to mitigate an adverse impact, the Clearinghouse shall review the analysis and recommendations of the designated DoD Components and determine if the proposed project would result in an unacceptable risk to the national security of the United States. If the Clearinghouse determines that the proposed project would result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect. If the Clearinghouse determines, contrary to the recommendations of the DoD Components, that the proposed project would not result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect.

(2) If the senior official concurs with the recommendation of the Clearinghouse, the senior official shall make a recommendation to the senior officer that is consistent with the recommendation of the Clearinghouse. If the senior official does not agree with the recommendation of the Clearinghouse, the senior official may make a recommendation to the senior officer to that effect.

(3) The senior officer shall consider the recommendation of the senior official, and, after giving full consideration to mitigation actions available to the DoD and those agreed to by the applicant, determine whether the proposed project would result in an unacceptable risk to the national security of the United States. If the senior officer makes such a determination, the senior officer shall convey that determination to the Secretary of Transportation, identifying which of the three criteria in section 211.3(l) creates the unacceptable risk to the national security of the United States.

(d) The Clearinghouse may, on behalf of itself, the senior official, or the senior officer, seek an extension of time from the Secretary of Transportation for consideration of the application.

§ 211.7 Initiating an Informal DoD Review of a Proposed Project.

(a) An informal review of a project begins with the receipt from a requester by the Clearinghouse of a request for an informal review. In seeking an informal review, the requester shall provide the following information to the Clearinghouse:

(1) The geographic location of the project including its latitude and longitude; and

(2) The nature of the project.

(3) The requester is encouraged to provide as much additional information as is available. The more information provided by the requester, the greater will be the accuracy and reliability of the resulting DoD review.

(b) The Clearinghouse shall, within five days of receiving the information provided by the requestor, convey that information to those DoD Components it believes may have an interest in reviewing the request.

(1) The DoD Components that receive the request from the Clearinghouse shall provide their comments and recommendations on the request to the Clearinghouse no later than 30 days after they receive the request.

(2) Not later than 50 days after receiving the request from the requester, the Clearinghouse shall evaluate all comments and recommendations received and take one of two actions:

(i) Determine that the project will not have an adverse impact on military operations and readiness, in which case it shall notify the requester of such determination. In doing so, the Clearinghouse shall also advise the requester that the informal review by the DoD does not constitute an action under 49 U.S.C. 44718 and that neither the DoD nor the Secretary of Transportation are bound by the determination made under the informal review.

(ii) Determine that the project will have an adverse impact on military operations and readiness.

(A) When the requester is the project proponent and the Clearinghouse makes such a determination, the Clearinghouse shall immediately—

(*1*) Notify the requester of the determination and the reasons for the conclusion of the Clearinghouse and advise the requester that the DoD would like to discuss the possibility of mitigation to reduce any adverse impact; and

(2) Designate one or more DoD Components to engage in discussions with the requester to attempt to mitigate the adverse impact.

(B) When the requester is a state or local official, notify the requester of the determination of the Clearinghouse and the reasons for that conclusion.

(c) If the requester is the project proponent and agrees to enter into discussions with the DoD to seek to mitigate an adverse impact, the designated DoD Components shall engage in discussions with the requester in an attempt to reach agreement on measures that would mitigate the adverse impact of the project on military operations and readiness.

§ 211.8 Inquiries Received by DoD Components.

(a) An inquiry received by a DoD Component other than the

Clearinghouse relating to an application filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 shall be forwarded to the Clearinghouse by the DoD Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the inquiry.

(b) A request for informal DoD review or any other inquiry related to matters covered by this part and received by a DoD Component other than the Clearinghouse shall be forwarded to the Clearinghouse by that Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the request.

§ 211.9 Mitigation Options.

(a) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the DoD Components designated to discuss mitigation with an applicant or requester shall, as appropriate and as time allows, analyze the following types of DoD mitigation to determine if they identify feasible and affordable actions that may be taken to mitigate adverse impacts of projects on military operations and readiness:

(1) Modifications to military operations.

(2) Modifications to radars or other items of military equipment.

(3) Modifications to military test and evaluation activities, military training routes, or military training procedures.

(4) Providing upgrades or modifications to existing systems or procedures.

(5) The acquisition of new systems by the DoD and other departments and agencies of the Federal Government.

(b) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the applicant or requester, as the case may be, should consider the following possible actions:

(1) Modification of the proposed structure, operating characteristics, or the equipment in the proposed project.

(2) Changing the location of the proposed project.

(3) Providing a voluntary contribution of funds to offset the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of the project on military operations and readiness.

§ 211.10 Reporting Determinations to Congress.

(a) Not later than 30 days after making a determination of unacceptable risk pursuant to section 211.6, the senior officer shall submit to the congressional defense committees a report on such determination and the basis for such determination.

(b) Such a report shall include—

(1) An explanation of the operational impact that led to the determination.

(2) A discussion of the mitigation options considered.

(3) An explanation of why the mitigation options were not feasible or did not resolve the conflict.

Subpart D—Communications and Outreach

§ 211.11 Communications With the Clearinghouse.

All communications to the Clearinghouse by applicants, requesters, or members of the public should be addressed to:

Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), Room 5C646, 3400 Defense Pentagon, Washington, DC 20301–3400 or to such internet address as the Clearinghouse may provide.

§ 211.12 Public Outreach.

(a) The DoD shall establish a Web site accessible to the public that—

(1) Lists the applications and requests for informal review the DoD is currently considering.

(2) Identifies the stage of the action, e.g., preliminary review, referred for mitigation discussions, determined to be an unacceptable risk.

(3) Indicates how the public may provide comments.

(b) The Clearinghouse shall publish a handbook to provide applicants, requesters, and members of the public with necessary information to assist them in participating in the Mission Compatibility Evaluation Process.

Dated: October 12, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26987 Filed 10–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0816]

RIN 1625–AA09

Drawbridge Operation Regulation; Bear Creek, Sparrows Point, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is canceling a portion of an existing drawbridge operation regulation. The Baltimore County Revenue Authority (Dundalk Avenue) highway toll drawbridge across Bear Creek, mile 1.5, Sparrows Point, MD was replaced with a fixed bridge in 1998. Therefore, that portion of the operating regulation, as it pertains to the Dundalk Avenue highway toll drawbridge, is no longer applicable or necessary.

DATES: This rule is effective October 20, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0816 and are available by going to *http://www.regulations.gov,* inserting USCG–2011–0816 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary

to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Baltimore County Revenue Authority (Dundalk Avenue) highway toll draw bridge requiring draw operations, as specified in 33 CFR 117.543(a), was removed and replaced with a fixed bridge in 1998. That portion of the regulation has not been enforced since the replacement of the bridge, approximately thirteen years ago. The regulations governing the bridge, which is no longer a drawbridge, are no longer applicable and shall be removed from this section. It is unnecessary to publish an NPRM as this regulation cancels a regulation that has no further practical value. It is further unnecessary to publish an NPRM because operators transiting this portion of the waterway are aware that the bridge is now a fixed bridge. And, it is unnecessary to publish an NPRM because this regulation does not purport to place any restriction on mariners but rather removes a restriction that has no further applicability.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the Baltimore County Revenue Authority (Dundalk Avenue) highway toll draw operation requirements under 33 CFR 117.543(a), thus removing a regulatory restriction on the public. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge has been a fixed bridge for the past 13 years; this rule merely requires an administrative change to the **Federal Register**, in order to omit a regulatory requirement that is no longer applicable or necessary.

Basis and Purpose

The drawbridge across Bear Creek, mile 1.5 was removed and replaced with a fixed bridge in 1998. Prior to 1998, a regulation was necessary to govern the operation of the openings of the drawbridge. After 1998, because the bridge can no longer be opened, there became no need for a regulation governing openings. It has come to the attention of the Coast Guard that the regulation was never updated subsequent to the completion of the fixed bridge. Therefore, this regulation seeks to alter the original regulation, to remove that portion which does not have present applicability due to the present capabilities of the bridge. The elimination of this drawbridge necessitates the modification of the Baltimore County Revenue Authority (Dundalk Avenue) highway toll drawbridge operation regulation.

The regulation governing the operation of the bridge is found in 33 CFR 117.543(a). The purpose of this rule is to remove the portion of 33 CFR 117.543(a) that refers to the Baltimore County Revenue Authority (Dundalk Avenue) highway toll bridge at mile 1.5, from the Code of Federal Regulations since it governs a bridge that is no longer able to be opened.

The regulation found at 33 CFR 117.543 also governs the Peninsula Parkway Bridge, mile 2.1, and the Wise Avenue Bridge, mile 3.4. This Final Rule shall not alter the operating regulations in place at 33 CFR 117.543 for the Peninsula Parkway Bridge and the Wise Avenue Bridge. This rule shall only remove that verbiage regulating the Dundalk Avenue Bridge.

Discussion of Rule

The Coast Guard is changing the regulation in 33 CFR 117.543 by removing the restrictions and the regulatory burden related to the draw operations for this bridge which is no longer a drawbridge. The change removes the portion of the regulation governing the Baltimore County Revenue Authority (Dundalk Avenue) highway toll bridge because the bridge has been replaced with a fixed bridge. The replacement took place in 1998, approximately thirteen years ago. This Final Rule seeks to update the Code of Federal Regulations by removing language that regulates signaling and notice requirements for the opening of a bridge that, in fact, can no longer open. This change does not affect vessel operators using the waterway. This change does not affect nor does it alter those portions of 33 CFR 117.543 dealing with the Peninsula Parkway Bridge and the Wise Avenue Bridge.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard does not consider this rule to be ''significant'' under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

Since this drawbridge has been removed and replaced with a fixed bridge, the regulation governing draw operations for this bridge is no longer needed. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not cause a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule because this rule affects the promulgation of operating regulations or procedures for drawbridges.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise paragraph (a) of § 117.543 to read as follows:

§ 117.543 Bear Creek.

(a) The draw of the Peninsula Parkway Bridge, mile 2.1, between Dundalk and Sparrows Point, shall open on signal; except that, from April 16 through November 15 from 12 midnight to 8 a.m. except Saturdays and Sundays, and Federal and State holidays, at least one half hour notice is required.

* * * * *

October 5, 2011.

William D. Lee,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2011–27128 Filed 10–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0962]

Drawbridge Operation Regulation; Islais Creek, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Third Street Drawbridge across Islais Creek, mile 0.4, at San Francisco, CA. The deviation is necessary to allow the City of San Francisco to make emergency electrical repairs on the bridge. This deviation allows the bridge to be secured in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 8 a.m. on October 3, 2011 to 6 p.m. on November 18, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–0962 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0962 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The City of San Francisco requested a temporary change to the operation of the Third Street Drawbridge, mile 0.4, over Islais Creek, at San Francisco, CA. The drawbridge navigation span provides a vertical clearance of 4 feet above Mean High Water in the closed-to-navigation position. As required by 33 CFR 117.163(b), the draw shall open on signal if at least 72 hours advance notice is given to the San Francisco

Department of Public Works. Navigation on the waterway is commercial and recreational.

The Third Street Drawbridge will be secured in the closed-to-navigation position from 8 a.m. on October 3, 2011 to 6 p.m. on November 18, 2011, to allow the City of San Francisco to complete emergency electrical repairs. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were received.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

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

Dated: October 7, 2011.

D.H. Sulouff,

Bridge Section Chief, Eleventh Coast Guard District.

[FR Doc. 2011–27129 Filed 10–19–11; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 230

RIN 0596–AC84

Community Forest and Open Space Conservation Program

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements the Community Forest and Open Space Conservation Program (CFP), authorized by Section 8003 of the Food, Conservation, and Energy Act of 2008. The CFP legislation is an amendment to the Cooperative Forestry Assistance Act of 1978. The CFP is a competitive grant program whereby local governments, Indian tribes, and qualified nonprofit organizations are eligible to apply for grants to establish community forests through fee-simple acquisition of private forest land. The program's two purposes are to provide public benefits to communities including economic benefits through sustainable forest management, environmental benefits including clean air, water, and wildlife habitat; benefits from forest-based educational programs; benefits from serving as models of effective forest stewardship; and recreational benefits secured with public access; and to acquire private forest lands that are threatened by conversion to nonforest uses. Existing provisions in Forest Service regulations pertaining to the Stewardship Incentive Program will be removed as deauthorized by the Farm Security and Rural Investment Act of 2002, and this final rule will be substituted in lieu thereof.

DATES: This final rule is effective November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Kathryn Conant, U.S. Forest Service, State and Private Forestry, Cooperative Forestry, (202) 401–4072. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for Final Rule

Congress authorized the Community Forest and Open Space Conservation Program (CFP) to address the needs of communities to protect and maintain their forest resources. In the CFP authorization, Congress found that tens of thousands of acres of private forest land are under pressure from development; public access to privately owned forest land for recreational opportunities has declined; people derive health benefits from having access to forests for recreation and exercise; forests protect public water supplies and may provide financial benefits from forest products; forest parcels owned by local governments and nonprofit organizations provide important educational opportunities for private forest landowners; and there is an urgent need to leverage financial resources to purchase important parcels of privately owned forest land as the parcels are offered for sale.

The CFP is a competitive grant program whereby local governments, Indian tribes, and qualified nonprofit organizations are eligible to apply for grants to establish community forests through fee-simple land acquisitions. ''Fee-simple'' means absolute interest in real property, versus a partial interest such as a conservation easement. By creating community forests through land acquisition, communities and Indian tribes can sustainably manage forests for these and many other benefits, including wildlife habitat, stewardship demonstration sites for forest landowners, and environmental education.

While the statutory title for the CFP includes the term ''open space,'' the authorizing language does not discuss the term. The only land cover Congress references is ''forests.'' As a result, in this final rule, the term ''open space'' is not used, and it is assumed that the only type of ''open space'' on which Congress wanted the CFP to focus is ''forests.''

The Forest Service believes that these regulations for the CFP will facilitate administration of the program and provide uniform criteria for program participation. The program will focus its funding towards forests that provide community benefits as defined in this rule and are identified as a national, regional, or local priority for protection. See Ranking Criteria and Proposal selection in § 230.5 of this final rule.

Benefits provided by forests acquired under the CFP may address a variety of outcomes such as protecting a municipal water supply, providing public access for outdoor recreation, or providing economic benefits from sustainable forest management, including harvesting forest products and using woody biomass for renewable energy production. Beyond local measures of success, the contribution of community forests to larger protected areas of forest helps support resource-based economies and adds needed resiliency to natural systems as they respond to climate change. Therefore, in addition to public engagement to articulate local needs and capacity, successful community forests in the CFP should be part of a larger conservation effort that protects a variety of land types and working lands, which provide ecosystem services. In this way, the program delivers local benefits that can also have a larger impact.

Relationship to Other Cooperative Forestry Assistance Act Programs

The Cooperative Forestry Assistance Act of 1978 (CFAA) enables the Forest Service to work with States, private landowners, and communities to address the full range of forest resources from urban street trees to large rural timber lands. The CFP recognizes that successful protection of community forests depends on engaged citizens. Their participation is equal in importance to the forests being protected. The CFP complements and builds upon other CFAA programs that focus on stewardship and education by providing the opportunity for communities to go a step further and directly acquire and manage forests. The CFP provides grant assistance directly to Indian tribes, local governments, or qualified nonprofit organizations; it is able to assist those entities that have demonstrated a sustained commitment to community forestry. Through public engagement, these entities are able to

articulate specific community needs that this program can meet and demonstrate that they have the capacity to manage a public asset such as a community forest.

Relationship to the Forest Legacy Program

There are now two land protection programs under the Cooperative Forestry Assistance Act, the Forest Legacy Program (FLP) codified at 16 U.S.C. 2103c and the CFP codified at 16 U.S.C. 2103d. Both the CFP and FLP provide financial assistance to partners to protect forest land that is threatened by conversion to nonforest uses and provide significant environmental, economic, and social benefits. The two programs are complementary; each engages unique partners and utilizes different tools for land protection. While a few projects may align with the intent of both programs, most projects will qualify for only one. An applicant is not allowed to submit a project application to both the CFP and FLP simultaneously.

The FLP provides grants to State agencies, though other units of government have partnered with the State agency on a few projects. The CFP provides grants directly to local governments, Indian tribes and qualified nonprofit organizations. The FLP allows for the acquisition of conservation easements or fee-simple titles, while the CFP permits only fee-simple acquisition of land as a community forest. While proponents of FLP are encouraged to coordinate with and obtain input from the public, such coordination is not a critical project selection criterion. In contrast, successful CFP projects will be evaluated on the extent of community involvement in the development and the long-term management of the community forest. While FLP encourages public access or other recreational opportunities, it is not a program requirement. In contrast, the CFP requires public access.

Relationship to the Urban and Community Forest Program

The Urban and Community Forestry (UCF) Program, authorized in the Cooperative Forestry Assistance Act (16 U.S.C. 2105), is a cooperative program of the Forest Service that encourages and promotes the creation of healthier, more livable communities; it is not a land protection or acquisition program like the CFP or FLP. UCF provides technical, financial, educational, and research assistance to communities, through its primary partner the State forestry agencies, to plan urban forestry programs and to plant, protect, maintain, and use wood from community trees and forests to maximize social, environmental, and economic benefits. The CFP provides grants directly to local governments, Indian tribes, and qualified nonprofits for fee-simple acquisition of land to establish community forests.

Community Forest Plan

The CFP requires communities to draft a community forest plan (§ 230.2 and § 230.4) as part of the application process. The draft community forest plan submitted with the application should be as specific as possible, but the Forest Service recognizes that the plan may not be finalized until after the project is closed. The community forest plan may build upon existing land management plans to meet the requirements of the CFP.

Landscape-Level Conservation Plans and the Community Forest Plan

The community forest plan can tier to an existing broader landscape-level plan. Applicants should start by using the landscape level plan most germane to the CFP project; examples of plans include community green infrastructure plans, community land use plans, Indian tribe's area of interest/homelands plans, and others as long as there are overlapping or shared goals. A Statewide Forest Resource Assessment and Strategy is an example of a land use plan that may also be useful. The Forest Service recommends that applicants contact their State Forester or equivalent official of the Indian tribe or Bureau of Indian Affairs to see if they may provide technical assistance during the development of a CFP application. Professional specialists, including foresters may also provide valuable assistance at the project development stage; however, the services of a professional specialist is not mandated by the program.

Grant recipients must submit a final community forest plan within 120 days of the title transferring to the grant recipient (§ 230.9). The community forest plan must be developed with community involvement and incorporate as much as possible the desires of the community. The draft community forest plan should describe the community that benefits from the community forest and what benefits the community forest will provide. The expectation is that there will be ongoing and meaningful community participation in plan development and revision; this could be through a standing advisory board or similar mechanism. The community is encouraged to periodically review and revise the community forest plan (§ 230.9).

Proximity to Community Requirements

The final rule does not impose a requirement on the proximity of the community forest to the benefitting community or on the size of the benefitting community (§ 230.4). The final rule will fund quality projects with active community participation.

Project Review and Selection Process

The Forest Service will conduct a review and ranking process to select projects for funding. The application process is outlined in § 230.3 of this final rule. Individual applications will be ranked according to criteria outlined in § 230.5 of this final rule. The Forest Service anticipates providing additional specificity on the review process, review criteria, and timelines in an annual Request for Applications (RFA).

Role of the State Forester or Equivalent Official of the Indian Tribe

Under the CFP, applications will be submitted to the State Forester (for local government and non profit organizations) or the equivalent official of the Indian tribe (for Indian tribes). As time and resources allow, these entities may conduct a general review of all applications submitted to them for eligibility and compatibility with landscape conservation efforts. The State Forester or equivalent official of the Indian tribe may provide technical assistance to applicants in the preparation of applications.

The final rule requires the State Forester or equivalent official of the Indian tribe to forward all CFP applications they receive to the Forest Service, but provides them with an opportunity to comment. Application review by State Foresters or equivalent officials of the Indian tribe is voluntary, but will be considered by the Forest Service. Such participation will not result in a transfer of responsibility for any aspect of the CFP project selection process to the State Forester or Indian tribes from the Forest Service.

While the Forest Service anticipates this intermediate step will add approximately 30 days to the review process, input from State Foresters or equivalent officials of the Indian tribes will be valuable in helping the Forest Service make final funding decisions.

Eligible Entities

The statute establishing the CFP states that only local governments, Indian tribes, and qualified nonprofit organizations are eligible to receive a grant through the CFP. The statute also

provides definitions for those three eligible organizations. Local governments are defined as municipal, county, and other local governments with jurisdiction over local land use decisions. Indian tribes are defined as prescribed by Section 4 of the Indian Self-Determination and Education Assistance Act (U.S.C. 450b), which includes federally recognized Indian tribes and Alaska Native Corporations. Finally, qualified nonprofit organizations are defined as charities described in the Internal Revenue Code of 1986 26 USCS § 170(h)(3) which operates in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A). A conservation purpose is defined as the preservation of land for outdoor recreation or education, protection of natural habitat or ecosystems, preservation of open space, and preservation of historic lands or structures. Consistent with regulations of the Internal Revenue Service (26 CFR 1.170A–14(c)(1)) qualified nonprofit organizations must also have a commitment to protect in perpetuity, the purposes for which the tract was acquired under the CFP, and demonstrate that they have the resources to enforce the protection of the property as a community forest. In general, a land conservancy or land trust would be a typical organization that would be considered a qualified nonprofit organization under the authorizing statute of the CFP.

Ensuring Permanence of Community Forest Projects

In order to minimize the chances that the community forest is ever sold, or converted to nonforest uses or a use inconsistent with the CFP, the following three actions will be required of the grant recipient:

(1) Grant recipients will be required to record a Notice of Grant Requirements with the deed in the lands records of the local county or municipality.

(2) Grant recipients will define objectives for the use and management of the community forest in the required community forest plan. Because the size, condition, and possible uses of community forests under this program could be quite varied, the community forest plan will identify forest uses for the property. In order to guide compliance with the requirements of the CFP, ''nonforest uses'' is defined in § 230.2 of this final rule.

(3) Every five years, grant recipients will submit to the Forest Service a self certifying statement that the property has not been sold or converted to nonforest uses. In addition, the grant recipients will be subject to a spot check conducted by the Forest Service to verify that property acquired under the CFP has not been sold or converted to nonforest uses or a use inconsistent with the purpose of the CFP (§ 230.9).

In the statute establishing the CFP, Congress required that the grant recipient cannot sell the land or convert it to nonforest uses (Sec. 8003.e). In the event that these conditions are violated, the law requires that the grant recipient pay the Federal Government an amount equal to the greater of the current sale price or current appraised value of the land. An additional penalty is that the grant recipient that sells or converts a parcel acquired under the CFP will not be allowed to receive additional grants under the program. Ramifications for conversion to nonforest use or sale are discussed in § 230.9 ''Ownership Use and Requirements'' of this final rule.

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (''Uniform Act'') (42 U.S.C. 4601, *et seq.*) provides guidance and procedures for the acquisition of real property by the Federal government, including relocation benefits to displaced persons. Department of Transportation regulations implementing the Uniform Act (49 CFR part 24) have been adopted by the Department of Agriculture (7 CFR part 21). The CFP is deemed exempt from the Uniform Act because it meets the exemption criteria stated at 49 CFR 24.101(b)(1).

Federal Appraisal Standards

Section 7A(c)(4) of the Cooperative Forestry Assistance Act (16 U.S.C. 2103d(c)(4)), requires that land acquired under the CFP be appraised in accordance with the current *Uniform Appraisal Standards for Federal Land Acquisitions* developed by the Interagency Land Acquisition Conference (also known as the Yellow Book), hereafter referred to as the Federal Appraisal Standards, in order to determine the non-Federal share of the cost of a parcel of privately-owned forest land. The Federal Appraisal Standards are contained in a readily available public document (*http://www.justice.gov/enrd/3044.htm*). A grant recipient will be responsible for assuring that the appraisal of the CFP tract is done in conformance with the Federal Appraisal Standards. The Federal Appraisal Standards will be used to determine the market value for the purpose of determining CFP contribution and reimbursement for the non-Federal cost share. However, separate tracts donated for the purpose of providing the non-Federal cost share may be appraised using the Uniform Standards of Professional Appraisal Practice (USPAP) or the IRS regulations for a donation in land. The Forest Service will be available to advise applicants with the appraisal and associated appraisal review and will conduct spot checks to assure compliance with Federal Appraisal Standards.

Government-to-Government Consultation With Indian Tribes

Indian tribes were invited to consult on the CFP proposed rule prior to review and comment by the general public. The consultation process was initiated September 30, 2010. The Deputy Chief for State and Private Forestry sent a letter to the Forest Service regional leadership requesting that they initiate consultation. Each unit then initiated consultation with Indian tribes, providing them with information about the CFP, the proposed rule, how to request government-to-government consultation, and where to send comments. Consultation concluded March 7, 2011.

Three Indian tribes consulted with the Forest Service about the CFP, many Indian tribes discussed the CFP with Forest Service personnel, and three Indian tribes sent comments through the public comment process. Two regions of the United States Department of the Interior, Bureau of Indian Affairs (BIA) also sent comments through the public comment process. Indian tribe and BIA comments were analyzed separately from general public comments. The Forest Service incorporated the input received through consultation and the public comment process into the development of this final rule.

Indian Tribal Input and Agency Responses

The Authorizing Statute

The following comments suggested changes to the rule, but these points are governed by the authorizing statute Section 8003 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234; Stat. 2043) and are not within the discretion of the Forest Service. As a result, no changes will be made to the final rule.

Eligible Entities

Comment: Eligible entities should include Tribal Organizations—such as the Native American Land Conservancy, whose mission is ''to acquire and preserve our sacred lands''. We believe

inclusion of these types of tribal organizations is implied, as they are authorized by Tribal Governments through approval of Tribal Resolution to fulfill this mission. We strongly recommend the regulations clearly state that Tribal Organizations or Tribal Government Organizations can also apply under this program.

Response: ''Eligible entity'' is defined in the authorizing statute and, after consultation with the Office of General Counsel, the Forest Service interprets ''eligible entity'' to mean federally recognized Indian tribes and Alaska Native Corporations, local government entities, and qualified nonprofit organizations that are qualified to acquire and manage land. If a Tribal Organization meets these definitions, it would be an eligible entity. Tribal organizations that meet the definition of a ''qualified nonprofit organization'' would be an ''eligible entity.'' No change made to the final rule.

Eligible Lands

Comment: § 230.2 Definition: Expand the definition of community forest to include vacant, undeveloped, or underutilized developed lands because many lands that are sacred or important to Indian tribes that they would like to acquire may or may not be forested.

Response: Eligible land is described as ''private forest land'' by the authorizing statute; no change made to the final rule.

Conversion of Forest to Nonforest Land

Comment: Allow forest land to be converted to nonforest land.

Response: Conversion to nonforest land is a prohibited use in the authorizing statute; no change made to the final rule.

Trust Lands

Comment: Allow for the conversion of fee lands to Indian Trust.

Response: Conversion of fee lands into Indian Trust is a prohibited use in the authorizing statute; no change made to the final rule.

Comment: Because the program disallows placing CFP purchased land in Tribal trust, this requirement probably precludes Indian tribes from finding this program useful. In addition, the requirements of matching funds and inability to place in tribal trust lands essentially make the proposed program of very little use.

Response: The CFP authorizing statute prohibits CFP acquired lands to be transferred into Tribal trust lands. Financial gain from the community forest is possible through timber harvest and other land management practices. No change to the final rule.

General Comments

Comment: Following discussions on the possible uses of the CFP within our traditional territory, there is interest in potential utilization of the program once it is in place and final guidelines established.

Response: The Forest Service agrees that the CFP will be a valuable tool for all eligible entities; no change to the final rule.

Comment: Community benefits have a lot of application to tribal interests on their homelands.

Response: The Forest Service agrees that the benefits provided by community forests will be appreciated by communities; no change made to the final rule.

Comment: Our Indian tribe has no objection to the proposed CFP.

Response: None required; no change to the final rule.

Priority for Indian Tribes

Comment: Are Indian tribes on an even playing field with all other applicants? Provide priority to Indian tribes which have lost land base due to Federal land acquisitions in the past.

Response: The Forest Service will ensure that all applicants are ranked using the criteria in § 230.5 and are given an equal opportunity for funding. Indian tribes' specific concerns, such as loss of land base, may be described in the application, and the acquisition of the community forest should be discussed in the community benefits; no change to the final rule.

Department of the Interior (DOI) or Bureau of Indian Affairs (BIA) Appraisers

Comment: Could a DOI or BIA Federal Land Appraiser be used?

Response: If the appraiser is allowed by his or her agency and is qualified to conduct the appraisal as required in § 230.8 of the final rule, then a BIA or DOI appraiser could be used; no change made to final rule.

Comment: Include the BIA on ranking committee.

Response: The Forest Service will continue to engage BIA throughout implementation of the CFP. Composition of the ranking committee has yet to be decided. No change made to the final rule.

Tribal Area of Interest/Homeland

Comment: Tribal government documents/plans identify conservation needs and goals that apply to their area of interests/homelands. Would their area of interest/homelands equate to locality, state or region as defined in the proposed rule?

Response: Areas of interest/homelands would equate to locality, state or region as defined in the final rule; no change made to the final rule.

BIA's Indian Reservation Roads Program

Comment: The rule should require a public route be identified to Community Forest Program parcels through the BIA's Indian Reservation Roads (IRR) Program to ensure the public continues to have access to lands purchased with CFP funds by an Indian tribe. IRR routes must, by law, be accessible to the public.

Response: The issue is more appropriately addressed on a case by case basis in specific project grants; no change made to the final rule.

Public Access Restrictions for Tribal Ceremonies

Comment: Indian tribes or Tribal Organizations should have the authority to control access on lands acquired by a Indian tribe or Tribal Organization; could a management plan for a community forest owned by the Indian tribe provide opportunities for closing all or portions of a community forest for short durations (a few days to a few weeks) to allow culturally sensitive tribal ceremonies to take place at various times during a year undisturbed by non-tribal members?

Response: As long as reasonable public access is allowed, limited closures, which are outlined and explained in the community forest plan, to accommodate tribal ceremonies would be consistent with the definition of public access (§ 230.2).

Public Comments and Agency Responses

On January 6, 2011, the Forest Service published a notice of proposed rule and request for comment on 36 CFR part 230 in the **Federal Register** (76 FR 33344). During the comment period, which ended March 7, 2011, the Forest Service received 28 responses containing over 150 comments. Responses from Indian tribes, the agencies that work with them and government-to-government consultations were also received and analyzed separately (see ''Government-to-Government Consultation with Indian Tribes'' above and ''Consultation and Coordination with Indian Tribes'' in the ''Regulatory Certifications'' to follow).

Twenty respondents explicitly expressed support, sixteen respondents suggested minor revisions, one respondent objected to Federal spending for any new program, and one

respondent felt program funds should be spent on other Forest Service priorities.

The Authorizing Statute

Comment: § 230.2 Definition: Expand the definition of ''eligible entity'' to include a wider range of nonprofit organizations.

Response: ''Eligible entity'' is defined in the authorizing statute; no change made to the final rule.

Comment: § 230.2 Definition: Expand the definition of ''community forest'' to include vacant, undeveloped, or underutilized developed lands.

Response: The authorizing statute requires the Secretary to award grants to acquire private forest land, and no other land cover is eligible; no change made to the final rule.

Comment: § 230.3 Application process: The States should be able to limit the number of applications being submitted for funding from each State to prevent applications that do not meet program requirements.

Response: The authorizing statute requires the State Forester or equivalent official of the Indian tribe to submit a list that includes a description of each project submitted by an eligible entity. The Forest Service encourages States and equivalent official of the Indian tribe to review and comment on the applications, but will not require it; no change made to the final rule.

Comment: § 230.4 Application requirements: Delete the requirement for a draft community forest plan.

Response: A community forest plan is a requirement of the authorizing statute; no change made to the final rule.

Technical Assistance

Comment: § 230.10 Technical assistance funds: Provide for ongoing technical assistance as a component of the grants. Technical assistance will be called for in all stages of establishing and maintaining a community forest, and the funding structure should reflect this; the CFP should allow awarding of technical assistance funds to State Foresters/Tribal governments before CFP projects have been funded to help get the program started and develop competitive applications with partner communities; this program puts an increased workload and unfunded responsibility on the State Forester or equivalent Tribal Government official since technical assistance funding is only available for implementation after a grant is awarded in their jurisdiction; is it possible for States with projects submitted within their jurisdiction to be reimbursed for any technical assistance provided in helping applicants prepare proposals and draft community forest plans; could States be reimbursed for time spent providing technical assistance and/or processing on a ''per application'' basis?

Response: The authorizing statute limits funding for technical assistance to ''not more than 10 percent of all funds made available to carry out the Program for each fiscal year to State Foresters or equivalent officials (including equivalent officials of Indian tribes) for Program administration and technical assistance.'' The amount of funds available for technical assistance may not enable the Forest Service to reimburse State and Indian tribes for all technical assistance rendered both before and after the applications are submitted. Grant recipients should be prepared to incur the cost of ongoing maintenance and some cost associated with the application; no change made to the final rule.

Comment: Project costs should include dedicated, restricted funds for the long-term maintenance and management of community forests. Such funds should be allowable project and cost share costs.

Response: The authorizing statute only allows funds to be expended on acquiring land to establish community forests. Long term maintenance funds are the responsibility of the grant recipient; no change made to the final rule.

Comment: Provide adequate funding to communities for technical assistance. The program should be structured to make sure that grant recipients are made fully aware of the range of resources available to them through State forestry agencies—especially as they create and implement a community forest management plan.

Response: The Forest Service will help identify resources grant recipients can utilize when establishing their community forest. However, the authorizing statute does not provide funding for technical assistance directly to the community but rather funds go to States Foresters and equivalent officials of Indian tribes; no change made to the final rule.

Use of CFP Funds

Comment: The CFP should provide capacity building grants to establish new community forests.

Response: Capacity building grants are outside scope of this program by statute; no change made to the final rule.

Comment: The CFP should provide funding for the following two efforts as part of the upcoming program: 1. Tree and forest resource inventories; 2. Operations and maintenance funding.

Response: These activities are outside the scope of this program; no change made to the final rule.

Penalties

Comment: Allow forest land to be converted to nonforest land.

Response: The authorizing statute specifies a penalty for converting the forests to nonforest uses; no change made to the final rule.

Comment: Strengthen the penalties for selling or converting CFP acquired lands to nonforest uses to help discourage sale or conversion to nonforest uses.

Response: The penalties for selling or converting CFP acquired lands are defined in the authorizing statute; no change made to the final rule.

Support for the Proposed Rule

Comment: Twenty respondents expressed support for the Community Forest Program

Response: None required; no change made to the final rule.

General Comments

Comment: Ten comments from six respondents identified program benefits:

- Creates many more community forests nationwide
- Increases green space and enhances the health of any community
- Develops a broader appreciation for the importance of our Country's forests among youth and citizens of all ages
- Keeps people connected to our forest heritage by sustaining timber management, protecting forest-based natural resources like water and wildlife, providing model forests to educate private landowners, and providing a natural setting for youth recreation and education
- Encourages the incorporation of environmental education into community institutions
- Provides much needed resources for forest conservation on the local level through local government and land trust partners
- Conserves threatened forestlands that can meet locally-identified community needs for natural resource protection, economic development, and public connections to the land. Community forests, whether owned by a local government, Indian tribe, or nonprofit organization, have a strong track record of engaging a broad range of citizens in forest conservation, stewardship, and governance. Where situated near Federal and State lands, establishment of community forests can foster new collaboration across

boundaries to achieve landscape-level management objectives

• The option to develop community forests under nonprofit ownership can be particularly valuable when a local government desires community-based conservation of a tract but does not have the capacity to effectively oversee management and governance issues for a community forest

• Creates potentially tens of thousands of jobs nationwide, provides significant environmental benefits and spurs economic growth in regions that are suffering greatly from job losses, environmental degradation and rising health costs due to obesity and other environmental related illnesses such as asthma. Furthermore, the program would provide communities an opportunity to study urban forest ecology from its genesis and to develop models to be used in urban forests in the 21st century

Response: None required; no change made to the final rule.

Comment: Once created, community forests could sell environmental credits to help defray longer term operation and maintenance costs.

Response: The buying and selling of environmental credits is an evolving practice and may be subject to regulation by other Federal or State agencies. All community forest projects would need to be compliant with those regulations and the CFP regulation; therefore, no change made to the final rule.

Comment: Augment the funding for Forest Legacy Program administration funds and allow those funds to be used for both programs (Forest Legacy and CFP).

Response: Funds authorized for one program cannot be used for another. Use of Forest Legacy Program dollars for the CFP would constitute misappropriation of funds; no change made to final rule.

Comment: Make monitoring requirements for new community forests more stringent by increasing the number of spot checks and develop a schedule in order to improve accountability.

Response: Each community forest will have unique monitoring needs, and the Forest Service believes that the notice of grant agreement, self certification every five years, and spot checks identified in the final rule are sufficient project oversight; no change made to final rule.

Comment: The CFP should identify a specific person or ''face'' for the program so that communities and supporting institutions will know who to contact when they need assistance and information about the program.

Response: The CFP Web site (*http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml*) will have current CFP contact information, and the Forest Service will make available information about the program; no change made to final rule.

Comment: A requirement for native species regeneration would be appropriate.

Response: Such a requirement may or may not be appropriate depending on goals and objectives of the community forest and, while encouraged, will be left to the discretion of the community; no change made to final rule.

Comment: Divert funds or resources from existing Forest Service programs for the CFP.

Response: The CFP is subject to annual appropriations by Congress, which will specify the amount of funds for the program. Funds authorized for one program cannot be used for another; no change made to final rule.

Comment: Final community forest plans should have an approval requirement by either the Forest Service or the State.

Response: The purpose of the community forest plan is to document and maximize the community benefits identified by the community. Therefore, the community developing the community forest plan should approve it. The community forest plan will be consulted during spot checks to ensure consistency with the program; no change made to final rule.

Comment: Use the Forest Resources Coordinating Committee (FRCC), established in the 2008 Farm Bill, to establish ranking criteria for the CFP.

Response: The FRCC focuses on private forest conservation issues which are not necessarily the only issues of concern for community forests; no change made to final rule.

Comment: The term ''landscape conservation initiative'' is not widely interpreted as inclusive of a town plan or similar conservation plan at the local level; clarify how to tie CFP projects to a landscape level conservation initiative.

Response: Applicants should use the landscape level plan most germane to their CFP project. The definition of landscape conservation initiative was revised in the final rule and changed the order of the ranking criteria in § 230.5 Ranking criteria and proposal selection.

Comment: Clarify the differences between the CFP and the Forest Legacy Program.

Response: The Forest Service felt this was an important clarification; added comparison of the CFP and Forest Legacy Program to the preamble of the final rule.

Comment: Add a ranking criterion for local governments which recognizes a community's sustained commitment to their urban and community forests (e.g., as demonstrated through Tree City USA or other public recognition programs, hiring of city foresters, establishment of tree boards) and the community's ability to manage the community forest after it is acquired through the program.

Response: While this criterion would work well for local governments' applications, it would not fit for applications submitted by qualified nonprofit organizations and some Indian tribes; no change made to final rule.

Comment: Training may be required to build capacity within the State Foresters' offices, and flexibility should be built into the implementation of this component to see whether this system works or not, and how to implement it effectively across the States.

Response: The Forest Service is willing to provide CFP information to State Foresters, Indian tribes, and eligible entities in a variety of formats.

Suggested Edits and Agency Responses

Numerous changes were made to the preamble and or final rule to clarify aspects of the program and address questions raised by respondents (*italicized text* was added;):

Comment: A number of comments proposed expanding eligible lands to include nonforested and developed land to achieve open space conservation.

Response: The Forest Service refers to this program as the ''Community Forest Program'' or ''CFP'' throughout this rule, as opposed to the ''Community Forest and Open Space Conservation Program.'' The authorizing statute limits eligible lands to currently forested lands, precluding nonforested lands from consideration. To avoid future confusion regarding nonforested open space, the Forest Service will begin to colloquially refer to the program as the Community Forest Program or CFP.

Section 230.2 Definitions

Comment: Depending on how the term borrowed funds is defined, cost share contributions from bonded sources may or may not be eligible.

Response: The Forest Service agrees that there was a need to clarify the definition of borrowed funds as a cost share; reworded the definition to read ''*Funds used for the purpose of cost share which would encumber the subject property, in whole or in part, to another party.*'' The prohibition against borrowed funds is intended to protect the Federal investment and the community forest property from foreclosure. Bonds issued by units of government would be allowed because

failure to honor those debts would not likely put the community forest at risk and these funding mechanisms are commonly used to finance land purchases.

Comment: Concerns were raised that there are a variety of formal and informal educational benefits that can be linked to community forests not specifically mentioned in the proposed rule; community forests also help provide clean air as well as clean water.

Response: The Forest Service felt this was a valuable addition and amended definition of ''Community benefits'' (2) to read ''Environmental benefits, including clean *air and* water, storm water management, and wildlife habitat;'' and (3) to read ''Benefits from forest-based *experiential* education programs, including *K–12 conservation education programs; vocational education programs; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.* in final rule.

Comment: Respondents proposed alternative definitions of ''forest lands;'' and questioned if the definitions included prospective reforested or afforested acreage (prohibited by statute), or included the mangrove forest type.

Response: The number of comments related to the definition of forest lands made it clear that some additional clarification was necessary. A number of alternative definitions were considered, and the Forest Service decided to amend the definition of ''Forest lands'' to read ''Lands that are at least five acres in size, suitable to sustain natural vegetation, and at least 75% forested. *Forests are determined both by the presence of trees and the absence of other prevailing land uses.''*

Comment: Clarify the term ''Landscape conservation initiative'' by stating that conservation or management plans or activities identify conservation needs and goals of a locality, state, or region. Conservation goals identified need to correspond with the community and environmental benefits outlined for the CFP.

Response: The Forest Service felt that this was a valuable clarification, adopted proposed language in both the preamble explanatory text and the final rule. Examples of initiatives include green infrastructure plans, a community or county land use plan, Indian tribe's area of interest/homelands plans, a Statewide Forest Resource Assessment and Strategy, etc.

Comment: Definition of ''nonforest uses'': The exclusion of mining is in conflict with the common use of rock quarries on forestland necessary to maintain roads essential to working forest operations. Many private forest lands have mineral rights retained by previous owners, and this aspect of the rule would eliminate many good projects from consideration; definition of nonforest uses should distinguish between smaller, community-based industrial uses that support sustainable forest management, and large-scale, industrial uses that would dramatically alter the character of the land.

Response: The Forest Service felt that this was a valuable clarification consistent with the purpose of the CFP; amended ''nonforest uses'' to read ''Activities that threaten forest cover and are inconsistent with the community forest plan, and include the following: (3) Mining and nonrenewable resource extraction, except for activities that would not require surface disturbance of the community forest such as offsite directional drilling for oil and gas development *or onsite use of gravel from existing gravel pits* * * * (6) Structures and facilities, except for compatible recreational facilities, concession and educational kiosks, energy development for onsite use, *facilities associated with appropriate forest management,* and parking areas. Said structures, facilities and parking areas must have minimal impacts to forest and water resources.''

Section 230.3 Application Process

Role of Professional Forester, State Forester or Equivalent Official of the Indian Tribe

Comment: A number of comments requested clarification or suggested either increasing or decreasing the role of State Foresters, Indian tribe officials, or professional foresters.

Response: All applicants are encouraged to consult with their State Forester or equivalent official of the Indian tribe, but the final rule does not require professional consultation. To address the comments, the final rule was changed to state that the State Forester's review would be based on available time and resources. In addition, the State Forester's review was clarified to include determining eligibility of the applicant and the land, confirming that the project is not also being proposed for funding through the Forest Legacy Program, and identifying if the project is part of a larger conservation initiative.

Section 230.5 Ranking Criteria and Proposal Selection

Comment: Remove (a)(2) ''An application with a subject property that makes a substantial contribution to a landscape conservation initiative. A landscape conservation initiative, as defined in this rule, is a landscape-level conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region,''

Response: The Forest Service felt that this was an appropriate edit as this criteria was already listed and the revised order of the criteria was consistent with the purpose of the CFP; deleted (a)(2) language in ''§ 230.5 Ranking Criteria and Proposal Selection'' of the final rule.

Section 230.6 Project Costs and Cost Share Requirements

Comment: A typical source of cost share contribution is likely to be in the form of bonded monies. Depending on how the term borrowed funds is defined, cost share contributions from bonded sources may or may not be eligible; we urge you to find a mechanism (such as subordination agreements) to allow local governments and qualified conservation organizations to engage local individual investors in purchasing property that would contribute to the match requirements for USFS Community Forest projects. Provision in the legislation for a subordination agreement, or other arrangement perhaps unacceptable to a commercial lending institution, would still enable interested individuals to work with local entities and the USFS to preserve working forest; nonprofit organizations sometime pursue bank loans to allow them to protect properties in a timely manner (e.g., during ''stop gap'' acquisitions) until they can raise the necessary funds through capital campaigns or other fundraising activities. Monies from such loans contribute directly to the land acquisitions, they are accountable, and they should therefore be allowed as cost share.

Response: The Forest Service determined that borrowed funds for the purpose of this rule are funds used for the purpose of cost share, which would encumber the subject property, in whole or in part, to another party. The prohibition against borrowed funds is intended to protect the Federal investment and the community forest property from foreclosure. Bonds issued by units of government would be allowed since failure to honor those

debts would not likely put the community forest at risk and these funding mechanisms are commonly used to finance land purchases; reworded the definition of borrowed funds.

Comment: Amend (e) ''Cost share contributions may include the purchase or donation of lands located within the community forest as long as it is provided by an eligible entity and legally dedicated to perpetual land conservation consistent with CFP objectives'' to include ''*such donations need to meet the requirements specified under § 230.8 Acquisition requirements (a)(1)(ii).''*

Response: The Forest Service felt that this was a valuable clarification; adopted proposed language in final rule.

Section 230.7 Grant Requirements

Comment: A grantee may need more than two years to complete the project and proposed the following language change to (c) as follows ''The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process.''

Response: The Forest Service felt that the proposed change was consistent with the purpose of the CFP and provided the program with additional flexibility; adopted proposed language in final rule.

Regulatory Certifications

Regulatory Planning and Review

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

A Cost Benefit Analysis has been completed and emphasizes that the benefits for each established forest will vary, depending on characteristics of the forest land, the community, and the management objectives. Where these forests are located will also be dependent on the communities that support them; therefore, they could occur in communities from rural to urban. Because there will be diversity among forests and among their benefits, this analysis used qualitative, as well as quantitative, methods to describe the potential benefits and costs of the CFP.

The primary cost of the CFP is the acquisition of the land itself. Additionally, the transfer of lands out of private ownership may reduce the tax base, or result in forgone economic benefits offered by development. The analysis assumed that development and associated activity will be established elsewhere without resulting in forestland conservation and the opportunity cost of lower economic activity will be off-set by the benefits provided by the community forest, such that the main analyzed costs are the cost of the acquisition and the tax revenue foregone by the local government unit. These costs were compared with the largely intangible benefits of protecting forest land, such as environmental goods and services from the land and nonmarket valued amenities, such as scenic views, but also included the economic value of retaining an active working forest in the local economy. Qualitative and quantitative evidence supported the assertion that community forests provide many benefits to communities, especially in areas threatened by conversion of private forest land.

This final rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor adversely affect State or local governments. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues.

Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs. This final rule does not regulate the private use of land or the conduct of business. It is a grant program to local governments, Indian tribes, and qualified nonprofit organizations for purposes of acquiring land in fee-simple for resource conservation and open space preservation. By providing funding to eligible entities for land acquisition, the Federal Government will promote a variety of benefits from sustainable forest management including, but not limited to: Economic benefits such as timber and non-timber products; environmental benefits, including clean air and water, stormwater management, and wildlife habitat; benefits from forest-based experiential learning, including K–12 conservation education programs, vocational education programs in disciplines such as forestry and environmental biology, and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.; benefits from serving as replicable models of effective forest stewardship for private landowners; recreational benefits such as hiking, hunting and fishing secured through public access.

The acquisition of land by eligible entities may affect the local real property tax base, depending on applicable state law and the tax status of the acquiring entity. The possible impact on the real property tax base cannot be ascertained, but it is assumed that any land going from taxable to nontaxable status would cause a commensurate shifting of the tax burden to other taxable properties or, alternatively, a reduction in local tax revenues.

The CFP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. The program is voluntary for each participating eligible entity.

Project Compliance With the National Environmental Policy Act

Project grants are subject to National Environmental Policy Act (NEPA) and must comply with agency NEPA implementing procedures as described in 40 CFR parts 1500–1508 as well as the Council on Environmental Quality's NEPA procedures at 40 CFR parts 1500–1508. CFP grants are to be used for transferring title and ownership of private lands to third parties and will not fund any ground-disturbing activities. The Forest Service has concluded that CFP grants fall under the categorical exclusion provided in the Forest Service's NEPA procedures for ''acquisition of land or interest in land'' 36 CFR 220.6(d)(6); 73 FR 43084 (July 24, 2008). As a result, CFP project grants are excluded from documentation in an environmental assessment or environmental impact statement.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding property considerations of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996. The Forest Service consulted with the Small Business Administration which concurred that the final rule for voluntary participation in the CFP does not impose significant direct costs on

small entities. This final rule imposes no additional requirements on the affected public. Entities most likely affected by this final rule are the local governments, qualified nonprofit organizations, and Indian tribes eligible to receive a grant through the CFP. The minimum requirements on small entities imposed by this final rule are necessary to protect the public interest, are not administratively burdensome or costly to meet, and are within the capabilities of small entities to perform. It does not compel the expenditure of $100 million or more by any State, local or Indian tribal government, or anyone in the private sector.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), signed into law on March 22, 1995, the Agency has assessed the effects of this final rule on State, local, and Indian Tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local or Indian tribal governments, or anyone in the private sector. Therefore, a statement under Section 202 of that Act is not required.

Federalism

The Forest Service has considered this final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Forest Service has determined that the rule conforms to the federalism principles set out in these Executive Orders. The rule would not impose any compliance costs on the States other than those imposed by statute, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on the proposed rule, additional consultation with State and local governments was determined to not be necessary.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the Forest Service requested and received an approval of a new information collection.

OMB Number: 0596—New

Comments were sought on the information collection aspect of this rule at the proposed rule stage; none were received.

Consultations and Coordination With Indian Tribes

This final rule has tribal implications as defined in Executive Order 13175. Section 7A(a)(1) of the Cooperative Forestry Assistance Act establishes that Indian tribes as defined by Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) are eligible entities to participate in the CFP.

Indian tribes were invited to consult on the CFP proposed rule prior to review and comment by the general public. The consultation process was initiated September 30, 2010. The Deputy Chief for State and Private Forestry sent a letter to Forest Service regional leadership requesting that they initiate consultation. Each unit then initiated consultation with Indian tribes, providing them with information about the CFP, the proposed rule, how to request government-to-government consultation, and where to send comments. Consultation concluded March 7, 2011.

Three Indian tribes consulted with the Forest Service about the CFP, many Indian tribes discussed the CFP with Forest Service personnel, and three Indian tribes sent comments through the public comment process. Two regions of the United States Department of the Interior, Bureau of Indian Affairs (BIA) also sent comments through the public comment process. Indian tribal and BIA comments were analyzed separately from general public comments. The Forest Service incorporated the input received through consultation and the public comment process into the development of this final rule.

Through consultation and comments a number of Indian tribes questioned if they are on an even playing field with all other applicants, and asked if the CFP would provide priority to Indian tribes which have lost land base due to Federal land acquisitions in the past. The Forest Service will ensure that all applicants are given an equal opportunity. Specific tribal concerns, such as loss of land base, may be described in the application.

The Agency has determined that the CFP does not impose substantial direct compliance costs on Indian tribes. This rule does not mandate Indian tribe participation in the CFP, but does ensure they have an opportunity to apply. A more complete summary of tribal consultation may be found in the preamble of this rule, under ''Government to Government Consultation with Indian Tribes''.

No Takings Implementations

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and the Forest Service has been determined that the final rule does not pose the risk of a taking of constitutionally protected private property. This final rule implements a program to assist eligible entities to acquire land from willing landowners. Any land use restrictions are voluntarily undertaken by program participants.

Environmental Impact

The Forest Service has determined that this final rule falls under the categorical exclusion provided in Forest Service regulations on National Environmental Policy Act procedures. Such procedures exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions.'' 36 CFR 220.6(d)(2); 73 FR 43084 (July 24, 2008). This final rule outlines the programmatic implementation of the CFP and has no direct effect on Forest Service decisions for its land management activities or on ground disturbing activities conducted by third-party entities.

Energy Effects

This final rule was reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It was determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Forest Service did not identify any State or local laws or regulations that are in conflict with this final rule or that would impede full implementation of this final rule. Nevertheless, in the event that such a conflict is identified, the final rule would not preempt the State or local laws or regulations found to be in conflict. Further, in that case, no retroactive effect would be given to this rule. The Forest Service would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 230

Grant programs, Grants administration, Community forest, State and local governments, Indian tribes,

Nonprofit organizations, Conservation, Forests and forest products, Land sales.

For the reasons set forth in the preamble, the Forest Service hereby amends part 230 of Title 36 of the Code of Federal Regulations by revising subpart A to read as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

■ 1. The authority citation for part 230 is revised to read as follows:

Authority: 16 U.S.C. 2103(d) & 2109(e).

■ 2. Revise Subpart A to read as follows.

Subpart A—Community Forest and Open Space Conservation Program

Sec.

230.1 Purpose and scope.
230.2 Definitions.
230.3 Application process.
230.4 Application requirements.
230.5 Ranking criteria and proposal selection.
230.6 Project costs and cost share requirements.
230.7 Grant requirements.
230.8 Acquisition requirements.
230.9 Ownership and use requirements.
230.10 Technical assistance funds.

Subpart A—Community Forest and Open Space Conservation Program

§ 230.1 Purpose and scope.

(a) The regulations of this subpart govern the rules and procedures for the Community Forest and Open Space Conservation Program (CFP), established under Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). Under the CFP, the Secretary of Agriculture, acting through the Chief of the Forest Service, awards grants to local governments, Indian tribes, and qualified nonprofit organizations to establish community forests for community benefits by acquiring and protecting private forestlands.

(b) The CFP applies to eligible entities within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the territories and possessions of the United States.

§ 230.2 Definitions.

The terms used in this subpart are defined as follows:

Borrowed funds. Funds used for the purpose of cost share which would encumber the subject property, in whole or in part, to another party.

Community benefits. One or more of the following:

(1) Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;

(2) Environmental benefits, including clean air and water, stormwater management, and wildlife habitat;

(3) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.;

(4) Benefits from serving as replicable models of effective forest stewardship for private landowners; and,

(5) Recreational benefits such as hiking, hunting and fishing secured with public access.

Community forest. Forest land owned in fee-simple by an eligible entity that provides public access and is managed to provide community benefits pursuant to a community forest plan.

Community forest plan. A tract-specific plan that guides the management and use of a community forest, was developed with community involvement, and includes the following components:

(1) A description of the property, including acreage and county location, land use, forest type and vegetation cover;

(2) Objectives for the community forest;

(3) Community benefits to be achieved from the establishment of the community forest;

(4) Mechanisms promoting community involvement in the development and implementation of the community forest plan;

(5) Implementation strategies for achieving community forest plan objectives;

(6) Plans for the utilization or demolition of existing structures and proposed needs for further improvements;

(7) Planned public access, including proposed limitations to protect cultural or natural resources, or public health and safety. In addition, local governments and qualified nonprofits need to provide a rationale for any proposed limitations; and

(8) A description for the long-term use and management of the property.

Eligible entity. A local governmental entity, Indian tribe, or a qualified nonprofit organization that is qualified to acquire and manage land.

Eligible lands. Private forest lands that:

(1) Are threatened by conversion to nonforest uses;

(2) Are not lands held in trust by the United States; and

(3) If acquired by an eligible entity, can provide defined community benefits under the CFP and allow public access.

Equivalent officials of Indian tribes. An individual designated and authorized by the Indian tribe.

Federal appraisal standards. The current *Uniform Appraisal Standards for Federal Land Acquisitions* developed by the Interagency Land Acquisition Conference (also known as the yellow book).

Fee-simple. Absolute interest in real property, versus a partial interest such as a conservation easement.

Forest lands. Lands that are at least five acres in size, suitable to sustain natural vegetation, and at least 75 percent forested. Forests are determined both by the presence of trees and the absence of nonforest uses.

Grant recipient: An eligible entity that receives a grant from the U.S. Forest Service through the CFP.

Indian tribe. Defined by Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); for purposes of this rule, Indian tribe includes federally recognized Indian tribes and Alaska Native Corporations.

Landscape conservation initiative. A landscape conservation initiative, as defined in this final rule, is a landscape-level conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region. Examples of initiatives include community green infrastructure plans, a community or county land use plan, Indian tribe's area of interest/homelands plans, a Statewide Forest Resource Assessment and Strategy, etc. The conservation goals identified in the plan must correspond with the community and environmental benefits outlined for the CFP.

Local governmental entity. Any municipal government, county government, or other local government body with jurisdiction over local land use decisions as defined by Federal or State law.

Nonforest uses. Activities that threaten forest cover and are inconsistent with the community forest plan, and include the following:

(1) Subdivision;

(2) Residential development, except for a caretaker building;

(3) Mining and nonrenewable resource extraction, except for activities that would not require surface

disturbance of the community forest such as directional drilling for oil and gas development or onsite use of gravel from existing gravel pits;

(4) Industrial use, including the manufacturing of products;

(5) Commercial use, except for sustainable timber or other renewable resources, and limited compatible commercial activities to support cultural, recreational and educational use of the community forest by the public; and

(6) Structures and facilities, except for compatible recreational facilities, concession and educational kiosks, energy development for onsite use, facilities associated with appropriate forest management and parking areas; said structures, facilities and parking areas must have minimal impacts to forest and water resources.

Qualified nonprofit organization. Defined by the CFP authorizing statute (Pub. L. 110–234; 122 Stat. at 1281), an organization that is described in Section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)) and operates in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A) of that Code (26 U.S.C. 170(h)(4)(A)). For the purposes of the CFP, a qualified nonprofit organization must meet the following requirements:

(1) Consistent with regulations of the Internal Revenue Service at 26 CFR 1.170A–14(c)(1):

(i) Have a commitment to protect in perpetuity the purposes for which the tract was acquired under the CFP; and

(ii) Demonstrate that it has the resources to enforce the protection of the property as a community forest as a condition of acquiring a tract under the CFP.

(2) Operate primarily or substantially in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A) of I.R.S. code (26 U.S.C. 170(h)(4)(A)). Conservation purposes include:

(i) The preservation of land areas for outdoor recreation by, or for the education of, the general public,

(ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

(iv) The preservation of a historically important land area or a certified historic structure.

Public access. Access that is provided on a non-discriminatory basis at reasonable times and places, but may be limited to protect cultural and natural resources or public health and safety.

State Forester. The State employee who is responsible for administration and delivery of forestry assistance within a State, or equivalent official.

§ 230.3 Application process.

(a) The Forest Service will issue a national request for applications (RFA) for grants under the CFP. The RFA will be posted to *http://www.grants.gov* as well as other venues. The RFA will include the following information outlined in this final rule:

(1) The process for submitting an application;

(2) Application requirements (§ 230.4);

(3) Review process and criteria that will be used by the Forest Service (§ 230.5); and

(4) Other conditions determined appropriate by the Forest Service.

(b) Pursuant to the RFA, interested eligible entities will submit an application for program participation to:

(1) The State Forester or equivalent official, for applications by local governments and qualified nonprofit organizations, or

(2) The equivalent officials of the Indian tribe, for applications submitted by an Indian tribe.

(c) Interested eligible entities will also notify the Forest Service, pursuant to the RFA, when submitting an application to the State Forester or equivalent officials of the Indian tribe.

(d) The State Forester or equivalent official of the Indian tribe will forward all applications to the Forest Service, and, as time and resources allow:

(1) Provide a review of each application to help the Forest Service determine:

(i) That the applicant is an eligible entity;

(ii) That the land is eligible;

(iii) That the proposed project has not been submitted for funding consideration under the Forest Legacy Program; and

(iv) Whether the project contributes to a landscape conservation initiative.

(2) Describe what technical assistance provided through CFP they may render in support of implementing the proposed community forest project and an estimate of needed financial assistance (§ 230.10).

(e) A proposed application cannot be submitted for funding consideration simultaneously for both the CFP and the Forest Service's Forest Legacy Program (16 U.S.C. 2103c).

§ 230.4 Application requirements.

The following section outlines minimum application requirements, but the RFA may include additional requirements.

(a) Documentation verifying that the applicant is an eligible entity and that the proposed acquisition is of eligible lands.

(b) Applications must include the following regarding the property proposed for acquisition:

(1) A description of the property, including acreage and county location;

(2) A description of current land uses, including improvements;

(3) A description of forest type and vegetative cover;

(4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;

(5) A description of applicable zoning and other land use regulations affecting the property;

(6) Relationship of the property within and its contributions to a landscape conservation initiative; and

(7) A description of any threats of conversion to nonforest uses.

(c) Information regarding the proposed establishment of a community forest, including:

(1) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;

(2) A description of the community involvement to date in the planning of the community forest and of the community involvement anticipated in its long-term management;

(3) An identification of persons and organizations that support the project and their specific role in acquiring the land and establishing and managing the community forest; and

(4) A draft community forest plan. The eligible entity is encouraged to work with the State Forester or equivalent official of the Indian tribe for technical assistance when developing or updating the Community Forest Plan. In addition, the eligible entity is encouraged to work with technical specialists, such as professional foresters, recreation specialists, wildlife biologists, or outdoor education specialists, when developing the Community Forest Plan.

(d) Information regarding the proposed land acquisition, including:

(1) A proposed project budget (§ 230.6);

(2) The status of due diligence, including signed option or purchase and sale agreement, title search, minerals determination, and appraisal;

(3) Description and status of cost share (secure, pending, commitment letter, etc.) (§ 230.6);

(4) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;

(5) The proposed timeline for completing the acquisition and establishing the community forest; and

(6) Long term management costs and funding source(s).

(e) Applications must comply with the Uniform Federal Assistance Regulations (7 CFR part 3015).

(f) Applications must also include the forms required to process a Federal grant. Section 230.7 references the grant forms that must be included in the application and the specific administrative requirements that apply to the type of Federal grant used for this program.

§ 230.5 Ranking criteria and proposal selection.

(a) Using the criteria described below, to the extent practicable, the Forest Service will give priority to an application that maximizes the delivery of community benefits, as defined in this final rule, through a high degree of public participation; and

(b) The Forest Service will evaluate all applications received by the State Foresters or equivalent officials of the Indian tribe and award grants based on the following criteria:

(1) Type and extent of community benefits provided. Community benefits are defined in this final rule as:

(i) Economic benefits such as timber and non-timber products;

(ii) Environmental benefits, including clean air and water, stormwater management, and wildlife habitat;

(iii) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc;

(iv) Benefits from serving as replicable models of effective forest stewardship for private landowners; and

(v) Recreational benefits such as hiking, hunting and fishing secured through public access.

(2) Extent and nature of community engagement in the establishment and long-term management of the community forest;

(3) Amount of cost share leveraged;

(4) Extent to which the community forest contributes to a landscape conservation initiative;

(5) Extent of due diligence completed on the project, including cost share committed and status of appraisal;

(6) Likelihood that, unprotected, the property would be converted to nonforest uses;

(7) Costs to the Federal government; and

(8) Additional considerations as may be outlined in the RFA.

§ 230.6 Project costs and cost share requirements.

(a) The CFP Federal contribution cannot exceed 50 percent of the total project costs.

(b) Allowable project and cost share costs will include the purchase price and the following transactional costs associated with the acquisition: appraisals and appraisal reviews, land surveys, legal and closing costs, development of the community forest plan, and title examination. The following principles and procedures will determine allowable costs for grants:

(1) For local and Indian tribal governments, refer to 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87) .

(2) For qualified nonprofit organizations, refer to 2 CFR Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A–122).

(c) Project costs do not include the following:

(1) Long-term operations, maintenance, and management of the land;

(2) Construction of buildings or recreational facilities;

(3) Research;

(4) Existing liens or taxes owed; and

(5) Costs associated with preparation of the application, except any allowable project costs specified in section 230.6(b) completed as part of the application.

(d) Cost share contributions can include cash, in-kind services, or donations and must meet the following requirements:

(1) Be supported by grant regulations described above;

(2) Not include other Federal funds unless specifically authorized by Federal statute;

(3) Not include non-Federal funds used as cost share for other Federal programs;

(4) Not include funds used to satisfy mandatory or compensatory mitigation requirements under a Federal regulation, such as the Clean Water Act, the River and Harbor Act, or the Endangered Species Act;

(5) Not include borrowed funds; and

(6) Be accomplished within the grant period.

(e) Cost share contributions may include the purchase or donation of lands located within the community forest as long as it is provided by an eligible entity and legally dedicated to perpetual land conservation consistent with CFP program objectives; such donations need to meet the requirements specified under § 230.8 Acquisition requirements (a)(1)(ii).

(f) For the purposes of calculating the cost share contribution, the grant recipient may request the inclusion of project due diligence costs, such as title review and appraisals, that were incurred prior to issuance of the grant. These pre-award costs may occur up to one year prior to the issuance of the grant, but cannot include the purchase of CFP land, including cost share tracts.

§ 230.7 Grant requirements.

(a) The following grant forms and supporting materials must be included in the application:

(1) An Application for Federal Assistance (Standard Form 424);

(2) Budget information (Standard Form SF 424c—Construction Programs);

(3) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d—Construction Programs); and

(4) Additional forms, as may be required.

(b) Once an application is selected, funding will be obligated to the grant recipient through a grant.

(c) The initial grant period will be two years, and acquisition of lands should occur within that timeframe. The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process.

(d) The grant paperwork must adhere to grant requirements listed below:

(1) Local and Indian tribal governments should refer to 2 CFR Part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87) and 7 CFR Part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for directions.

(2) Nonprofit organizations should refer to 2 CFR Part 215 Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations (OMB Circular A–110) and 7 CFR Part 3019 Uniform Administrative Requirements

for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations for directions.

(e) Forest Service must approve any amendment to a proposal or request to reallocate funding within a grant proposal. If negotiations on a selected project fail, the applicant cannot substitute an alternative site.

(f) The grant recipient must comply with the requirements in § 230.8 before funds will be released.

(g) After the project has closed, as a requirement of the grant, grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile: a digital, vector-based storage format for storing geometric location and associated attribute information, of CFP project tracts and cost share tracts, if applicable.

(h) Any funds not expended within the grant period must be de-obligated and revert to the Forest Service for redistribution.

(i) All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through the CFP.

§ 230.8 Acquisition requirements.

(a) Grant recipients participating in the CFP must complete the following, which applies to all tracts, including cost share tracts:

(1) Complete an appraisal:

(i) For lands purchased with CFP funds, the appraisal must comply with Federal Appraisal Standards prior to the release of the grant funds. The grant recipient must provide documentation that the appraisal and associated appraisal review were conducted in a manner consistent with the Federal appraisal standards.

(ii) For donated cost share tracts, the market value must be determined by an independent appraiser. The value needs to be documented by a responsible official of the party to which the property is donated.

(2) Prior to closing, notify the landowner in writing of the appraised value of the property and that the sale is voluntary. If the grant recipient has a voluntary option for less than appraised value, they do not have to renegotiate the agreement.

(3) Purchase all surface and subsurface mineral rights, whenever possible. However, if severed mineral rights cannot be obtained, then the grant recipient must follow the retention of qualified mineral interest requirements outlined in the Internal Revenue Service regulations (26 CFR 1.170A–14 (g)(4)), which address both surface and subsurface minerals.

(4) Ensure that title to lands acquired conforms to title standards applicable to State land acquisitions where the land is located:

(i) Title to lands acquired using CFP funds must not be subject to encumbrances or agreements of any kind that would be contrary to the purpose of the CFP.

(ii) Title insurance must not be a substitute for acceptable title.

(5) Record with the deed in the lands record of the local county or municipality, a Notice of Grant Requirement, which includes the following:

(i) States that the property (including cost share tracts) was purchased with CFP funds;

(ii) Provides a legal description;

(iii) Identifies the name and address of the grant recipient who is the authorized title holder;

(iv) States the purpose of the CFP;

(v) References the Grant Agreement with the Forest Service (title and agreement number) and the address where it is kept on file;

(vi) States that the grant recipient confirms its obligation to manage the interest in real property pursuant to the grant, the Community Forest Plan, and the purpose of the CFP;

(vii) States that the grant recipient will not convey or encumber the interest in real property, in whole or in part, to another party; and

(viii) States that the grant recipient will manage the interest in real property consistent with the purpose of the CFP.

§ 230.9 Ownership and use requirements.

(a) Grant recipient shall complete the final community forest plan within 120 days of the land acquisition, and must update the plan periodically to guide the management and the community benefits of the community forest.

(b) Grant recipient shall provide appropriate public access.

(c) In the event that a grant recipient sells or converts to nonforest uses or a use inconsistent with the purpose of the CFP, a parcel of land acquired under the CFP, the grant recipient shall:

(1) Pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater; and

(2) Not be eligible for additional grants under the CFP.

(d) For Indian tribes, land acquired using a grant provided under the CFP must not be sold, converted to nonforest uses or a use inconsistent with the purpose of the CFP, or converted to land held in trust by the United States on behalf of any Indian tribe.

(e) Every five years, the grant recipients will submit to the Forest Service a self-certifying statement that the property has not been sold or converted to nonforest uses or a use inconsistent with the purpose of the CFP.

(f) Grant recipients will be subject to a spot check conducted by the Forest Service to verify that property acquired under the CFP has not been sold or converted to nonforest uses or a use inconsistent with the purpose of the CFP.

§ 230.10 Technical assistance funds.

CFP technical assistance funds may be provided to State Foresters or equivalent officials of Indian tribes through an administrative grant to help implement community forest projects funded through the CFP, and as a result, funds will only be provided to States or Indian tribes with a CFP project funded within their jurisdiction. Section 7A (f) of the authorizing statute limits the funds made available for program administration and technical assistance to no more than 10% of all funds made available to carry out the program for each fiscal year.

Dated: October 14, 2011.

Arthur L. Blazer,

Deputy Under Secretary, NRE.

[FR Doc. 2011–27117 Filed 10–17–11; 4:15 pm]

BILLING CODE 3410–11–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AN95

Sharing Information Between the Department of Veterans Affairs and the Department of Defense

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulation pertaining to the applicability of certain VA regulations that restrict the disclosure of certain medical information to the Department of Defense (DoD). This interim final rule removes a restriction that is not required by the applicable statute, 38 U.S.C. 7332(e), and is inconsistent with the intent and purpose of that statute.

DATES: *Effective Date:* This interim final rule is effective October 20, 2011. Comments must be received by VA on or before December 19, 2011.

ADDRESSES: Written comments may be submitted through *www.*

Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AN95—Sharing Information between the Department of Veterans Affairs and the Department of Defense.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration Privacy Officer, Office of Information (19F2), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC, 20420, (704) 245–2492. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 7332(a)(1) of title 38, United States Code, affords special protection against the disclosure of VA medical ''[r]ecords of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia.'' However, an exception in section 7332(e) states: ''The prohibitions of this section shall not prevent any interchange of records-(1) within and among those components of [VA] furnishing health care to veterans, or determining eligibility for benefits under this title; or (2) between such components furnishing health care to veterans and the Armed Forces.''

VA implemented section 7332(e) in 38 CFR 1.461(c)(1); however, in so doing, we did not implement the specific exception that Congress provided in the statute for the exchange of information between VA and DoD. Instead, we imposed an additional restriction on the scope of information that may be interchanged and shared between VA and DoD, limiting it to only ''information pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice.'' This restriction is narrower than the statutory restriction, and it impedes VA's ability to share with DoD important medical information pertaining to veterans, so that we can coordinate their care and treatment. Our need to share this information is critical to the health and well-being of our veterans, particularly those whose records are transferred electronically between DoD and VA for medical care. Medical care requires the ability to make accurate and informed decisions, often under great time constraints. VA and DoD clinicians must have the most accurate and comprehensive data available to ensure that they provide the highest quality care possible. VA and DoD have made great strides in ensuring that the exchange of medical information regarding current and former members of the military is available wherever the care is being provided. We have discovered that, particularly in this age of electronic health records, this regulatory restriction creates an impediment to maximizing the exchange of information. Critical medical history may be out of reach of the clinician treating a patient with a chronic condition. In contrast, having a fully developed medical record will ensure that VA and DoD clinicians avoid allergic reactions from known drug allergies and negative interactions of a new drug with one previously prescribed. It will also ensure that patients will not unnecessarily undergo medical procedures that were already performed elsewhere.

Further, the additional restriction impedes VA's ability to fully engage in Presidential- and Congressional-supported interoperability initiatives with DoD, such as electronic health record initiatives pursuant to Executive Order 13335 and the Virtual Lifetime Electronic Record initiative, a strategic initiative that will ensure timely access to key electronic information on patients from the time they enter the military through their status as Veterans. We note as well that this regulatory limitation was not intended to have these negative results on VA's ability to provide comprehensive high-quality health care to veterans and, where applicable, to support DoD in similarly caring for servicemembers and military retirees. Therefore, the proposed amendment to 38 CFR 1.461(c)(1) will allow VA to fulfill Congress' clear intention that VA and DOD engage in the interchange of records while remaining consistent with 38 U.S.C. 7332.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(3)(B) and (d)(3), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for advance notice and public comment and good cause to publish this rule with an immediate effective date. As stated above, this interim final rule is necessary to eliminate an unnecessary regulatory restriction on VA's ability to share certain patient information with DoD that impedes VA's ability to provide needed health care to veterans and engage in critical programs with DoD, as described earlier in this notice. Delaying the effective date of this rule would negatively impact the full development and implementation of a VA and DoD electronic record system. Over 4 million patients are seen jointly by VA and DoD. By removing this unnecessary restriction, VA and DoD can each maximize the benefits of an electronic record system through which clinicians in either Department are able to access health data on those shared patients in real time and similar information exchanges for outpatient pharmacy and medication allergy data and for the electronic sharing of order entry and results retrieval of chemistry, hematology, anatomic pathology, and microbiology laboratory tests. To delay the effective date would hamper the electronic exchange of health information between VA and DoD, which, to ensure high levels of patient care and safety, must include the information related to the diagnoses covered by this regulation. In light of these detrimental and potentially detrimental effects, the Secretary finds it is impracticable, unnecessary, and contrary to public interest to delay this regulation for the purpose of soliciting advance public comment, or to have a delayed effective date.

Accordingly, we are issuing this rule as an interim final rule, with an immediate effective date. We will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

Effect of Rulemaking

The Code of Federal Regulations, as revised by this interim final rule, represents the exclusive legal authority on this subject. No contrary rules or procedures are authorized. All VA guidance will be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This rule contains no collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will not directly affect any small entities; only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this interim final rule have been examined and it has been determined not to be a significant regulatory action.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; and 64.013, Veterans Prosthetic Appliances.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on October 14, 2011, for publication.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Penalties, Privacy, Reporting and recordkeeping requirements, Security measures.

Dated: October 17, 2011.

William F. Russo,

Deputy Director, Office of Regulation Policy and Management, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

§ 1.461 [Amended]

■ 2. In the first sentence of § 1.461(c)(1), remove the phrase '', of information pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice''.

[FR Doc. 2011–27155 Filed 10–19–11; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register

Vol. 76, No. 203

Thursday, October 20, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all RR model RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19; and RB211–Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, 560A2–61; RB211–Trent 768–60, 772–60, 772B–60; and RB211–Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines that have a high-pressure (HP) compressor stage 1 to 4 rotor disc with a part number (P/N) listed in Table 1 of this proposed AD. The existing AD currently requires repetitive inspections of the axial dovetail slots, and follow-on corrective action depending on findings. Since we issued that AD, we determined that the definition of shop visit is too restrictive in the existing AD. This proposed AD would continue to require those repetitive inspections and follow-on corrective actions, and it would change the definition of a shop visit to be less restrictive. We are proposing this AD to detect cracks in the HP compressor stage 1 and 2 disc posts, which could result in failure of the disc post and HP compressor blades, release of uncontained engine debris, and damage to the airplane.

DATES: We must receive comments on this proposed AD by December 19, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418 or e-mail from *http://www.rolls-royce.com/contact/civil_team.jsp,* or download the publication from *https://www.aeromanager.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On April 12, 2011, we issued AD 2011–09–07, Amendment 39–16669 (76 FR 24793, May 3, 2011), for all RR model RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19; and RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, 560A2–61; RB211 Trent 768–60, 772–60, 772B–60; and RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines. That AD requires initial and repetitive fluorescent penetrant inspections of the HP compressor stage 1 to 4 rotor discs at the first shop visit after accumulating 1,000 cycles-since-new on the stage 1 to 4 rotor discs or at the next shop visit after the effective date of that AD, which ever occurs later. That AD also requires repetitive inspections at every shop visit. That AD resulted from findings of anomalies at the corners of the disc posts during manufacture of stage 1 and stage 2 discs with axial dovetails slots. We issued that AD to detect cracks in the HP compressor stage 1 and stage 2 disc posts, which could result in failure of the disc post and release of HP compressor blades, release of uncontained engine debris, and damage to the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2011–09–07, Amendment 39–16669 (76 FR 24793, May 3, 2011), we found that the definition of ''shop visit'' in the AD is too restrictive, in that it would require operators to inspect more often than required to ensure safety. We also found that Alert Service Bulletin (ASB) No. RB.211–72–AF964, Revision 2, dated June 8, 2011, also may be appropriate to

the corrective action in that AD, as is ASB No. RB.211–72–AF964, Revision 1, dated June 6, 2008 which is referenced in AD 2011–09–07.

Relevant Service Information

We reviewed RR ASB No. RB.211–72–AF964, Revision 1, dated June 6, 2008, and Revision 2, dated June 8, 2011. The ASB describes procedures for cleaning and inspecting the axial dovetail slots.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the definition of shop visit was too restrictive, and that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would change the definition of a shop visit in AD 2011–09–07 to ''whenever all compressor blades are removed from the HP compressor drum.'' This proposed AD would also allow using ASB No. RB.211–72–AF964, Revision 1, dated June 6, 2008, or ASB No. RB.211–72–AF964, Revision 2, dated June 8, 2011, to perform the inspection.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 371 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. No parts would be required per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $630,700.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed 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),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–09–07, Amendment 39–166679 (76 FR 24793, May 3, 2011), and adding the following new AD:

Rolls-Royce plc: Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by December 19, 2011.

(b) Affected ADs

This AD supersedes AD 2011–09–07, Amendment 39–16669 (76 FR 24793, May 3, 2011).

(c) Applicability

This AD applies to Rolls-Royce plc (RR) model RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19; and RB211–Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61 556B2–61, 560–61, 560A2–61; RB211–Trent 768–60, 772–60, 772B–60; and RB211–Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines that have a high-pressure (HP) compressor stage 1 to 4 rotor disc with a part number (P/N) listed in Table 1 of this AD.

TABLE 1—AFFECTED HP COMPRESSOR STAGE 1 TO 4 ROTOR DISC P/NS BY ENGINE MODEL

Engine model	HP compressor stage 1 to 4 rotor disc P/N
(1) RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19	FW20195, FK25502, or FW23711.
(2) RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2-61.	FK30524.
(3) RB211 Trent 768–60, 772–60, and 772B–60	FK22745, FK24031, FK26185, FK23313, FK25502, FK32129, FW20195, FW20196, FW20197, FW20638, or FW23711.
(4) RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892-17, 892B–17, and 895–17	FK24009, FK26167, FK32580, FW11590, or FW61622.

(d) Unsafe Condition

This AD was prompted by our determination that the definition of ''shop visit'' in the existing AD is too restrictive, in that it would require operators to inspect more often than required to ensure safety. We are issuing this AD to detect cracks in the HP compressor stage 1 and 2 disc posts, which could result in failure of the disc post and HP compressor blades, release of uncontained engine debris, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(f) Cleaning and Inspection

(1) Clean and perform a fluorescent penetrant inspection of the HP compressor stage 1 to 4 rotor discs at the first shop visit after accumulating 1,000 cycles since new on the stage 1 to 4 rotor discs or at the next shop visit after the effective date of this AD, which ever occurs later.

(2) Use paragraph 3.A through 3.E.(11) of the Accomplishment Instructions of Rolls-Royce Alert Service Bulletin (ASB) No. RB.211–72–AF964, Revision 1, dated June 6, 2008, or ASB No. RB.211–72–AF964, Revision 2, dated June 8, 2011, to do the inspections.

(3) Thereafter at every engine shop visit, perform the inspection specified by paragraph (f) of this AD.

(g) Definition

For the purpose of this AD, an ''engine shop visit'' is whenever all compressor blades are removed from the HP compressor drum.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

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

(2) See European Aviation Safety Agency Airworthiness Directive 2011–0073R1, dated April 8, 2009, for related information.

(3) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418 or e-mail from *http://www.rolls-royce.com/contact/civil_team.jsp,* or download the publication from *https://www.aeromanager.com.* You may review copies at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on October 14, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–27069 Filed 10–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140280–09]

RIN 1545–BK16

Tax Return Preparer Penalties Under Section 6695; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to a notice of proposed rulemaking and notice of public hearing (REG–140280–09) that would modify existing regulations related to the tax return preparer penalties under section 6695 of the Internal Revenue Code. The document was published in the **Federal Register** on Tuesday, October 11, 2011 (76 FR 62689).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Spence Hanemann, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 6695 of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking and notice of public hearing (REG–140280–09) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking and notice of public hearing (REG–140280–09), which was the subject of FR Doc. 2011–26247, is corrected as follows:

On page 62690, column 2, in the preamble, under the paragraph heading ''Explanation of Provisions'', first paragraph of the column, line 17, the language ''proposed § 1.6695–2(c)(2) provides that,'' is removed and is replaced with the new language ''proposed § 1.6695–2(c)(3) provides that,''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–27183 Filed 10–19–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60 and 63

[EPA–HQ–OAR–2010–0505; FRL–9481–8]

RIN 2060–AP76

Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Correction of Comment Period Closing Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction of public comment period closing date.

SUMMARY: The EPA is announcing that the period for providing public comments on the August 23, 2011, ''Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews,'' closes on October 31, 2011. This notice does not address the requests the EPA has received for extending this period.

DATES: *Comments.* The public comment period for the proposed rules published on August 23, 2011 (76 FR 52738) closes on October 31, 2011.

ADDRESSES: *Comments.* Written comments on the proposed rules may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically in *http://www.regulations.gov,* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Avenue, 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. A reasonable fee may be charged for copying.

World Wide Web. The EPA Web site for this rulemaking is located at: *http://www.epa.gov/airquality/oilandgas.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Fuels and Incineration Group (E143–05), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–5460; Fax number (919) 541–3470; E-mail address: *moore.bruce@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

On August 23, 2011, the EPA published in the **Federal Register** the proposed rule, ''Oil and Natural Gas Sector: New Source Performance Standards and National Emission standards for Hazardous Air pollutants Review.'' In that notice, the EPA announced that all comments must be received by October 24, 2011. The EPA conducted three public hearings on this proposed rule, the last of which was held on September 29, 2011, in Arlington, Texas. See 76 FR 53371, August 26, 2011. Under section 307(d) of the CAA, the EPA must keep the record open for thirty days after completion of the hearings to provide an opportunity for submission of rebuttal and supplementary information. Accordingly, the public comment period will end on October 31, 2011, rather than on October 24, 2011, as originally published.

The EPA has also received numerous requests for extending the public comment period for this proposed rule. This notice only corrects the public comment period pursuant to section 307(d) of the CAA. This notice does not address the pending requests being considered for extending the public comment period.

How can I get copies of this document and other related information?

The EPA has established the official public docket No. EPA–HQ–OAR–2010–0505. The EPA has also developed Web sites for the proposed rulemaking at the addresses given above.

Dated: October 14, 2011.

Gina McCarthy,

Assistant Administrator for Air and Radiation.

[FR Doc. 2011–27237 Filed 10–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2009–0277; FRL–9481–9]

RIN 2060–AQ83

Protection of Stratospheric Ozone: The 2012 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing uses that qualify for the 2012 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2012. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Second Meeting of the Parties. EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by November 21, 2011. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on October 25, 2011. If a hearing is requested it will be held on November 4, 2011 and comments will be due to the agency December 5, 2011. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *http://www.epa.gov/ozone/strathome.html.* Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0277, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Phone:* (202) 566–1742.
- *U.S. Mail:* Docket EPA–HQ–OAR–2009–0277, U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery or Courier:* Docket EPA–HQ–OAR–2009–0277, EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0277. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Jeremy Arling by telephone at (202) 343–9055, or by e-mail at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the methyl bromide section of the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/mbr* for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2012. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment (QPS) exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2012

critical use exemption as well as specific amounts of methyl bromide that may be produced and imported, or sold from pre-phaseout inventory (also referred to as ''stocks'' or ''inventory'') for proposed critical uses in 2012.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2012 critical use exemption including farmers of vegetable crops, fruits and nursery stock and owners of stored food commodities and structures such as grain mills and processors. This rulemaking does not affect applications for future control periods.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

B. What should I consider when preparing my comments?

1. *Confidential Business Information.* Do not submit confidential business information (CBI) to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by this proposal must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The provisions in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances

that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the U.S. could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270 kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which for newly listed Class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.''

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout. The Parties also established a phaseout date of 2015 for Article 5 countries.

IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the Clean Air Act (CAA) to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the ''Framework Rule'') that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the control periods from 2006 to 2011. Under authority of section 604(d)(6) of the CAA, this action proposes the uses that will qualify as approved critical uses in 2012 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action on critical uses for 2012 reflects Decision XXII/6, taken at the Twenty-Second Meeting of the Parties in November 2010. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, D.C. Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this action. In this proposed rule on critical uses for 2012, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What is the critical use exemption process?

A. Background of the Process

The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties (1997) the criteria for the exemption appeared in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.'' These criteria are reflected in EPA's definition of ''critical use'' at 40 CFR 82.3.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on May 20, 2009 (74 FR 23705), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives to methyl bromide, and efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review the CUNs of the Parties and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the agency is proposing to exempt for critical uses and the uses that the agency is proposing as approved critical uses.

More on the domestic review process and methodology employed by the Office of Pesticide Programs is available in a detailed memorandum titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America,'' contained in the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself remains rigorous with careful consideration of new technical and economic conditions.

On January 22, 2010, the U.S. Government (USG) submitted the eighth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for 2012 critical uses. In February 2010, MBTOC sent questions to the USG concerning technical and economic issues in the 2012 nomination. The USG transmitted responses to MBTOC in March, 2010. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analysis contained in those documents.

B. How does this proposed rule relate to previous critical use exemption rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year), to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), 74 FR 19878 (calendar year 2009), 75 FR 23167 (calendar year 2010), 76 FR 23769 (calendar year 2011 proposal).

Today's action proposes to utilize the existing regulatory framework to determine critical uses for 2012 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be allocated for those uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. A CSA is the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period.

The critical uses that EPA is proposing to approve as 2012 critical uses are the uses included in the USG's eighth CUN and authorized by the Parties in Decision XXII/6. EPA is utilizing the existing regulatory framework for critical uses. This framework is discussed in Section V.D.1 of the preamble.

C. Proposed Critical Uses

In Decision XXII/6, taken in November 2010, the Parties to the Protocol agreed ''to permit, for the agreed critical-use categories for 2012 set forth in table C of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2012 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *''

The following uses are those set forth in table C of the annex to Decision XXII/6 for the United States:

- Commodities.
- National Pest Management Association food processing structures.
- Mills and processors.
- Dried cured pork.
- Cucurbits.
- Eggplant—field.
- Forest nursery seedlings.
- Nursery stock—fruits, nuts, flowers.
- Orchard replants.
- Ornamentals.
- Peppers—field.
- Strawberry—field.
- Strawberry runners.
- Tomatoes—field.
- Sweet potato slips.

The Decision XXII/6 critical use levels for 2012 total 1,022,826 kilograms (kg), which is equivalent to 4.0% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of allowable new production and import for U.S. critical uses in Table D of Decision XXII/6 is 922,826 kg (3.6% of baseline), minus available stocks.

EPA is proposing a total critical use exemption in 2012 of 1,022,826 kg (4.0% of baseline) with new production or import of methyl bromide for critical uses up to 759,744 kg (3.0% of baseline), and with up to 263,082 kg (1.0% of baseline) coming from pre-phaseout inventory (*i.e.,* stocks).

EPA is seeking comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and seeks information regarding any changes to the registration (including cancellation or new registrations), use, or efficacy of alternatives that have transpired after the 2012 U.S. nomination was written. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes ''significant market disruption'' or ''technical and economic

feasibility'' change. Comments on the technical data contained in the nomination or new information could potentially alter the agency's analysis on the uses and amounts of methyl bromide qualifying for the critical use exemption. The agency may, in response to new information, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties. However, the agency will not increase the quantities or add new uses in the final rule beyond those authorized by the Parties.

EPA is also proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXII/6. The agency is amending the table of critical uses based in part on the technical analysis contained in the 2012 U.S. nomination that assesses data submitted by applicants to the CUE program. First, EPA is proposing to remove from the list of approved critical users those uses that did not submit applications and therefore were not included in the U.S. nomination. These uses are International Paper and Weyerhaeuser Company in the forest nursery seedlings sector and beans in the commodities sector. The Parties have not authorized them as critical uses for 2012 and EPA proposes not to list these uses as critical for this control period.

Second, EPA is proposing to remove North Carolina and Tennessee strawberry nurseries. Growers in this sector applied for a critical use in 2012. The U.S. did not submit a nomination to UNEP for this use because EPA's technical review found that there are alternatives to methyl bromide for Southeast strawberry nurseries. The Parties have not authorized them as critical uses for 2012 and EPA proposes not to list these uses as critical for this control period.

Third, EPA is proposing to reduce the number of allowable uses for the National Pest Management Association's (NPMA) post harvest fumigations. Past critical uses for NPMA included ''processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.'' MBTOC found that the nomination for food processing facilities was inadequately justified and recommended only cheese storage facilities for consideration by the Parties as a critical use. MBTOC's comments can be found in the May 2010 TEAP Progress Report in the docket to this rule. EPA is proposing to modify the NPMA critical use to include only ''Members of the National Pest Management Association treating cheese storage facilities.'' EPA seeks comment on these proposed changes to Appendix L.

EPA is not proposing other changes to the table but is repeating the following clarifications made in previous years for ease of reference. The ''local township limits prohibiting 1,3-dichloropropene'' are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, ''pet food'' under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, ''rapid fumigation'' for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

D. Proposed Critical Use Amounts

Table C of the annex to Decision XXII/6 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the total authorized critical use for 2012 is 1,022,826 kg, which is equivalent to 4.0% of the U.S. 1991 methyl bromide consumption baseline. The maximum amount of new production or import authorized by the Parties is 922,826 kg (3.6% of baseline) as set forth in Table D of the annex to Decision XXII/6. The difference between the total authorized amount and the authorized amount of new production is 100,000 kg (0.4% of baseline). This difference is the minimum that the Parties expect the U.S. to use from pre-phaseout inventory on critical uses.

EPA is proposing to allocate 759,744 kg (3.0% of baseline) of new production and import of methyl bromide for critical uses for 2012. EPA is also proposing to allocate 263,082 kg (1.0% of baseline) in the form of Critical Stock Allowances for sale of pre-phaseout inventory for critical uses in 2012. EPA is seeking comment on the proposed total levels of exempted new production and import for critical uses and the amount of material that may be sold from pre-phaseout inventory for critical uses. The sub-sections below explain EPA's reasons for proposing the above critical use amounts for 2012.

1. Approach for Determining Critical Stock Allowances

The 2004 Framework Rule established the provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of Critical Stock Allowances (CSAs) and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that pre-phaseout inventories were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing changes to these CSA provisions for calendar year 2012.

In the Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties. In each of the CUE allocation rules from 2006 through 2010, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. In the 2006 CUE Rule, EPA issued a total of 1,136,008 CSAs, equivalent to 4.4% of baseline. For 2006, the difference in the Parties' decision between the total CUE amount and the amount of new production and import was 3.6% of baseline. In the 2007 rule, EPA added to the minimum amount (6.3% of baseline) an additional amount (1.2% of baseline) for a total of 1,914,600 CSAs (7.5% of baseline). In the 2008 rule, EPA added to the minimum amount (3.0% of baseline) an additional amount (3.8% of baseline) for a total of 1,729,689 CSAs (6.8% of baseline). In the 2009 rule, EPA added to the minimum amount (1.2% of baseline) an additional amount (6.3% of baseline) for a total of 1,919,193 CSAs (7.5% of baseline). In the 2010 rule, EPA added to the minimum amount (1.8% of baseline) an additional amount (2.2% of baseline) for a total of 1,028,108 CSAs (4.0% of baseline). After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

As established in the earlier rulemakings, EPA views the inclusion of these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to ''permit'' a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not

require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency ''may'' create an exemption for critical uses, providing EPA with substantial discretion. When determining the CSA amount for a year, EPA considers what portion of existing stocks is ''available'' for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Decision XXII/6 states that ''production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks.'' In addition, earlier decisions refer to the use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXII/6 further reinforces this concept by including the phrase ''minus available stocks'' as a footnote to the United States' authorized level of production and consumption in Table D. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

EPA employs the concept of ''available stocks'' in determining whether to allocate additional CSAs beyond the minimum stock amount stipulated by the Parties. In response to stakeholder questions about how EPA derived its CSA amounts, the 2008 CUE rule established a refined approach for determining the amount of existing methyl bromide stocks that is ''available'' for critical uses. The approach uses a tool called the Supply Chain Factor (SCF). The SCF is EPA's technical estimate of the amount of methyl bromide inventory that would be adequate to meet the need for critical use methyl bromide after an unforeseen domestic production failure. The SCF recognizes the benefit of allowing the private sector to maintain a buffer in case of a major supply disruption. However, the SCF is not intended to set aside or physically separate stocks as an inventory reserve.

2. Calculation of Available Pre-Phaseout Inventory

For 2012, EPA proposes to calculate the amount of ''available'' stocks as follows, using the formula adopted in the 2008 CUE rule: $AS_{2012} = ES_{2011} - D_{2011} - SCF_{2012}$, where AS_{2012} is the available stocks on January 1, 2012; ES_{2011} is the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2011; D_{2011} is the estimated drawdown of existing stocks during calendar year 2011; and SCF_{2012} is the supply chain factor for 2012. Using this formula, EPA calculates that there will be 263,082 kg of pre-phaseout stocks of methyl bromide ''available'' on January 1, 2012.

Existing Stocks. In the above formula, ''ES_{2011}'' is methyl bromide that was produced before the January 1, 2005, phaseout date but is still held by domestic producers, distributors, and third-party applicators as of January 1, 2011. ES_{2011} does not include critical use methyl bromide that was produced after January 1, 2005, and carried over into subsequent years. Nor does it include methyl bromide produced (1) Under the quarantine and preshipment (QPS) exemption, (2) with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or (3) for feedstock or transformation purposes. EPA considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. Similarly, EPA considers inventory methyl bromide to be available to all users, including users in California and the Southeastern United States. These assumptions are discussed in the 2009 CUE rule (74 FR 19887).

Estimated Drawdown. In past CUE rules, EPA either estimated the drawdown of existing stocks using a simple linear fit estimation of inventory data from all available years or used actual reported end of year data if available. A linear estimate would project that no methyl bromide would remain in inventory on January 1, 2012. EPA does not believe this estimate to be accurate because it does not consider that the use of inventory on critical uses is limited by the allocation of CSAs. A better estimate of drawdown would instead add the estimated amount of CSAs that will be expended in 2011 plus the estimated amount of methyl bromide that will be used in 2011 for non-critical uses.

The first element of EPA's proposed drawdown estimate is the amount of inventory that will be used in 2011 on critical uses. This can be no more than the number of CSAs EPA allocates in the final 2011 CUE Rule. For purposes of this estimate, we are assuming the number of CSAs allocated in the final 2011 CUE Rule will be the same as the number EPA has proposed, which is 482,333 kg. As discussed in the Technical Support Document, on average only 58% of the CSAs allocated for a control period are reported as sold in that control period. Based on this historical pattern, EPA believes that not all of the CSAs will actually be expended in 2011 either. To estimate the number of expended CSAs in 2011, EPA conservatively assumes that 70% of the CSAs allocated for 2011 will be sold. This amount is greater than any year's use of CSA allocations. Thus, EPA estimates that 337,633 kg of inventory will be sold for critical uses in 2011.

The second element in the drawdown estimate is the amount of methyl bromide used on non-critical uses in 2011. Under the recent reregistration decision for methyl bromide, seven non-critical uses remain on the pre-plant methyl bromide labels. These non-critical uses can continue to use methyl bromide but are restricted to pre-phaseout inventory. The uses are caneberries, fresh market tomatoes grown in California, fresh market peppers grown in California, Vidalia onions grown in Georgia, ginger grown in Hawaii, soils on golf courses and athletic/recreational fields for resurfacing/replanting of turf, and tobacco seedling trays. See 76 FR 7200. Collectively they are referred to as ''Group II uses.'' EPA proposes to estimate the amount of inventory that will be sold to these Group II uses in 2011 by averaging the amounts sold in 2006–2010 for all non-critical uses. There is no clear trend in the pattern of usage which is why EPA is proposing to simply take an average. EPA is not including 2005 because it does not have data for that year. These data are contained in EPA's annual Accounting Frameworks submitted to UNEP and are available in the docket. The average use of pre-phaseout inventory on all non-critical uses over the last five years is 773 MT. EPA believes that this estimate is conservative because it includes the use of inventory for all non-critical uses, not just for Group II uses. Therefore, EPA proposes to adopt this average as its estimate of non-critical use in 2011.

Therefore, EPA proposes to estimate the potential drawdown of inventory in 2011 as (1) The projected sum of the use of CSAs for 2011 and (2) the estimate for Group II uses for 2011. Using this method, EPA projects that the pre-phaseout methyl bromide inventory will be drawn down by 1,110,633 kg (337,633 + 773,000) during 2011. This would result in a pre-phaseout inventory declining from 1,802,715 kg on January 1, 2011, to 692,082 kg on January 1, 2012. EPA welcomes comment on this proposed method of calculating inventory drawdown. If EPA receives actual end-of-year reported data

on inventory levels before this rule is finalized, EPA may substitute that data for this estimate.

Supply Chain Factor. The SCF represents EPA's technical estimate of the amount of pre-phaseout inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. As described in the 2008 CUE Rule, and the Technical Support Document contained in the docket to this rule, EPA estimates that it would take 15 weeks for significant imports of methyl bromide to reach the U.S. in the event of a major supply disruption. Consistent with the regulatory framework used in previous CUE allocation rules, the SCF for 2012 conservatively reflects the effect of a supply disruption occurring in the peak period of critical use methyl bromide production, which is the first quarter of the year. While this 15-week disruption is based on shipping capacity and does not change year to year, other inputs to EPA's analysis do change each year including the total U.S. and global authorizations for methyl bromide and the average seasonal production of critical use methyl bromide in the U.S. Using updated numbers, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) currently accounts for approximately 42% of annual critical use methyl bromide demand. EPA, therefore, estimates that the peak 15-week shortfall in 2012 could be 429 MT.

As EPA stated in previous CUE Rules, the SCF is not a ''reserve'' or ''strategic inventory'' of methyl bromide but is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts. Its use in the equation above demonstrates that 263,082 kg are available to be allocated. Further general discussion of the SCF is in the final 2008 CUE rule (72 FR 74118) and further detail about the analysis used to derive the value for the 2012 supply chain factor is provided in the Technical Support Document available on the public docket for this rulemaking.

Using the following formula $AS_{2012} = ES_{2011} - D_{2011} - SCF_{2012}$, EPA estimates that there will be 263,082 kg of pre-phaseout stocks of methyl bromide ''available'' on January 1, 2012. (263,082 = 1,802,715 − 1,110,633 − 429,000). Therefore, EPA proposes to allocate 263,082 kg as Critical Stock Allowances for 2012.

2. Approach for Determining New Production and Import Allowances

For the 2012 control period, EPA is proposing to apply the existing framework established in the Framework Rule. Under this approach, the amount of new production would equal the total amount authorized by the Parties to the Montreal Protocol in Decision XXII/6, minus the CSA amount detailed above, minus any reductions for carryover and the uptake of alternatives. Applying this established approach, EPA is proposing to exempt limited amounts of new production and imports of methyl bromide for critical uses in 2012 in the amount of 759,744 kg (3.0% of baseline). EPA is taking comment on this approach.

Carryover Material. The Parties in paragraph 6 of Decision XXII/6 ''urge parties operating under a critical-use exemption to put in place an effective system to discourage the accumulation of methyl bromide produced under the exemption.'' As discussed in the Framework Rule, EPA does not permit the building of stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this ''carryover'' from the total level of allowable new production and import in the year following the year of the data report. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing stocks (which applies to pre-phaseout material) because this would lead to a double-counting of carryover amounts, and a double reduction of critical use allowances (CUAs).

Unlike past control periods, all critical use methyl bromide that companies reported to be produced or imported in 2010 was sold to end users. The information reported to EPA is that 1,954,610 kg of critical use methyl bromide was produced or imported. A slightly higher amount than the amount produced or imported was actually sold to end-users in 2010. This additional amount was from distributors selling amounts that were carried over from the 2009 control period. Using the existing framework, EPA is proposing to apply the carryover deduction of 0 kg to the new production amount. EPA's calculation of the amount of carryover at the end of 2010 is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6 for calculating column L of the U.S. Accounting Framework. Past U.S. Accounting Frameworks, including the one for 2010, are available in the public docket for this rulemaking.

Uptake of Alternatives. EPA also is proposing to continue considering new data about alternatives that were not available at the time the U.S. Government submitted its CUN to the Parties and adjust the allocation for new production accordingly. Two alternatives not considered in the 2012 CUN, which was submitted to UNEP in January 2010, may potentially be used in 2012. In July 2010, EPA registered Dimethyl Disulfide (DMDS) to control nematodes, weeds, and pathogens in tomatoes, peppers, eggplants, curcurbits, strawberries, ornamentals and forest nursery seedlings, and onions. Currently, 12 states have registered DMDS for use in that state. Neither California nor Florida has yet to register DMDS. EPA anticipates uptake during 2012 to be minimal as the primary states with critical uses have not yet registered the alternative. In addition, once registered, growers are likely to experiment on only a limited number of acres.

Second, California registered Iodomethane in December of 2010. EPA is unable to estimate uptake of Iodomethane in California during 2012 due to uncertainties created by the California label, specifically impacts of larger buffer zones and the lack of efficacy studies at the California label's lower use rates. In addition to the state registration, County Agricultural Commissioners must permit each iodomethane application that occurs within their jurisdiction.

While EPA is not proposing a specific amount of reduction to account for the uptake of these alternatives, EPA will consider new data received during the comment period. If the registration status of either of these alternatives changes, EPA is proposing to estimate and account for that uptake in the final rule. EPA is not proposing to take any other reductions for alternatives because the 2012 CUN properly applied transition rates for all other alternatives. The TEAP report of October 2010 included reductions in its recommendations for critical use categories based on the transition rates in the 2012 CUN. The TEAP's recommendations were then considered in the Parties' 2012 authorization amounts, as listed in Decision XXII/6. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2012 critical use amounts. EPA continues to gather information about methyl bromide alternatives

through the CUE application process, and by other means. EPA also continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

In addition, EPA is taking comment on an issue raised in the proposed 2011 CUE rule. In that rulemaking, EPA proposed a critical-use allowance allocation of 1,500,000 kg for 2011, given that regulated entities had been acting in good faith on statements made by the Agency in No Action Assurance letters that producers and importers could assume the allocation would be at least that much. While the total allocation was not affected, the amount of new production was 128,382 kg more than what EPA would have proposed for 2011 had the CSA and CUA amounts been based on the ''available stocks'' calculation using end of year inventory data. It also means that the critical stock allocation was 128,382 kg less than the amount of ''available stocks.'' EPA stated in the 2011 proposed rule that the Agency could reduce critical-use allowances for new production and import in the 2012 allocation rule to account for this difference.

EPA is taking comment on an alternative approach in which EPA would allocate 631,362 kg (2.5% of baseline) of CUAs for 2012. This amount is 128,382 kg less than the proposed CUA amount. The CSA amount could remain either at 263,082 kg or be increased to 391,464 kg to reflect the lower CSA allocation in 2011. The total allocation for 2012 would be 894,444 kg or 1,022,826 kg depending on how many CSAs are issued under this alternative. While EPA is taking comment on this alternative, EPA is not proposing it as the lead approach because the number of CUAs in the 2011 rule did not exceed the Parties' production authorization for 2011 and the total CUE amount for 2011 was unaffected. EPA does not believe the 2011 allocation will result in carryover; however, if it does, EPA will follow its standard practice, discussed in prior CUE notices, of subtracting the carryover amount from the CUA amount in a subsequent year. In addition, any effects that the 2011 CSA allocation had on the amount of pre-phaseout inventory used in 2011 is captured in the ''available stocks'' analysis contained in this rule.

3. Summary of Calculations

The calculations described above for determining the level of new production and critical stock allowances are summarized in the table below:

	Kilograms
Step 1: Calculate supply chain factor:	
U.S. authorization for 2012 in Decision XXII/6	1,022,826
− Reduction for uptake of alternatives	0
= One year's CUE need	1,022,826
× Percentage of year's production to recover from production failure	42%
= Supply Chain Factor	429,000
Step 2: Calculate available stocks:	
Existing pre-phaseout inventory on January 1, 2011	1,802,715
− Drawdown of inventory for critical uses	337,633
− Drawdown of inventory for non-critical uses	773,000
− Supply Chain Factor (Step 1)	429,000
= Available stocks = Critical Stock Allowance	263,082
Step 3: Calculate new production:	
Total U.S. authorization for 2012	1,022,826
− Critical Stock Allowance (Step 2)	263,082
− Carryover	0
− Uptake of alternatives	0
= New production/import = Critical Use Allowance	759,744

E. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 5 of Decision XXII/6 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2012 control period. A discussion of the agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. In section V.C. the agency solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.D., V.G., and V.H. of this preamble. The agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005, updated in October 2009, as well as in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

There continues to be a need for methyl bromide for research purposes. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. As in past CUE rules, EPA is proposing to allocate CSAs rather than CUAs for any amounts authorized specifically for research purposes. Also as in past years, EPA is proposing to retain research on the crops shown in the table in Appendix L to subpart A as a critical use of methyl bromide. The USG recently submitted a supplemental nomination for 2,576 kg for research activities in 2012. Because the supplemental nomination was submitted this year, the Parties have not yet taken a decision authorizing an amount. The Parties are expected to take a decision at their upcoming Meeting of the Parties in November 2011. Therefore, EPA is proposing to increase the final CSA allocation by up to 2,576 kg after consideration of the action taken by the Parties in November and comments received on this proposed rule regarding research needs.

EPA encourages methyl bromide suppliers to sell inventory to researchers and encourages researchers to purchase inventory for research purposes. As discussed in the 2010 CUE rule, research is a key element of the critical use process. Therefore, researchers may continue to use newly produced methyl bromide, as well as pre-phaseout inventory purchased through the expenditure of CSAs, for field, post-harvest, and emission minimization studies requiring the use of methyl bromide. EPA is taking comment on this proposal to increase the CSA amount as described above for research.

F. Emissions Minimization

Previous decisions have stated that Parties shall request critical users to employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. Through the recent Reregistration Eligibility Decision (RED) for methyl bromide, the agency requires that methyl bromide applications be tarped except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also encourages the use of high-barrier tarps, such as virtually impermeable film (VIF), by providing credits that applicators can use to minimize their buffer zones. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the USG reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed. Emissions minimization efforts should not be limited to pre-plant fumigations. While the RED addresses emissions minimization only in the context of pre-plant fumigation, EPA also urges users to reduce emissions from structures and port facilities through the use of recapture technologies.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. The agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the agency welcomes comments on the implementation of emission minimization techniques and whether and how emissions could be reduced further.

G. Critical Use Allowance Allocations

EPA is proposing to allocate 2012 critical use allowances for new production or import of methyl bromide up to the amount of 759,744 kg (3.0% of baseline) as shown in the proposed changes to the table in 40 CFR 82.8(c)(1). EPA is seeking comment on the total levels and allocations of exempted new production or import for pre-plant and post-harvest critical uses in 2012. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The proposed CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

Paragraph 3 of Decision XXII/6 states ''that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision.'' This is similar to language in prior Decisions authorizing critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions, but continues to welcome comments on this issue.

H. Critical Stock Allowance Allocations

A preambular paragraph to Decision XXII/6 states ''that parties should reduce their stocks of methyl bromide retained for employment in critical-use exemptions to a minimum in as short a time period as possible.'' EPA notes that the U.S. Government is not retaining pre-phaseout inventory for any particular purpose. Pre-phaseout inventory is held by private companies who may sell to any use that meets the labeling under FIFRA. However, EPA believes that its practice of encouraging the use of inventory by allocating CSAs equivalent to all ''available stocks'' is consistent with this statement by the Parties. EPA is proposing to allocate CSAs for the 2012 control period in the amount of 263,082 kg (1.0% of baseline). This amount is greater than the difference between the total U.S. CUE amount approved by the Parties and the permitted level of U.S. production and consumption. For 2012, that difference is 100,000 kg (0.4% of baseline).

EPA's proposed allocation of CSAs is based on each company's proportionate share of the aggregate inventory. In

2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table in 40 CFR 82.8(c)(2). EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

I. Stocks of Methyl Bromide

An approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of ''critical use methyl bromide'' intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing to change these provisions.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2011 is 1,802,715 kg. As in prior years, the Agency will continue to closely monitor CUA and CSA data. As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

As explained in the 2008 CUE Rule, the agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA is not proposing to change the treatment of submitted information but welcomes information concerning the composition of the industry in this regard. The aggregate information for 2003 through 2011 is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this proposal is a ''significant regulatory action.'' This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous Critical Use Exemption rulemakings and this action does not propose to change any of those existing requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon farming. 1113—Fruit and Nut Tree Farming. 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops 0172—Grapes. 0173—Tree Nuts. 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC. 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning).		$7 million.
	311211—Flour Milling	2041—Flour and Other Grain Mill Products.	500 employees.
	311212—Rice Milling	2044—Rice Milling	500 employees.
	493110—General Warehousing and Storage.	4225—General Warehousing and Storage.	$25.5 million.
	493130—Farm Product Warehousing and Storage.	4221—Farm Product Warehousing and Storage.	$25.5 million.
Distributors and Applicators	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	$7 million.
Producers and Importers	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule would only affect entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2011 down to 1,800 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule would exempt methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. EPA estimates in the Regulatory Impact Assessment found in the docket to this rule that the reduced costs resulting from the de-regulatory creation of the exemption are approximately $22 million to $31 million on an annual basis (using a 3% or 7% discount rate respectively). These reduced costs are dramatic owing to the high value of methyl bromide for crop production and agriculture related activities. We have therefore concluded that this proposed rule would relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action would provide an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is expected to primarily affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to

EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

List of Subjects in 40 CFR Part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: October 13, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.8 is amended as follows:

a. by revising the table in paragraph (c)(1);

b. by revising paragraph (c)(2) including the table.

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2012 Critical use allowances for pre-plant uses * (kilograms)	2012 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp., A Chemtura Company	425,197	36,499
Albemarle Corp	174,851	15,009
ICL–IP America	96,626	8,294
TriCal, Inc	3,009	258
Total **	699,683	60,061

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2012 on a pro-rata basis in relation to the inventory held by each.

Company

Albemarle
Bill Clark Pest Control, Inc.
Burnside Services, Inc.
Cardinal Professional Products
Chemtura Corp.
Crop Production Services
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail
Hy Yield Products
ICL–IP America
Industrial Fumigant Company
Pacific Ag Supplies Inc.
Pest Fog Sales Corp.
Prosource One
Reddick Fumigants
TriCal, Inc.
Trident Agricultural Products
Univar
Western Fumigation

Total—263,082 kilograms

3. Appendix L to Subpart A is revised to read as follows:

Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2012 Control Period

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User and Location of Use	Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
PRE-PLANT USES		
Cucurbits	(a) Growers in Delaware and Maryland	Moderate to severe soilborne disease infestation.
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features.
Forest Nursery Seedlings	(a) Southern Forest Nursery Management Cooperative (Growers in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) Northeastern Forest and Conservation Nursery Association (Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin).	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(c) Michigan Seedling Growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Nursery Stock (Fruit, Nut, Flower).	(a) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene.
	(b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
Orchard Replant	California stone fruit, table and raisin grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User and Location of Use	Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. Restrictions on alternatives due to karst topographical features.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot.
Strawberry Nurseries	California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation.
Sweet Potato Slips	California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.
	(b) Maryland growers	Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the National Pest Management Association treating cheese storage facilities.	Mite infestation.
Commodities	California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season.
Dry Cured Pork Products	Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation

[FR Doc. 2011–27186 Filed 10–19–11; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–AY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment for the South Atlantic

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) for review, approval, and implementation by NMFS. The Comprehensive ACL Amendment amends the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region, the Golden Crab Fishery of the South Atlantic Region, the Dolphin and Wahoo Fishery off the Atlantic States, and the Pelagic Sargassum Habitat of the South Atlantic Region. The Comprehensive ACL Amendment proposes actions to specify annual catch limits (ACLs), allowable biological catch (ABC), ABC control rules, and accountability measures (AMs) for species in the FMPs for Snapper-Grouper, Dolphin and Wahoo, Golden Crab, and Sargassum. The Comprehensive ACL Amendment proposes to specify ABC, and describe the current terminology and measures in place in the Sargassum FMP that are consistent with an ACL and AMs. For Sargassum, this amendment would not specifically set an ACL because there is currently a commercial quota in place which functions as an ACL, and there are commercial closure provisions in the event the quota is met or projected to be met which functions as an AM. Sector allocations, annual catch targets (ACTs), and management measures are also proposed for species in the Snapper-Grouper and Dolphin and Wahoo FMPs. In addition, the Comprehensive ACL Amendment proposes actions to the snapper-grouper fishery management unit (FMU), including the removal of some species, designation of ecosystem component (EC) species, and the development of species groups.

DATES: Written comments must be received on or before December 19, 2011.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2011–0087'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0087'' in the keyword search and click on ''search''. To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0087'' in the keyword search and click on ''search''. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or e-mail: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The four FMPs being revised by the Comprehensive ACL Amendment were prepared by the Council and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

Background

The 2006 revisions to the Magnuson-Stevens Act require that in 2011, for fish stocks determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve optimum yield (OY) within a fishery. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Actions Contained in the Amendment

Golden Crab FMP

The Comprehensive ACL Amendment proposes to specify an ABC, an ABC control rule, an ACL, and an AM for golden crab.

Dolphin and Wahoo FMP

The Comprehensive ACL Amendment proposes to specify ABCs, ABC control rules, ACLs, and AMs for dolphin and wahoo. Sector allocations, ACTs for dolphin and wahoo, and management measures for dolphin are also proposed.

Snapper-Grouper FMP

The Comprehensive ACL Amendment proposes to identify snapper-grouper species that do not need Federal management and can therefore be removed from the Snapper-Grouper FMP; designate selected snapper-grouper species as EC species; and establish species groups for selected snapper-grouper species for more effective management. The Comprehensive ACL Amendment would establish ABC control rules, ACLs for the commercial and recreational sectors, and ACTs (recreational sector only) for individual species and species groups. Additionally, the Comprehensive ACL Amendment would define the allocation of black grouper, mutton snapper, and yellowtail snapper across the jurisdictional boundary between the Gulf of Mexico Fishery Management Council (Gulf Council) and the South

Atlantic Council. Furthermore, the Comprehensive ACL Amendment allocates the harvest of species between the commercial and recreational sectors. The Comprehensive ACL Amendment also establishes AMs, which manage harvest within an applicable quota or ACL and manage future harvest, should a species or species group ACL be exceeded.

Removal of Stocks From the Snapper-Grouper FMP

There are currently 73 species in the Snapper-Grouper FMP. Many uncommonly harvested species were originally placed in the FMP because they were considered to be sub-tropical/tropical in distribution, and therefore limited in their range to south of Cape Hatteras, North Carolina, on the east coast of the U.S., and were part of a large multi-species fishery where co-occurring species were taken together with the same gear in the same area. The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries, for other fisheries where regulation would serve some useful purpose, and where the present or future benefits of regulation would justify the costs. The Council evaluated whether all species currently included in the snapper-grouper FMU are in need of Federal conservation and management and determined 13 species should be removed from the FMU. Species proposed for removal from the snapper-grouper FMU are black margate, bluestriped grunt, crevalle jack, French grunt, grass porgy, porkfish, puddingwife, queen triggerfish, sheepshead, smallmouth grunt, Spanish grunt, tiger grouper, and yellow jack.

Designation of Ecosystem Component Species in the Snapper-Grouper FMP

The Council chose six species to be selected as EC species in the Comprehensive ACL Amendment. The proposed EC species are bank sea bass, cottonwick, longspine porgy, ocean triggerfish, rock sea bass, and schoolmaster. The designation of these species as EC species retains them in the snapper-grouper FMU, but does not require that these species have an ACL and AM specified. EC species would also no longer be subject to any other Federal management measures, such as bag limits and size limits.

Species Groupings in the Snapper-Grouper FMP

The Council decided to establish both species complex ACLs and single species ACLs within the Comprehensive ACL Amendment. Single species ACLs would be established for both assessed and targeted species, species that have an ACL equal to zero, and species that cannot be placed into a complex based on the criteria below. Complexes for species groups would be established using associations based on life history, catch statistics from commercial logbook and observer data, recreational headboat logbook and private/charter survey, and fishery-independent data. The Comprehensive ACL Amendment would establish selected snapper-grouper species into the complexes for selected deep-water species, shallow-water groupers, snappers, jacks, grunts, and porgies.

ABC Control Rules for the Sargassum, Golden Crab, Dolphin and Wahoo, and Snapper-Grouper FMPs

Standard methods for determining the appropriate ABC would allow the Council's Scientific and Statistical Committee (SSC) to determine an objective and efficient assignment of ABC. The SSC's recommendation of an ABC takes into account scientific uncertainty regarding the harvest levels that would lead to overfishing. The quality and quantity of landings information varies according to the stock in question, thus different control rules are needed for data-adequate (assessed species) and data-poor (un-assessed species) stocks.

Allocations for Species in the Snapper-Grouper and Dolphin and Wahoo FMPs

The Comprehensive ACL Amendment would set jurisdictional allocations for black grouper, yellowtail snapper, and mutton snapper between the South Atlantic and Gulf of Mexico. The amendment would also establish allocations for the commercial and recreational sectors for snapper-grouper species and dolphin and wahoo that do not currently have allocations specified.

Specification of ACLs and OY for the Golden Crab, Dolphin and Wahoo, and Snapper-Grouper FMPs

The Comprehensive ACL Amendment would assign initial ACLs and OY, for each of the species retained for Federal management in the amendment, excluding EC species. An ACL would be set equal to the OY for a species or species group for selected snapper-grouper, dolphin and wahoo, and golden crab (commercial sector only). ACL would be set equal to the OY and equal to the ABC for species in this amendment requiring ACLs. ACLs would be specified for species in both the commercial and recreational sectors for species in the Dolphin and Wahoo and Snapper-Grouper FMPs. For Sargassum, this amendment would not specifically set an ACL, however, there is currently a commercial quota in place which functions as an ACL and for which commercial closure provisions are in effect in the event the quota is met or projected to be met.

ACT/AMs for the Golden Crab, Dolphin and Wahoo, and Snapper-Grouper FMPs

For species in the Snapper-Grouper and Dolphin and Wahoo FMPs, ACTs for the commercial sector would not be established in this amendment but would be set for the recreational sector. ACTs would not be established for the Golden Crab FMP. In-season and post-season AMs are proposed for the commercial sector of the Golden Crab, Dolphin and Wahoo, and Snapper-Grouper FMPs that would maintain catch levels within the proposed ACLs, or restore catch levels to those limits if exceeded. AMs would be established for selected snapper-grouper, dolphin and wahoo, and golden crab. For the Snapper-Grouper-FMP, when a complex ACL is exceeded, all species in that complex would be subject to AMs, and when an individual ACL is exceeded, the individual stock would be subject to AMs. For the recreational sector (Dolphin and Wahoo and Snapper-Grouper FMPs), AMs would be implemented during the year following any potential overage of the ACL during the previous year. ACLs and AMs would apply to the applicable species for both the commercial and recreational sectors.

Additional Management Measures for Wreckfish in the Snapper-Grouper FMP and Dolphin in the Dolphin and Wahoo FMP

The Comprehensive ACL Amendment would also implement a one wreckfish per vessel recreational daily bag limit and a recreational wreckfish closed season of January 1 through June 30 and September 1 through December 31, each year. Additionally, the Comprehensive ACL Amendment proposes to prohibit bag limit sales of dolphin from for-hire vessels and establish a minimum size limit for dolphin of 20 inches (50.8 cm) fork length from Florida through South Carolina.

Consideration of Public Comments

A proposed rule that would implement measures outlined in the Comprehensive ACL Amendment has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is

affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by December 19, 2011, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed.

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

Dated: October 17, 2011.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–27203 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110211137–1599–01]

RIN 0648–BA87

Fisheries Off West Coast States; Highly Migratory Species Fisheries; Swordfish Retention Limits

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to modify retention limits for swordfish, *Xiphias gladius,* harvested in the U.S. West Coast-based deep-set tuna longline (DSLL) fishery. The DSLL fishery is managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The proposed rule would implement the Pacific Fishery Management Council's (Council) recommendation to modify HMS FMP regulations governing the possession and landing limits of swordfish captured in the DSLL fishery, contingent on hook type and fisheries observer presence. If a vessel without an observer onboard uses any J-hooks (tuna hooks), the trip limit would be 10 swordfish. If a vessel without an observer onboard uses only circle hooks, the trip limit would be 25 swordfish. If the vessel carries a NMFS-approved observer during the entire fishing trip, there would be no limit on swordfish retained. Regulations prohibiting the use of shallow-set longline gear to target swordfish would remain in place.

DATES: Comments must be received by November 21, 2011.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0211, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0211 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.
- *Fax* (562) 980–4047; Attn: Rodney R. McInnis.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, 760–431–9440, ext. 303.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible at (*http://swr.nmfs.noaa.gov/*). An electronic copy of the current HMS FMP and accompanying appendices are available on the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/hms/hmsfmp.html.*

The HMS FMP was developed by the Council in response to the need to coordinate state, Federal, and international management of HMS stocks. The management unit in the FMP consists of highly migratory species (tunas, billfish, and sharks) that occur within the West Coast (California, Oregon, and Washington) Exclusive Economic Zone (EEZ) and to a limited extent on adjacent high seas waters. NMFS, on behalf of the U.S. Secretary of Commerce, partially approved the HMS FMP on February 4, 2004 (69 FR 18444). The majority of HMS FMP implementing regulations became effective on April 7, 2004. Reporting and recordkeeping provisions became effective on February 10, 2005.

Since being adopted in 2004, the HMS FMP has been amended twice. On June 7, 2007, NMFS approved Amendment 1 to the HMS FMP to incorporate recommended international measures to end overfishing of the Pacific stock of bigeye tuna, *Thunnus obesus,* in response to formal notification from NMFS that overfishing was occurring on this stock. On June 12, 2011, NMFS approved Amendment 2 to the HMS FMP (76 FR 56328) to ensure that it is consistent with revised guidelines to implement National Standard 1 of the MSA in order to more effectively prevent overfishing and rebuild overfished stocks, or stocks that may become overfished.

In a letter dated July 16, 2010, the Council received a request to modify HMS FMP longline regulations at 50 CFR 660.712. To avoid interactions with sea turtles, those regulations prohibit vessels based on the West Coast from using longline gear to make shallow sets. Longline vessels that make deep sets with longline (DSLL) are limited to landing 10 swordfish per trip. The trip limit was implemented to prevent vessels departing ostensibly to fish DSLL gear targeting bigeye and yellowfin tuna, from switching to make shallow sets using longline (SSLL) that is used to target swordfish, and that might result in higher incidental catch rates of sea turtles. The letter to the Council requested that these regulations be modified to increase the trip limits on swordfish, in order to make them consistent with regulations implementing the Western Pacific Fishery Management Council's Pacific Pelagics Fishery Ecosystem Plan (FEP) governing DSLL fishing retention limits. Specifically, the letter requested that the Council modify 50 CFR 660.712 governing the DSLL fishery by recommending removal of the 10

swordfish per trip limit in light of the Western Pacific Fishery Management Council's recommendation to do the same at their 148th meeting on June 28–July 1, 2010.

The Council considered the request to modify the trip limit and determined that the current HMS FMP regulations, which proscribe SSLL fishing and set specific trip limits on swordfish catch, provide adequate controls on both DSLL and SSLL fishing. However, the Council noted that the single vessel in the DSLL fishery has 100% observer coverage, and that coverage reduces the likelihood of that vessel engaging in SSLL fishing. Additionally, the Council found that the deterrent effect to SSLL fishing provided by the 100% observer coverage makes the current 10 swordfish per trip limit unnecessary for longline fishermen. Moreover, the Council noted that the 10 swordfish per trip limit might create regulatory discards (a form of bycatch) and potential loss of income from the sale of swordfish harvested in excess of the current retention limit.

In response to these findings, in November 2010, the Council recommended to NMFS that the regulations at 50 CFR 660.712 be modified. Specifically, the Council recommended retaining the 10 swordfish limit for DSLL vessels fishing with J-hooks (tuna hooks), because those types of hooks have higher sea turtle bycatch rates, and the trip limit acts as a deterrent to engaging in fishing practices that may result in sea turtle bycatch. The Council recommended changing the trip limits for vessels fishing without observers but using circle hooks, because those types of hooks are known to minimize the bycatch and mortality of sea turtles. However, for trips with a NMFS-approved observer, the Council recommended removing the trip limits, because the observer acts a sufficient deterrent to SSLL activities prohibited by the rules.

If implemented, this proposed rule will assist vessels in the DSLL fishery by reducing the unnecessary discard of swordfish (regulatory ''bycatch'' under the Magnuson Act) when a vessel employs DSLL fishing methods known to reduce the risk of incidentally catching sea turtles. It will also benefit the DSLL vessels by allowing them to land a greater number of swordfish than allowed under the current regulations, which will result in fishermen to realizing greater profits from DSLL fishing trips, especially those with NMFS-approved observer coverage. Furthermore, by not forcing fishermen to discard so many swordfish, bycatch levels will be minimized as required by National Standard 9 of the MSA.

Classification

NMFS has determined that the proposed rule is consistent with the HMS FMP and preliminarily determined that this proposed rule is consistent with the MSA and other applicable laws.

An Initial Regulatory Impact Review was conducted to analyze the potential economic impacts and costs of this proposed rule.

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

Under the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for that determination is as follows:

The proposed rule would revise the HMS FMP to modify the current regulation, which allows a maximum of 10 swordfish per trip when using authorized DSLL gear regardless of hook type or the presence of an observer on any given trip. The proposed action would impose a trip limit of 10 swordfish when using J-hooks (tuna hooks), and 25 swordfish when using circle hooks. For trips carrying an observer there would be no retention limit in place, regardless of hook type, because the observer's coverage on the trip reduces the likelihood of the vessel engaging in fishing practices prohibited by the regulations, or that would result in sea turtle bycatch.

There is currently a single longline fisherman operating in the DSLL fishery based out of the U.S. West Coast, and that is the only entity expected to be affected by this rule. The annual revenue generated by that single fisherman is unknown, but for the purpose of this analysis, that entity is considered to be a small business. However, the proposed action is expected to have only positive (and quite minor) economic impacts on the effected entity, because it would not change the number of permitted vessels authorized to fish or the manner in which the fishery is prosecuted, nor would it impose any additional reporting, procedural or other requirements on the affected entity. Indeed, the rule would allow fishermen carrying observers to retain and sell more swordfish than they can under the current regulations, but even then the numbers of swordfish caught by the DSLL fishery are expected to be relatively small, and the additional potential income de minimis relative to the economics of a fishing trip in this fishery. The population of north Pacific swordfish is considered healthy and not in an overfished condition or experiencing overfishing. There are no quotas or harvest guidelines in place under the HMS FMP for swordfish.

Accordingly, and as a result of this analysis, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 17, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.705, revise paragraphs (s) and (mm) to read as follows:

§ 660.705 Prohibitions.

* * * * *

(s) If no observer is on the vessel and J-type fishing hooks are used, possess more than 10 swordfish; if no observer on the vessel and only circle-type fishing hooks are used, possess more than 25 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing west of 150 °W. long. and north of the equator (0 °lat.) in violation of § 660.712(a)(9).

* * * * *

(mm) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing on the high seas of the Pacific Ocean west of 150 °W. long. north of the equator in violation of § 660.720 (a)(3).

* * * * *

3. In § 660.712, revise paragraphs (a)(10) and (a)(11) to read as follows:

§ 660.712 Longline fishery.

(a) * * *

(10) If no observer on board the vessel, owners and operators of longline vessels registered for use of longline gear may land or posses no more than

10 swordfish from a fishing trip when using any J-type fishing hooks, and no more than 25 swordfish from a fishing trip when using only circle hook-type fishing hooks.

(11) Owners and operators of longline vessels registered for use of longline gear are subject to the provisions at 50 CFR part 223 prohibiting shallow sets to target swordfish in waters beyond the U.S. EEZ and east of 150 °W. long.

* * * * *

[FR Doc. 2011–27212 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 203

Thursday, October 20, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Career and Employment Grants Program or ''ACE''

AGENCY: Departmental Management, Office of Advocacy and Outreach, Agriculture.

ACTION: Funding opportunity announcement.

FOA No.: USDA2011ACE01.

Catalog of Federal Domestic Assistance (CFDA) No.: 10.465.

DATES: Proposals must be received by *http://www.Grants.gov* by 5 p.m. EST on Tuesday, November 14, 2011. Proposals received after this deadline will not be considered for funding.

SUMMARY: To improve the supply of skilled agricultural workers and bring greater stability to the workforce in this sector through provision of services specifically designed to assist farmworkers in securing, retaining, upgrading or returning from an agricultural job. The intended outcomes are that, as a result of the services to be provided, farmers will have access to a more skilled pool of workers and farmworkers who will have an enhanced skill set, making on-the-farm employment opportunities more plentiful.

The total funding for this competitive opportunity is $4,000,000. The U.S. Department of Agriculture's (USDA), Office of Advocacy and Outreach (OAO), anticipates awarding a total of approximately no less than 8 grants from this announcement, subject to availability of funds and the quality of applications received. A maximum award will be limited to $500,000.

Contents of This Announcement

Administrative Procedure Act Statement

I. Funding Opportunity Description
II. Award Information
III. Eligibility Information
IV. Application and Submission Information
V. Application Review Information
VI. Award Administration Information
VII. Agency Contact
VIII. Other Information

Administrative Procedure Act Statement

This Notice of Funds Availability (NOFA) is being issued without advance rulemaking or public comment. The Administrative Procedure Act (''APA'', 5 U.S.C. 553), has several exemptions to rulemaking requirements. Among them is an exemption for matters relating to federal benefits, but under the provisions of the ''Statement of Policy of the Secretary of Agriculture effective July 24, 1971,'' issued by Secretary Hardin in 1971 (36 FR 13804 (the ''Hardin Memorandum''), the Department will normally engage in rulemaking related to federal benefits despite that exemption. However, the Hardin Memorandum does not waive certain other APA-contained exemptions, in particular the ''good cause'' exemption found at 5 U.S.C. 553(b)(3)(B), which allows effective government action without rulemaking procedures where withholding the action would be ''impracticable, unnecessary, or contrary to the public interest.'' The Hardin memorandum specifically provides for the use of the ''good cause'' exemption, albeit sparingly, when a substantial basis for so doing exists, and where, as will be described more fully below, that substantial basis is explained.

USDA has determined, consistent with the APA and the Hardin Memorandum, that making these funds available under this Notice to support farmworker training activities is in the public interest. Withholding this NOFA to provide for public notice and comment would unduly delay the provision of benefits associated with this program and be contrary to the public interest. Should the actual practice of the program produce reasons for program modifications, those modifications can be brought to the attention of the Department and changes made in the future rulemaking process.

I. Funding Opportunity Description

A. Background

Section 14204, of the Food Conservation and Energy Act of 2008, Public Law 110–246 (June 18th, 2008) 2008 Farm Bill, 7 U.S.C. 2008q–1 authorizes the Secretary of Agriculture to make grants to assist agricultural employers and farmworkers by improving the supply, stability, safety, and training of the agricultural labor force. Such grants may be made to eligible entities for use in providing services to assist farmworkers who are citizens or otherwise legally present in the United States in securing, retaining, upgrading, or returning from agricultural jobs. The 2010 Appropriations Act included an appropriation of $4 million to the USDA's Rural Housing Service (RHS) for this program, and the delegation of authority and funding for the program has since been transferred to OAO, within Departmental Management of USDA. OAO has designated the program the Agricultural Career and Employment (ACE) Grants Program and it will be referred to as such hereafter.

Purpose of the ''ACE'' Grants Program

As the title of Section 14204 of the 2008 Farm Bill suggests—''Grants to Improve the Supply, Stability, Safety, and Training of Agricultural Labor Force''—the ACE grants program is designed to address the needs of both agricultural employers and farmworkers with respect to the supply of skilled labor in American agriculture and the stability of employment in that sector. About 800,000 hired farmworkers are employed in U.S. agriculture, with hired workers making up an estimated one-third of the total agricultural labor force. Particularly critical for labor-intensive sectors of agriculture, such as fruits and vegetables, the hired agricultural labor force in the United States is characterized by considerable instability. Among the hired workforce are large numbers of migrant and seasonal farmworkers, many of whom travel long distances to obtain employment, and often move from crop to crop as conditions warrant. See Profile of Hired Farmworkers, A 2008 Update, by William Kandel, U.S. Department of Agriculture, Economic Research Service. This study can be found at *http://www.ers.usda.gov/Publications/ERR60/.*

Despite this regular flow of workers, regional differences in crops, variations in harvest times, and unpredictable weather conditions mean that many farm owners complain of chronic labor shortages, while farmworkers frequently report it is difficult to locate

employment or obtain sufficient hours of work to earn a living. Unemployment rates among farmworkers generally are double those of other wage and salaried workers and those working in field crops have twice the unemployment rate of livestock workers. Historically, the uncertainty farmworkers have faced as to the availability or duration of work, along with the low wages generally earned by hired farm laborers, have led to many employed in the agricultural labor sector to leave agriculture for employment in other industries. Because of high turnover rates in agricultural employment, it is estimated that 2.0 to 2.5 individual farmworkers fill each job slot in the course of a year. This phenomenon has lead to chronic instability in the labor market and a shortage of skilled and experienced workers.

B. Scope of Work

The ACE grants program is intended to improve the supply of skilled agricultural workers and bring greater stability to the workforce in this sector. This stability will be realized through services specifically designed to assist farmworkers in securing, retaining, upgrading or returning from agricultural jobs. Such services include the following:

- Agricultural labor skills development;
- The provision of agricultural labor market information;
- Transportation;
- Short-term housing while in transit to an agricultural worksite;
- Workplace literacy and assistance with English as a second language;
- Health and safety instruction, including ways of safeguarding the food supply of the United States; and
- Other such services the Secretary deems appropriate.

C. Anticipated Outputs/Outcomes

1. *Outputs.* The term ''output'' means the creation or provision of services to assist farmworkers in securing, retaining, upgrading or returning from agricultural jobs. Outputs may be quantitative or qualitative but must be measurable during an assistance agreement funding period.

Examples of outputs from the projects to be funded under this announcement may include, but are not limited to, the following: Number of farmworkers served; number of farmworkers who attended conferences or trainings; number of conferences or training sessions held; or number of farmworkers completing labor skills programs or health and safety training programs.

2. *Outcomes.* The term ''outcome'' means the result, effect, or consequence that will occur from carrying out an outreach or assistance program or activity that is related to a programmatic goal or objective. Outcomes may be agricultural, behavioral, social, economic, or programmatic in nature. They may not necessarily be achievable within an assistance agreement funding period. Projects to be funded under this announcement are required to document anticipated outcomes, including but not limited to: Improvements in the supply, stability, safety and/or training of the agricultural labor force in a given geographic area or a given sector of the agricultural industry; an increase in the numbers of farmworkers in a given geographic area or agricultural sector who obtain skill-based certifications, licenses, or demonstrated competencies qualifying them for enhanced employment opportunities; the number of farmworkers in a given area who, as a result of program activities, advance to a position in agricultural employment which offers more hours of work and/or better terms and conditions of employment and/or an increase in wages; the number of farmworkers for whom English is not their first language who achieve, as a result of program activities, demonstrable improvements in workplace literacy in English; the establishment of new programs of health and safety instruction for farmworkers which, among other things, address ways of safeguarding the U.S. food supply; the establishment of new partnerships, networks or community support for services designed to assist farmworkers in securing, retaining, upgrading or returning from agricultural jobs, with the ultimate goal of improving the supply, stability, safety and training of the agricultural labor force.

3. *Performance Measures.* To be eligible for consideration for funding the applicant must develop performance measures they expect to achieve through the proposed activities. These performance measures will help gather insights and will be the mechanism to track progress concerning success process and outcome strategies and will provide the basis for developing lessons to inform future awardees. It is expected that the description of performance measures will include an estimate of the number of farmworkers served by the activities of the project including the assumptions used to make those estimates.

The following are questions to consider when developing output and outcome measures of quantitative and qualitative results:

- What are the measurable short term and longer term results the project will achieve?
- How does the plan measure progress in achieving the expected results (including outputs and outcomes) and how will the approach use resources effectively and efficiently?
- How will the results be achieved in the proposed timeline?

II. Award Information

A. Expected Amount of Funding

The total funding available for awards under this competitive opportunity is approximately $4,000,000.

B. Expected Number of Awards

OAO anticipates awarding no less than 8 grants from this announcement, subject to availability of funds and the quality of applications received. A maximum award will be limited to $500,000. OAO reserves the right to make additional awards under this announcement, consistent with Agency policy, if additional funding becomes available. Any additional selections for awards will be made no later than six months from the date of the original selection date.

C. Project Period

The estimated project period for awards resulting from this solicitation will begin April 2, 2012. Proposed project periods may be up to three years.

D. Award Type

The funding for selected projects will be in the form of a grant. Although OAO will negotiate precise terms and conditions relating to the degree of involvement under the grant agreement as part of the award process, the anticipated Federal involvement for these projects will be limited to the following activities:

- Approval of awardees' final budget and statement of work accompanying the grant agreement
- Monitoring of awardees' performance through quarterly and final progress reports
- Evaluating awardees' use of federal funds through quarterly and final financial reports

III. Eligibility Information

A. Eligible Entities

Entities eligible for awards are non-profit organizations or a consortium of entities comprised of a non-profit organization and one or more of the following: Agribusinesses, State and local governments, agricultural labor

organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farmworkers. The criteria by which an entity's capacity to train farmworkers will be evaluated, at a minimum, by the following items: (1) An understanding of the issues facing hired farmworkers and conditions under which they work; (2) familiarity with the agricultural industry in the geographic area to be served, including agricultural labor needs and existing services for farmworkers; and (3) the capacity to effectively administer a program of services and benefits authorized by the grants program.

B. Beneficiary Eligibility

Farmworkers who are citizens of the United States or are otherwise legally present in the United States and who meet the definition of ''United States workers'' established by the U.S. Department of Labor in its regulations at 20 CFR 655.4.

C. Credentials/Documentation

Grantees must have the financial, legal, administrative and operational capacity to carry out the objectives of the program. Grantees shall be responsible for verifying the employment of farmworkers who are actively employed and are seeking to participate in program services or benefits. Unemployed farmworkers seeking to participate shall be required to certify to grantees that they are eligible for program services and benefits.

D. Cost-Sharing or Matching

OAO does not require matching support for this program. Matching resources will not be factored into the review process as part of the evaluation criteria.

E. Threshold Eligibility Criteria

These are requirements that if not met by the time of proposal submission will result in the elimination of the proposal from consideration for funding. Only applications from eligible entities (see above) that meet all of these criteria will be evaluated in the proposal review process in Section V of this announcement. Applicants deemed ineligible for funding consideration as a result of the threshold eligibility review will be notified within 15 calendar days of the ineligibility determination.

i. Proposals must substantially comply with the proposal submission instructions and requirements set forth in Section IV of this announcement. Where a page limit is expressed in Section IV with respect to the narrative proposal, pages in excess of the page limitation will not be reviewed.

ii. Proposals must be received by OAO as specified in Section IV of this announcement on or before the proposal submission deadline published in Section IV of this announcement. Applicants are responsible for ensuring that their application reaches the designated person/office specified in Section IV of this announcement by the submission deadline.

iii. Proposals received after the submission deadline will be considered late and returned to the sender without further consideration unless the applicant can clearly demonstrate that it was late due to *www.Grants.gov* or USDA mishandling. Applicants may confirm receipt of their proposal with OAO after the submission deadline to ensure proposal review.

iv. Proposals will only be accepted via *www.Grants.gov,* except in extenuating circumstances such as trouble submitting electronically to that site or as determined by OAO.

v. Proposals must address one or more of the program areas that would provide farmworkers assistance in securing, retaining, upgrading or returning from an agricultural job.

vi. Proposals requesting federal funding exceeding $500,000 will be deemed ineligible and will not be considered for award.

IV. Application and Submission Information

A. Proposal and Submission Information

Applicants may download individual grant proposal forms from *www.Grants.gov.* For assistance with *www.Grants.gov,* please consult the Applicant User Guide *(http://grants.gov/assets/ApplicantUserGuide.pdf).*

B. Form of Proposal Submission

Applicants are required to submit proposals through *www.Grants.gov.* Applicants will be required to register through *www.Grants.gov* in order to begin the proposal submission process. Any applicant who experiences significant technical difficulty with *www.Grants.gov* should contact OAO as soon as possible to obtain an alternate method of electronic submission (*i.e.,* e-mail).

Proposals must be submitted via *http://www.Grants.gov* by 5 p.m. EST on November 14, 2011. Proposals received after this deadline will not be considered for funding.

C. Content of Proposal Package Submission

All proposal submissions must contain completed and signed original application forms, as well as the Project Narrative and other required attachments, as described below.

1. Forms. The forms listed below can be found in the proposal package on *www.Grants.gov.*

- Standard Form 424, Application for Federal Assistance
- Standard Form 424A, Budget Information—Non-Construction Programs
- Standard Form 424B, Non-Construction Programs

2. Attachments. The elements listed below are included in the proposal package on *www.Grants.gov* as fillable PDF templates. Applicants must download and complete these attachments and save the completed PDF files to the application submission portal on *www.Grants.gov.* **Note:** Please number each page of each attachment and indicate the total number of pages per attachment (*i.e.,* 1 of 10, 2 of 10, etc).

- Attachment 1: Project Summary. In 500 words or less, indicate the organizations or entities that will conduct the project, their eligibility, the geographical area served by the project, and the priority areas that will be addressed by the project. Please be concise.
- Attachment 2: Project Narrative. In 10 double-spaced pages or less (one-inch margins, 12-point font), discuss the merits of your proposed project. Specifically, it is critical that the proposal: (1) Explain how the project will assist employers and farmworkers by improving the supply, stability, safety and training of the agricultural labor force; (2) describe the way in which the services to be provided will assist farmworkers in securing, retaining, upgrading, or returning from an agricultural job); (3) identify the experience of the organization(s) taking part in the project; and (4) identify project performance measures, including an estimated number of farmworkers served, as described in Section I.C.;
- Attachment 3: Personnel. In 2 double-spaced pages or less per individual (one-inch margins, 12-point font), identify the qualifications, relevant experience, and knowledge of each Project Director or collaborator. Also, specifically discuss the roles and responsibilities of each person within the scope of work to be completed by the proposed project.
- Attachment 4: Budget Narrative. In an organized format identify and

describe the costs associated with the proposed project, including subawards or contracts and indirect costs. Each cost indicated must be fully allowable under the Federal Cost Principles in order to be funded by the award.

• Attachment 5: Program of Work. In an organized format, map out the timeline for each task to be accomplished during the proposed project period. Identify the relationship of each task to a priority area. Examples of priority areas are listed under Section I.B.

D. Subawards and Partnerships

OAO awards funds to one eligible applicant as the awardee even if other eligible applicants are named as partners or co-applicants or members of a coalition or consortium. The awardee is accountable to OAO for the proper expenditure of funds, consistent with the OAO approved proposal.

E. Submission Dates and Times

The closing date and time for receipt of proposal submissions via *www.Grants.gov* is by 5 p.m., EST on Tuesday, November 15, 2011. Proposals received after the closing date and time will not be considered for funding.

F. Confidential Information

The names of entities submitting proposals, as well as proposal contents and evaluations, except to those involved in the review process, will be kept confidential to the extent permissible by law. If an applicant chooses to include confidential or proprietary information in the proposal, it will be treated in confidence to the extent permitted by law, provided that the information is clearly marked by the applicant with the term ''confidential and proprietary information.''

G. Pre-Submission Proposal Assistance

OAO may not assist individual applicants by reviewing draft proposals or providing advice on how to respond to evaluation criteria. However, OAO will respond to questions from individual applicants regarding eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification about the announcement. Any questions should be submitted to *christine.chavez @osec.usda.gov.*

V. Application Review Information

A. Evaluation Criteria

Only eligible entities whose proposals meet the threshold criteria in Section III of this announcement will be reviewed according to the evaluation criterion set forth below. Applicants should explicitly and fully address these criteria as part of their proposal package submittal.

OAO will use a points system to rate each proposal, with a total of 100 points possible. Each proposal will be given a numerical score and will be rank-ordered according to that score. Preliminary funding recommendations will be provided to the designated approving official based on this ranking. Final funding decisions will be made by the designated approving official based on the rankings and preliminary recommendation of OAO review panel evaluations. In making final funding decisions, the designated approving official may also consider programmatic priorities and geographic diversity of applicants. Once final decisions have been made, a funding recommendation will be developed and forwarded to the Program Leader.

Criteria	Points
1. *Project Narrative:* Under this criterion, OAO will evaluate the extent and quality to which the narrative includes a well-conceived strategy for addressing the requirements and objectives stated Section I, Part B (Scope of Work) related to (i) (15 points) estimated number of farmworkers assisted in securing, training, retaining, upgrading and returning from an agricultural job Section I.B.; (ii) (15 points) the extent to which the proposal would bring together services for farmworkers and/or help build networks or partnerships to leverage resources to further program goals (iii) (10 points) estimate the number of farmworkers who will demonstrate improvements in workplace literacy in English (iv) (10 points) extent to which the applicant clearly demonstrates how they will ensure timely and successful completion of the project and whether the proposal sets forth a reasonable time schedule for execution of the tasks associated with the projects	50
2. *Anticipated Outcomes and Outputs:* Under this criterion, OAO will evaluate: (i) (15 points) the effectiveness of the applicant's plan for tracking and measuring its progress toward achieving the expected project outputs and outcomes related to assisting farmworkers in securing, training, retaining, upgrading or returning from an agricultural job, such as those identified in Section I.C of this announcement	15
3. *Capability of Applicant:* Under this criterion, applicants will be evaluated based on their ability to successfully complete and manage the proposed project taking into account the applicant's: (i) (5 points) past performance in successfully completing and managing prior funding agreements identified in Attachment 1 of the proposal as described in Section IV.C of the announcement; (ii) (10 points) organizational experience and plan for timely and successfully achieving the objectives of the proposed project; and (iii) (5 points) staff expertise/qualifications, staff knowledge, and resources or the ability to obtain them, to successfully achieve the goals of the proposed project	20
4. *Budget:* Under this criterion, OAO will evaluate the proposed project budget to determine whether, (i) (10 points) costs are reasonable to accomplish the proposed goals, objectives, and measurable outcomes; and (ii) (5 points) the proposed budget provides a detailed breakdown of the approximate funding used for each major activity, including associated administrative expenses incurred by implementing the ACE grants	15

B. Selection of Reviewers

Reviewers will be selected from within USDA based upon training and experience in relevant fields including, knowledge, experience and expertise in serving the needs of the farmworker community.

VI. Award Administration Information

A. Award Notices

Following evaluation of proposals, all applicants will be notified regarding their status.

B. Proposal Notifications and Feedback

1. OAO anticipates notification of the successful applicant will be made using one of the following methods via telephone, e-mail, or postal mail by October 30, 2011. The notification will advise the applicant that its proposed project has been successfully evaluated and recommended for award. The notification will be sent to the original signer of the SF–424, Application for Federal Assistance. This notification, which advises that the applicant's proposed project has been recommended for award, is not an authorization to begin work. The award notice signed by USDA grants officer is

the authorizing document and will be provided through postal mail. At a minimum, this process can take up to 90 days from the date of recommendation.

2. OAO anticipates notification to unsuccessful applicants will be made via e-mail or postal mail by February 6, 2012. The notification will be sent to the original signer of the SF–424, Application for Federal Assistance.

3. Non-selected notification letters will contain information on how to obtain feedback. At OAO's discretion feedback will be either written or through oral debriefings. See Section VII for Agency Contact information.

C. DUNS Number and CCR Registration

In accordance with the Federal Funding Accountability and Transparency Act (FFATA) and the USDA implementation, all applicants must obtain and provide an identifying number from Dun and Bradstreet's Data Universal Numbering System (DUNS). Applicants can receive a DUNS number, at no cost, by calling the toll-free DUNS Number request line at 1–866–705–5711, or visiting the D&B Web site at *http://www.dnb.com.*

In addition, FFATA requires applicants to register with the Central Contractor Registry (CCR). This registration must be maintained and updated annually. Applicants can register or update their profile, at no cost, by visiting the CCR Web site at *http://www.ccr.gov.*

D. Reporting Requirement

The following reporting requirements will apply to awards provided under this FOA. OAO reserves the right to revise the schedule and format of reporting requirements as necessary in the award agreement.

1. Quarterly progress reports and financial reports will be required.

• Quarterly Progress Reports. The awardee must submit the OMB-approved Performance Progress Report form (SF–PPR, Approval Number: 0970–0334). For each report, the awardee must complete fields 1 through 12 of the SF–PPR. To complete field 10, the awardee should provide a brief narrative of project performance and activities, as described in the award agreement and in sample documents provided by OAO. Quarterly progress reports must be submitted to the designated OAO official within 30 days after the end of each calendar quarter.

• Quarterly Financial Reports. The awardee must submit the Standard Form 425, Federal Financial Report. For each report, the awardee must complete both the Federal Cash Transaction Report and the Financial Status Report sections of the SF–425. Quarterly financial reports must be submitted to the designated OAO official within 30 days after the end of each calendar quarter.

2. Final progress and financial reports will be required. The final progress report should include a summary of the project or activity, achievements of the project or activity, and a discussion of problems experienced in conducting the project or activity. The final financial report should consist of a complete SF–425 indicating the total costs of the project. Final progress and financial reports must be submitted to the designated OAO official within 90 days after the completion of the award period.

VII. Agency Contact

Attn: Christine Chavez, Program Leader, U.S. Department of Agriculture, Office of Advocacy and Outreach, 1400 Independence Avenue, SW., Whitten Building Room 533–A, Washington, DC 20250, Phone: (202) 205–4215, Fax: (202) 720–7136, Email: *christine.chavez@osec.usda.gov.*

VIII. Other Information

None.

Signed in Washington, DC, on October 14, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration for the Office of the Secretary.

[FR Doc. 2011–27078 Filed 10–19–11; 8:45 am]

BILLING CODE 3412–89–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0098]

Notice of Request for Extension of Approval of an Information Collection; Importation of Peppers From the Republic of Korea

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of peppers from the Republic of Korea.

DATES: We will consider all comments that we receive on or before December 19, 2011.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0098-0001.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0098* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of peppers from the Republic of Korea, contact Mr. Alex Belano, Senior Import Specialist, Regulations, Permits, and Manuals, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–5333. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Peppers From the Republic of Korea.

OMB Number: 0579–0282.

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

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51).

Under these regulations, peppers from the Republic of Korea are subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States. The regulations include requirements for greenhouse inspections by South Korean national plant

quarantine service (NPQS) officials and the use of a phytosanitary certificate with a declaration by NPQS officials stating the peppers were grown in accordance with the regulations and found free of certain plant pests.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.6 hours per response.

Respondents: South Korean national plant quarantine service officials and growers of peppers in South Korea.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 3 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27168 Filed 10–19–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0097]

Notice of Request for Extension of Approval of an Information Collection; Importation of Christmas Cactus and Easter Cactus in Growing Media From the Netherlands and Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of Christmas cactus and Easter cactus in growing media from the Netherlands and Denmark.

DATES: We will consider all comments that we receive on or before December 19, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0097-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0097, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0097* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of Christmas cactus and Easter cactus in growing media from the Netherlands and Denmark, contact Dr. Arnold Tschanz, Senior Plant Pathologist/Risk Manager, Plants for Planting Policy, Regulations, Permits, and Manuals, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Christmas Cactus and Easter Cactus in Growing Media From the Netherlands and Denmark.

OMB Number: 0579–0266.

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

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The regulations contained in ''Subpart—Plants for Planting'' (7 CFR 319.37 through 319.37–14) prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Under these regulations, Christmas cactus and Easter cactus in approved growing media may be imported into the United States from the Netherlands and Denmark under certain conditions, which require the use of a phytosanitary certificate and declaration stating the plants were grown in accordance with specific conditions, an agreement between APHIS and the plant protection service of the country where the plants are grown, and an agreement between the foreign plant protection service and the grower.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection

technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5714285 hours per response.

Respondents: Foreign plant protection service officials and growers in the Netherlands and Denmark.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 10.5.

Estimated annual number of responses: 210.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27170 Filed 10–19–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0096]

Notice of Request for Extension of Approval of an Information Collection; Hawaiian and Territorial Quarantine Notices

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to prevent the interstate spread of plant pests from the State of Hawaii and U.S. territories.

DATES: We will consider all comments that we receive on or before December 19, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0096-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0096* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the interstate movement of fruits and vegetables from Hawaii and U.S. territories, contact Mr. David Lamb, Import Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737; (301) 734–0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Hawaiian and Territorial Quarantine Notices.

OMB Number: 0579–0198.

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

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

Regulations governing the interstate movement of plants and plant products from Hawaii and U.S. territories, including Guam, Puerto Rico, and the U.S. Virgin Islands, are contained in 7 CFR part 318, ''State of Hawaii and Territories Quarantine Notices.''

These regulations are necessary to prevent the interstate spread of plant pests such as the Mediterranean fruit fly, the melon fly, the Oriental fruit fly, green coffee scale, the bean pod borer, and other plant pests to noninfested areas of the United States.

Administering these regulations requires APHIS to collect information from a variety of individuals who are involved in growing, packing, handling, and transporting plants and plant products. This information serves as supporting documentation required for the issuance of forms and documents, including limited permits, Federal certificates, compliance agreements, and applications for transit permits, that authorize the movement of regulated articles and is vital to help ensure that injurious plant pests are not spread interstate from the State of Hawaii and U.S. territories to noninfested areas of the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.7371428 hours per response.

Respondents: State plant health regulatory officials, irradiation facility personnel, and individuals involved in growing, packing, handling, and transporting plants and plant products.

Estimated annual number of respondents: 110.

Estimated annual number of responses per respondent: 38.181818.

Estimated annual number of responses: 4,200.

Estimated total annual burden on respondents: 3,096 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27172 Filed 10–19–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0092]

Importation of Plants for Planting; Risk-Based Sampling and Inspection Approach and Propagative Monitoring and Release Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to implement a risk-based sampling approach for the inspection of imported plants for planting. In our previous approach, we inspected 2 percent of consignments of imported plants for planting regardless of previous evidence of the risk posed by the plants for planting. The risk-based sampling and inspection approach will allow us to target high-risk plants for planting for more extensive inspection to help ensure that plants for planting infested with quarantine pests do not enter the United States, while providing a speedier inspection process for lower-risk plants for planting. In addition, for taxa of plants for planting that pose an extremely low risk, we are establishing a Propagative Monitoring and Release Program under which consignments of those taxa will be periodically monitored but not every consignment will be inspected.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Muraoka, National Plant Inspection Station Coordinator, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0932; or Dr. Mary Palm, Senior Mycologist and Lab Director, National Identification Services, Molecular Diagnostic Lab, PPQ, APHIS, B–580, BARC-East, Powder Mill Road, Beltsville, MD 20705; (301) 504–7154.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control to eradicate or contain them within the United States.

The regulations in ''Subpart—Plants for Planting,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict the importation of plants for planting. *Plants for planting* is defined in § 319.37–1 as plants intended to remain planted, to be planted or replanted. The definition of *plant* in that section includes any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

All plants for planting imported into the United States must be presented for inspection. Inspectors examine the plants for planting to determine whether they show any visual evidence of being infested with quarantine pests or infected with quarantine pathogens. After inspection, the plants may be allowed entry into the United States (with treatment, if necessary), destroyed, or reexported, depending on the results of the inspection.

Plants for planting that are required to be imported under a written permit under § 319.37–3(a)(1) through (a)(6) and that are not from Canada must be imported or offered for importation at a U.S. Department of Agriculture (USDA) plant inspection station. Under § 319.37–3(a)(5), lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada may be imported into the United States only after issuance of a written permit. Therefore, most consignments of plants for planting must be imported or offered for importation at a USDA plant inspection station. Such stations are listed in § 319.37–14. Plants for planting that are offered for inspection at a USDA plant inspection station are inspected by Plant Protection and Quarantine (PPQ) inspectors.

This notice announces our decision to standardize our approach to sampling and inspecting consignments of plants for planting offered for importation at USDA plant inspection stations based on the pest risk presented by the plants for plant for planting.

To this point, PPQ inspectors have inspected a minimum of 2 percent of every consignment of plants for planting presented for inspection. We have assessed our sampling and inspection methods and found that we can use our resources more effectively by targeting our efforts towards plants for planting that are known to present a higher risk, based on past inspection results for those plants for planting. Such an approach would be consistent with International Standard for Phytosanitary Measures (ISPM) #31, ''Methodologies for Sampling of Consignments.'' [1]

Therefore, we are standardizing our sampling and inspection approach to adjust the intensity of our inspection of imported plants for planting based on the risk they present of introducing quarantine pests into the United States. We will evaluate the risk associated with combinations of taxa of plants for planting and countries from which they are exported and assign risk ratings to those articles.

Plants for planting determined to present an extremely low risk will be inspected under the Propagative Monitoring and Release Program (PMRP). Taxa of plants for planting included in this program will be periodically monitored at plant inspection stations. Not every consignment of plants for planting included in the PRMP will be inspected, but those consignments that are inspected will be inspected at normal levels to confirm the plants' continued eligibility for the PMRP.

Subsequently, we will also implement a risk-based sampling plan for all other plants for planting. We will implement this approach initially by considering all taxa of plants for planting to be high risk. All plants for planting will be sampled at high risk rates until we have gathered sufficient data to establish that the plants for planting present a medium or low risk.

If a taxon of plants for planting from a certain country is determined to present a medium or low risk, it will be sampled at the plant inspection stations at a less intensive rate than high-risk plants for planting. We will continue to sample some consignments of the taxon at higher rates to monitor whether the taxon should still be considered to be medium or low risk. We will update our categorizations of taxa regularly in response to data from all inspections. This approach will allow us to target our resources towards taxa of plants for planting that pose the greatest risk and thus to provide greater security against the introduction of quarantine pests into the United States.

[1] ISPMs are developed under the auspices of the International Plant Protection Convention, to which the United States is a signatory. To view this and other ISPMs on the Internet, go to *http://www.ippc.int/* and click on the ''Adopted Standards'' link under the ''Core activities'' heading.

For importers of plants for planting, this approach may increase or decrease inspection time at the plant inspection station, depending on the risk level of the material. We believe this new sampling and inspection approach will result in increased effectiveness and that the difference in inspection time will be an incentive for importers to present high-quality, pest-free plants for planting for inspection at plant inspection stations.

We plan to implement the PMRP on October 17, 2011. The risk-based sampling will be implemented following further analysis of the sampling protocol.

Done in Washington, DC, this 14th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27173 Filed 10–19–11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0091]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with legislation implementing the results of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade, we are informing the public of the international standard-setting activities of the World Organization for Animal Health, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0091-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0091* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For general information on the topics covered in this notice, contact Mr. John Greifer, Associate Deputy Administrator for SPS Management, International Services, APHIS, room 1132, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250; (202) 720–7677.

For specific information regarding standard-setting activities of the World Organization for Animal Health, contact Dr. Michael David, Director, International Animal Health Standards Team, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 33, Riverdale, MD 20737–1231; (301) 734–5324.

For specific information regarding the standard-setting activities of the International Plant Protection Convention or the North American Plant Protection Organization, contact Ms. Julie E. Aliaga, Program Director, International Phytosanitary Standards, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301) 734–0763.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established as the common international institutional framework for governing trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act (Pub. L. 103–465), which was signed into law on December 8, 1994. The WTO Agreements, which established the WTO, entered into force with respect to the United States on January 1, 1995. The Uruguay Round Agreements Act amended Title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*). Section 491 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing an annual notice in the **Federal Register** that provides the following information: (1) The SPS standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each SPS standard specified, a description of the consideration or planned consideration of that standard, a statement of whether the United States is participating or plans to participate in the consideration of that standard, the agenda for U.S. participation, if any, and the agency responsible for representing the United States with respect to that standard.

''International standard'' is defined in 19 U.S.C. 2578b as any standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission (Codex) regarding food safety; (2) developed under the auspices of the World Organization for Animal Health (OIE, formerly known as the Office International des Epizooties) regarding animal health and welfare, and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with the North American Plant Protection Organization (NAPPO) regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement (NAFTA) or the member countries of the WTO.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of Codex, OIE, IPPC, and NAPPO. The United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) informs the public of Codex standard-setting activities, and USDA's Animal and Plant Health Inspection Service (APHIS) informs the public of OIE, IPPC, and NAPPO standard-setting activities.

FSIS publishes an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities for Codex. Codex was created in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

APHIS is responsible for publishing an annual notice of OIE, IPPC, and NAPPO activities related to international standards for plant and animal health and representing the United States with respect to these standards. Following are descriptions of the OIE, IPPC, and NAPPO organizations and the standard-setting agenda for each of these organizations. We have described the agenda that each of these organizations will address at their annual general sessions, including standards that may be presented for adoption or consideration, as well as other initiatives that may be underway at the OIE, IPPC, and NAPPO.

The agendas for these meetings are subject to change, and the draft standards identified in this notice may not be sufficiently developed and ready for adoption as indicated. Also, while it is the intent of the United States to support adoption of international standards and to participate actively and fully in their development, it should be recognized that the U.S. position on a specific draft standard will depend on the acceptability of the final draft. Given the dynamic and interactive nature of the standard-setting process, we encourage any persons who are interested in the most current details about a specific draft standard or the U.S. position on a particular standard-setting issue, or in providing comments on a specific standard that may be under development, to contact APHIS. Contact information is provided at the beginning of this notice under **FOR FURTHER INFORMATION CONTACT**.

OIE Standard-Setting Activities

The OIE was established in Paris, France, in 1924 with the signing of an international agreement by 28 countries. It is currently composed of 178 Members, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country or territory. The WTO has recognized the OIE as the international forum for setting animal health and welfare standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its Members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE aims to achieve these through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE provides annual reports on the global distribution of animal diseases, recognizes the free status of Members for certain diseases, categorizes animal diseases with respect to their international significance, publishes bulletins on global disease status, and provides animal disease control guidelines to Members. Various OIE commissions and working groups undertake the development and preparation of draft standards, which are then circulated to Members for consultation (review and comment). Draft standards are revised accordingly and are then presented to the OIE World Assembly of Delegates (all the Members) during the General Session, which meets annually every May, for review and adoption. Adoption, as a general rule, is based on consensus of the OIE membership.

The next OIE General Session is scheduled for May 20–25, 2012, in Paris, France. Currently, the Deputy Administrator for APHIS' Veterinary Services program is the official U.S. Delegate to the OIE. The Deputy Administrator for APHIS' Veterinary Services program intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. Information about OIE draft Terrestrial and Aquatic Animal Health Code chapters may be found on the Internet at *http://www.aphis.usda.gov/import_export/animals/oie/* or by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

OIE Terrestrial and Aquatic Animal Health Code Chapters and Appendices Adopted by the May 2011 General Session

Over 50 Code chapters were amended, rewritten, or newly proposed and presented for adoption at the General Session. The following Code chapters are of particular interest to the United States:

1. Glossary

Several Code chapter definitions were modified, rewritten, or deleted. Modified or rewritten definitions include the definitions for ''euthanasia,'' ''veterinary legislation,'' and ''wildlife''.

2. Chapter 1.1, Notification of Diseases and Epidemiological Information

The change in the text of this chapter helps to clarify the reporting responsibilities of a Member with respect to a given notifiable disease.

3. Chapter 6.4, Biosecurity Procedures in Poultry Production

The text in this chapter was modified for clarity and completeness in content.

4. Chapter 6.5, Zoning and Compartmentalization, and Chapter 4.4, Application of Compartmentalization

The text in these chapters was modified for clarity in content. No substantive changes were made to these chapters.

5. Chapter 6.5, Prevention, Detection and Control of Salmonella in Poultry

The terms ''farm'' and ''establishment'' were removed and replaced with ''flock.''

6. Chapter 8.1, Anthrax

The changes in the text of this chapter included the procedures for inactivation of *B. anthracis* spores in animal products.

7. Chapter 8.2, Aujeszky's Disease

The text in this chapter was modified to make it consistent with the structure of other chapters, update the definition of the disease and clarify what is meant by affected populations.

8. Chapter 8.5, Foot and Mouth Disease (FMD)

The text in this chapter was modified to allow for the option of OIE endorsement of a Member's official FMD control or eradication program.

9. Chapter 8.15, Vesicular Stomatitis

A list of safe commodities that can be traded regardless of a country's vesicular stomatitis status was incorporated into the chapter.

10. Chapter 10.4, Avian Influenza

Minor changes were made to this chapter to improve clarity.

11. Chapter 10.13, Newcastle Disease

The text in this chapter was modified to revise the time-temperature parameters for inactivation of Newcastle disease virus in poultry meat.

12. Chapter 12.6, Equine Influenza

The text in this chapter was modified for clarity.

The following Aquatic Code chapters are of particular interest to the United States:

1. Manual Chapter 2.1.1., Batrachochytrium Dendrobatidis

This is a new chapter proposed for adoption in 2011.

2. Chapter 6.3., Principles for Responsible and Prudent use of Anti-Microbia Agents in Aquatic Animals

Minor changes were made to this chapter to improve clarity.

3. Chapter 8.2., Infection With Ranavirus

Conditions are defined to allow unrestricted international trade in untested animal products from countries, zones or compartments not declared free of Ranavirus.

OIE Terrestrial Animal Health Code Chapters and Appendices for Future Review

Existing Terrestrial Animal Health Code chapters that may be further revised and new chapters that may be drafted in preparation for the next General Session in 2012 include the following:

- Chapter 1.2, Criteria for listing diseases.
- Chapter 6.5, Prevention, Detection and Control of Salmonella in Poultry.
- Chapter 8.6, Aujesky's disease.
- Chapter 8.10, Rabies.
- Chapter 8.12, Rinderpest.
- Chapter 11.3, Bovine brucellosis.
- Chapter 12.1, African horse sickness.
- Chapter 15.2, Classical swine fever.
- Chapter 15.4, Swine Vesicular Disease.
- Chapter X.X.X, Animal Welfare and Broiler Chicken Production. (This proposed chapter that focuses on establishing standard commercial poultry production practices was not adopted to allow for further Member consultations.)
- Chapter X.X.X. Animal Welfare and Beef Production. (This will be a new proposed chapter on standard practices for commercial beef production.)

OIE Terrestrial Animal Health Standards Commission Future Work Program

During the next few years, the OIE Terrestrial Animal Commission may address the following issues or establish ad hoc groups of experts to update or develop standards for the following issues:

- Diseases of Honey Bees and Hygiene and disease security procedures in apiaries.
- Epizootic Hemorrhagic Disease.

IPPC Standard-Setting Activities

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards, the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC.

The IPPC is under the authority of the Food and Agriculture Organization (FAO), and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations (NPPOs) in cooperation with regional plant protection organizations (RPPOs); the Commission on Phytosanitary Measures (CPM, formerly referred to as the International Commission on Phytosanitary Measures); and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC entered into force after two-thirds of the contracting parties notified the Director General of FAO of their acceptance of the amendment in October 2005. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is APHIS' Plant Protection and Quarantine (PPQ) program. The steps for developing a standard under the IPPC are described below.

Step 1: Proposals for a new international standard for phytosanitary measures (ISPM) or for the review or revision of an existing ISPM are submitted to the Secretariat of the IPPC in a standardized format on a 2-year cycle. Alternatively, the Secretariat can propose a new standard or amendments to existing standards.

Step 2: After review by the Standards Committee and the Strategic Planning and Technical Assistance Working Group, a summary of proposals is submitted by the Secretariat to the CPM. The CPM identifies the topics and priorities for standard setting from among the proposals submitted to the Secretariat and others that may be raised by the CPM.

Step 3: Specifications for the standards identified as priorities by the CPM are drafted by the Standards Committee. The draft specifications are subsequently made available to members and RPPOs for comment (60 days). Comments are submitted in writing to the Secretariat. Taking into account the comments, the Standards Committee finalizes the specifications.

Step 4: The standard is drafted or revised in accordance with the specifications by a working group designated by the Standards Committee. The resulting draft standard is submitted to the Standards Committee for review.

Step 5: Draft standards approved by the Standards Committee are distributed to members by the Secretariat and RPPOs for consultation (100 days). Comments are submitted in writing to the Secretariat. Where appropriate, the Standards Committee may establish open-ended discussion groups as forums for further comment. The Secretariat summarizes the comments and submits them to the Standards Committee.

Step 6: Taking into account the comments, the Secretariat, in cooperation with the Standards Committee, revises the draft standard. The Standards Committee submits the final version to the CPM for adoption.

Step 7: The ISPM is established through formal adoption by the CPM according to Rule X of the Rules of Procedure of the CPM.

Step 8: Review of the ISPM is completed by the specified date or such other date as may be agreed upon by the CPM.

Each member country is represented on the CPM by a single delegate. Although experts and advisors may

accompany the delegate to meetings of the CPM, only the delegate (or an authorized alternate) may represent each member country in considering a standard up for approval. Parties involved in a vote by the CPM are to make every effort to reach agreement on all matters by consensus. Only after all efforts to reach a consensus have been exhausted may a decision on a standard be passed by a vote of two-thirds of delegates present and voting.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all IPPC draft standards. The United States also has a representative on the Standards Committee. In addition, documents and positions developed by APHIS and NAPPO have been sources of significant input for many of the standards adopted to date. This notice describes each of the IPPC standards currently under consideration or up for adoption. The full text of each standard will be available on the Internet at *http://www.aphis.usda.gov/import_export/plants/plant_exports/phyto_international_standards.shtml.* Interested individuals may review the standards posted on this Web site and submit comments via the Web site.

The next CPM meeting is scheduled for March 26–30, 2012, at FAO Headquarters in Rome, Italy. The Deputy Administrator for APHIS' PPQ program is the U.S. delegate to the CPM. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standards up for adoption. The agenda for the Fifth Session of the Commission of Phytosanitary Measures is as follows:

1. Opening of the session.
2. Adoption of the agenda.
3. Election of the Rapporteur.
4. Report by the CPM chairperson.
5. Report by the Secretariat.
6. Report of the technical consultation among RPPOs.
7. Report of observer organizations.
8. Goal 1: A robust international standard-setting and implementation program.
9. Goal 2: Information exchange systems appropriate to meet IPPC obligations.
10. Goal 3: Effective dispute settlement systems.
11. Goal 4: Improved phytosanitary capacity of members.
12. Goal 5: Sustainable implementation of the IPPC.
13. Goal 6: International promotion of the IPPC and cooperation with relevant regional and international organizations.
14. Goal 7: Review of the status of plant protection in the world.
15. Election of the Bureau.
16. Membership of CPM subsidiary bodies.
17. Calendar.
18. Other business.
19. Date and venue of the next meeting.
20. Adoption of the report.

It is expected that the following standards will be sufficiently developed to be considered by the CPM for adoption at its 2012 meeting. The United States, represented by the Deputy Administrator for APHIS' PPQ program, will participate in consideration of these standards. The U.S. position on each of these issues will be developed prior to the CPM session and will be based on APHIS' analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

1. *Integrated measures for plants for planting in international trade.* This standard outlines the main criteria for the identification and application of integrated measures for the production and international movement of plants for planting (excluding seeds) as a pathway. It provides guidance to help identify and manage pest risks associated with plants for planting.

2. *Systems approach for pest risk management of fruit flies (Diptera: Tephritidae).* This standard provides guidelines for the development, implementation, and verification of integrated measures in a systems approach for pest risk management of fruit flies (Tephritidae) of economic importance.

New Standard-Setting Initiatives, Including Those in Development

A number of expert working group meetings or other technical consultations will take place during 2011 and 2012 on the topics listed below. These standard-setting initiatives are under development and may be considered for future adoption. APHIS intends to participate actively and fully in each of these working groups. The U.S. position on each of the topics to be addressed by these various working groups will be developed prior to these working group meetings and will be based on APHIS' technical analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

1. *Establishment and maintenance of fruit fly quarantine areas within pest free areas in the event of an outbreak detection.* This draft is proposed as an Annex to ISPM 26, Establishment of pest free areas for fruit flies (Tephritidae). It will provide guidance on the establishment and maintenance of regulated areas within pest free areas (PFA) when fruit fly outbreaks are detected. It will provide guidance on phytosanitary measures which are intended to protect other production areas and, as far as possible, will allow for the continuation of fruit and vegetables production, movement and handling, treatment, and shipping when some or all of the components of the export process are located in the regulated areas within the PFA.

2. *Minimizing pest movement by sea containers and conveyances in international trade.* The standard will provide guidance to NPPOs as to identifying particular pest risks associated with shipping containers as pathways in sea and overland transport between countries; identifying appropriate phytosanitary measures to mitigate such risks, in particular prior to export, including procedures for packing and cleaning of the interior and exterior of shipping containers, as well as inspection and measures related to the area surrounding packing, storage and loading locations; and identifying verification procedures. The purpose of this standard is to minimize the risk of quarantine pests moved as contaminants with shipping containers, irrespective of the cargo carried. The standard should provide guidance as to how appropriate pest risk management can be achieved with minimum impediment to efficient movement and management of shipping containers.

For more detailed information on the above topics, which will be addressed by various working groups established by the CPM, contact Ms. Julie E. Aliaga (see **FOR FURTHER INFORMATION CONTACT** above).

APHIS posts draft standards on the Internet (*http://www.aphis.usda.gov/import_export/plants/plant_exports/phyto_international_standards.shtml*) as they become available and provides information on the due dates for comments. Additional information on IPPC standards is available on the IPPC Web site at *http://www.ippc.int/IPP/En/default.htm.* For the most current information on official U.S. participation in IPPC activities, including U.S. positions on standards being considered, contact Ms. Julie E. Aliaga (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any of the areas of work being undertaken by the IPPC may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Ms. Aliaga.

NAPPO Standard-Setting Activities

NAPPO, a regional plant protection organization created in 1976 under the IPPC, coordinates the efforts among Canada, the United States, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating intra- and inter-regional trade. NAPPO conducts its business through panels and annual meetings held among the three member countries. The NAPPO Executive Committee charges individual panels with the responsibility for drawing up proposals for NAPPO positions, policies, and standards. These panels are made up of representatives from each member country who have scientific expertise related to the policy or standard being considered. Proposals drawn up by the individual panels are circulated for review to Government and industry officials in Canada, the United States, and Mexico, who may suggest revisions. In the United States, draft standards are circulated to industry, States, and various government agencies for consideration and comment. The draft standards are posted on the Internet at *http://www.aphis.usda.gov/import_export/plants/plant_exports/phyto_international_standards.shtml.* Once revisions are made, the proposal is sent to the NAPPO Working Group and the NAPPO Standards Panel for technical reviews, and then to the Executive Committee for final approval, which is granted by consensus.

The annual NAPPO meeting is scheduled for October 17 to 21, 2011, in Merida, Yucatan, Mexico. The NAPPO Executive Committee meeting will take place on October 17, 2011. The Associate Deputy Administrator for PPQ is a member of the NAPPO Executive Committee. The Associate Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption or any proposals to develop new standards.

Below is a summary of current panel assignments as they relate to the ongoing development of NAPPO standards. The United States (*i.e.,* USDA/APHIS) intends to participate actively and fully in the work of each of these panels. The U.S. position on each topic will be guided and informed by the best scientific information available on each of these topics. For each of the following panels, the United States will consider its position on any draft standard after it reviews a prepared draft. Information regarding the following NAPPO panel topics, assignments, activities, and updates on meeting times and locations may be obtained from the NAPPO homepage at *http://www.nappo.org* or by contacting Ms. Julie E. Aliaga (see **FOR FURTHER INFORMATION CONTACT** above).

1. Accreditation Panel

The panel will perform an in-depth audit of the Mexican NPPO's adherence to Regional Standard for Phytosanitary Measures (RSPM) 9, ''Authorization of laboratories for phytosanitary testing'' and review the audit training program with a view to establish a harmonized approach for NAPPO countries.

2. Biological Control Panel

The panel will investigate possible biological control strategies for the Emerald Ash Borer; review the draft regional standard on ''Guidelines for shipment of biological control agents among NAPPO countries'' and, in collaboration with the Pest Risk Analysis panel, will assess the risks associated with the importation of bee pollen and royal jelly diverted for use in pollination and recommend management measures.

3. Citrus Panel

The panel will conclude sampling procedures for citrus propagative material for the detection of Huanglongbing (HLB) as part of the diagnostic procedure and organize a second international workshop on citrus quarantine pests. Subjects to be covered would include: HLB, citrus black spot, citrus leprosis, citrus canker, and citrus variegated chlorosis.

4. Electronic Phytosanitary Certification Panel

The panel will participate in the international development of electronic certification towards a functioning regional and global e-certification capability; finalize the review of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) data mapping, preparing data mapping for phytosanitary certificates; and consolidate previously developed documents into an e-certification technical guide to be further discussed with members of the international e-certification working groups.

5. Forestry Panel

The panel will work on completing the drafting of a standard for regulating the movement of wooden articles intended for indoor and outdoor use; complete the drafting of a standard on the movement of Christmas trees within the NAPPO region; deliver a workshop related to the import and export of Christmas trees within and from the NAPPO region; review and comment on forest-related international standards being developed by the IPPC, in particular a proposed standard on the international movement of wood. The panel will prepare a discussion paper reviewing the applicability of current standards for heat treatment of wood and wood packaging in relation to emerging information that certain insect species appear to be thermo-tolerant.

6. Fruit Panel

The panel will develop a strategy to mitigate the risk of introduction of *Lobesia botrana* into NAPPO countries, including measures to deal with a possible outbreak; determine appropriate phytosanitary measures against *Drosophila suzukii* for trade in products which are hosts; complete RSPM 34, ''Guidelines to develop and apply phytosanitary protocol treatments for arthropod pests for fruits and vegetables,'' and complete the technical advisory group documents on *Rhagoletis* and *Tetranychus* trapping.

7. Grains Panel

The panel will contribute to the organization (agenda and speakers) of the IPPC workshop on the international movement of grain, to be held in Canada in late 2011.

8. Invasive Species Panel

The panel will develop a pathway risk analysis standard with support from the PRA panel; complete the discussion paper describing NAPPO's role in invasive alien species including documentation of relevant Federal legislative authority for regulation of both terrestrial and aquatic plants in North America; and collaborate with the PRA panel to review the scientific literature on climate change and complete the discussion paper on its pertinence to the PRA process.

9. Pest Risk Analysis Panel

The panel will complete the discussion paper on the potential for climate change to affect the ability of pests to spread and establish in new areas, including the implications for the current PRA process, with assistance from the Invasive Species panel; assist the Biological Control panel by assessing the risks associated with importation of bee pollen into NAPPO countries; complete a discussion paper summarizing the risk associated with the movement of wooden articles intended for indoor and outdoor use; and complete the development of the PRA format including risk-ranking guidelines.

10. Phytosanitary Alert System (PAS) Panel

The panel will prepare a checklist of alert sources and ensure that all available sources are being utilized but not duplicated; coordinate outreach with other related Web sites and link them to the PAS; evaluate whether users are visiting the resources page on the PAS Web site and determine whether this page should continue to be maintained; post pest reports and alerts to the NAPPO PAS Web site and prepare guidelines for the development of pest alerts.

11. Plants for Planting

The panel will organize information exchange among Government and industry in NAPPO countries to encourage progress towards implementation of RSPM 24, ''Integrated pest risk management measures for the importation of plants for planting into NAPPO member countries''; complete the pest list annexes; complete development of a protocol for hot water treatment of grapevines to control *Phylloxera;* and review and update RSPM 18, ''Guidelines for phytosanitary action following detection of Plum Pox Virus.''

12. Potato Panel

The panel will develop a NAPPO diagnostic protocol for *Ralstonia solanacearum* Race 3 Biovar 2; develop a NAPPO discussion paper on the efficacy of potato sprout inhibitors; gather the most recent information potato virus Y and identify the strains of concern to the NAPPO region based on biological and economic factors; and complete the review of RSPM 3, ''Guidelines for movement of potatoes into a NAPPO member country.''

13. Seeds Panel

The panel will complete the NAPPO regional standard on seed movement; continue to collaborate with COSAVE on North-South seed trade facilitation; support efforts in the development of an international standard for seed; and prepare an agenda and speakers for a symposium on seed movement for the 2011 NAPPO Annual meeting.

14. Standards Panel

The panel will coordinate the review of new and amended NAPPO standards, diagnostic and treatment protocols, and implementation plans; provide updates on NAPPO standards and ISPMs for the NAPPO Newsletter; maintain the NAPPO Glossary; and provide a formal description of responsibilities for the panel.

The PPQ Associate Deputy Administrator, as the official U.S. delegate to NAPPO, intends to participate in the adoption of these regional plant health standards, including the work described above, once they are completed and ready for such consideration.

The information in this notice contains all the information available to us on NAPPO standards currently under development or consideration. For updates on meeting times and for information on the working panels that may become available following publication of this notice, go to the NAPPO Web site on the Internet at *http://www.nappo.org* or contact Ms. Julie Aliaga (see **FOR FURTHER INFORMATION CONTACT** above). Information on official U.S. participation in NAPPO activities, including U.S. positions on standards being considered, may also be obtained from Ms. Aliaga. Those wishing to provide comments on any of the topics being addressed by any of the NAPPO panels may do so at any time by responding to this notice (see **ADDRESSES** above) or by transmitting comments through Ms. Aliaga.

Done in Washington, DC, this 14th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27174 Filed 10–19–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 64–2011]

Foreign-Trade Zone 272—Counties of Lehigh and Northampton, PA; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Lehigh Valley Economic Development Corporation, grantee of FTZ 272, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 13, 2011.

FTZ 272 was approved by the Board on April 5, 2007 (Board Order 1502, 72 FR 18960, 04/16/07), and expanded on February 13, 2009 (Board Order 1605, 74 FR 8903, 02/13/09), and on May 13, 2010 (Board Order 1679, 75 FR 29975–29976, 05/28/10).

The current zone project includes the following sites: *Site 1* (727 acres)—Lehigh Valley Industrial Park VII at Bethlehem Commerce Center, 1805 E, 4th St., Bethlehem; *Site 2* (96 acres)—Arcadia East Industrial Park (Lot 3), Route 512 and Silver Crest Rd., East Allen Township; *Site 3* (83 acres)—Arcadia West Industrial Park (Lots 2, 5, 6 and 7), I–78 and Route 863, Weisenburg Township; *Site 4* (226 acres)—West Hills Business Center, I–78 and Route 863, Weisenburg Township; *Site 5* (399 acres)—Liberty Business Center, Industrial Blvd. and Boulder Dr., Breinigsville; *Site 6* (183 acres)—Lehigh Valley West Corporate Center, Nestle Way and Schantz Rd., Breinigsville; *Site 7* (213 acres)—LogistiCenter, 4950 Hanoverville Rd., Bethlehem; *Site 8* (163 acres)—ProLogis Park 33, 3819 and 3850 ProLogis Parkway, Lower Nazareth; and, *Site 9* (442 acres)—Majestic Bethlehem Center, 3001 Commerce Blvd., Bethlehem.

The grantee's proposed service area under the ASF would be the Counties of Lehigh and Northampton, Pennsylvania, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Lehigh Valley Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to remove Sites 2–4 and to include existing sites 1, 5, 6, 7, 8, and 9 as magnet sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting approval of the following initial ''usage-driven'' site: *Proposed Site 10* (21 acres)—Sigma Aldrich Chemical Company, 6950 Ambassador Drive, Allentown, Lehigh County, Pennsylvania. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application

would have no impact on FTZ 272's authorized subzone.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 19, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 3, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: October 13, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–27213 Filed 10–19–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Partial Preliminary Results, Rescission of, and Intent To Rescind, in Part, the 2009–2010 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2009, through October 31, 2010. The Department initiated this review for 112 producers/exporters (companies).[1] The Department is issuing partial preliminary results for the PRC-wide entity only, which includes the seven companies listed in Appendix III. Based on timely withdrawals of requests for review, the Department is now rescinding the review with respect to 84 companies which are listed in Appendix I. The Department also preliminarily determines that a rescission of the administrative review is warranted with respect to 14 companies which each timely submitted a ''no shipment'' certification. The intent to rescind is applicable to the companies listed in Appendix II. In addition, there are seven companies which the Department determines are subject to the PRC-wide entity rate and which are subject to these partial preliminary results. These seven companies are listed in Appendix III. Accordingly, 21 companies are subject to these partial preliminary results and the intent to rescind the administrative review and are listed in Appendix IV.

The Department is issuing these partial preliminary results based on unique circumstances that have raised concerns with respect to enforcement of the antidumping duty order. Specifically, there are two mandatory respondents who are not participating in this review. Because these two companies have failed to establish their eligibility for a separate rate, the Department preliminarily determines that each of these companies are part of the PRC-wide entity. Thus, each company's current cash deposit rate is much lower than the rate preliminarily determined to be applicable to their entries. While such circumstances do not normally warrant issuance of partial preliminary results, there are unique and serious enforcement concerns that warrant issuing preliminary results for certain companies at this time. A more detailed explanation of the disposition of each of the above companies is set forth below.[2] The remaining seven companies under review will be covered in a separate partial preliminary results of review, and are listed in Appendix V. The preliminary results of review for these seven remaining companies are currently due November 10, 2011.

The Department invites interested parties to comment on these partial preliminary results for the PRC-wide entity and on our intent to rescind the administrative review of the 14 companies which certified ''no shipments.'' If the partial preliminary results for the PRC-wide entity are adopted in the partial final results, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

DATES: *Effective Date:* October 20, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Lingjun Wang, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0780 and (202) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1994, the Department published in the **Federal Register** the antidumping duty order on fresh garlic from the PRC.[3] On November 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the PRC for the period November 1, 2009, through October 31, 2010.[4] On November 16, 26, 29, and 30, 2010, eight companies timely requested the Department to review their exports of subject merchandise: (1) Chengwu County Yuanxiang Industry & Commerce Co., Ltd.; (2) Hebei Golden Bird Trading Co., Ltd. (Golden Bird); (3) Henan Weite Industrial Co., Ltd.; (4) Jinan Farmlady Trading Co., Ltd. (Farmlady); (5) Qingdao Xintianfeng Foods Co., Ltd.; (6) Shenzhen Xinboda Industrial Co., Ltd. (Xinboda); (7) Weifang Hongqiao International Logistic Co., Ltd. (Hongqiao); (8) Zhengzhou Harmoni Spice Co., Ltd. (Harmoni).

On November 30, 2010, the Fresh Garlic Producers Association (FGPA) and its individual members[5] (collectively, Petitioners) timely

[1] We also initiated a review of Zhengzhou Dadi. However, the responses of Shenzhen Xinboda, a mandatory respondent, indicate that Zhengzhou Dadi is its affiliated producer. As such, we will address Zhenghou Dadi in the context of our analysis of Shenzhen Xinboda. We do not include Zhengzhou Dadi in our company counts in this notice.

[2] The specific facts underlying the Department's decision for issuing these partial preliminary results are business proprietary. *See* Memorandum to The File, Through Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration, and Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, From: Scott Lindsay, Case Analyst, AD/CVD Operations, Office 6, Subject: Discussion of Business Proprietary Information for Partial Preliminary Results of Administrative Review for Fresh Garlic from the People's Republic of China, dated concurrently with this notice.

[3] *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China,* 59 FR 59209 (November 16, 1994).

[4] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010).

[5] The individual members of the FGPA are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

requested that the Department conduct an administrative review of 112 companies.[6] On December 28, 2011, the Department published a notice of initiation of administrative review with respect to 112 companies.[7]

On March 28, 2011, Petitioners timely withdrew their requests to review 84 of the 112 companies they initially requested, including Harmoni. *See* Attachment I. Harmoni also withdrew its own review request. On March 31, 2011, Hongqiao also withdrew its own review request and claimed that Petitioners also withdrew their request to review Hongqiao. On April 5, 2011, Petitioners responded to Hongqiao's withdrawal, stating that Petitioners did not withdraw their review request for Hongqiao. On April 15, 2011, the Department notified Hongqiao that it continues to be included in the review.[8]

On November 30, 2010, Jining Yongjia Trade Co., Ltd. (Yongjia), Qingdao Tiantaixing Foods Co., Ltd. (QTF), Weifang Chenglong Import & Export Co., Ltd. (Chenglong), Jining Yifa Garlic Produce Co., Ltd. (Yifa), Jinxiang Hejia Co., Ltd. (Hejia), Qingdao Sea-line International Trading Co., Ltd. (Sea-line), Shenzhen Bainong Co., Ltd. (Bainong) each timely certified that it had no shipments during the POR. On this same date, Yantai Jinyan Trading Co., Ltd. (Yantai) certified that it made no shipments during the period June 1, 2010, through October 31, 2010. On January 18, 2011, Jinxiang Chengda Import & Export Co., Ltd. (Chengda), Jinxiang Yuanxin Import & Export Co., Ltd. (Yuanxin), and Zhengzhou Yuanli Trading Co., Ltd. (Yuanli) each timely certified that it had no shipments during the POR. On January 24, 2011, Shandong Wonderland Organic Food Co., Ltd. (Wonderland) and XuZhou Simple Garlic Industry Co., Ltd. (Simple) each timely certified that it had no shipments during the POR. On February 3, 2011, Shanghai LJ International Trading Co., Ltd. (Shanghai LJ) timely certified that it had no shipments during the POR. On February 24, 2011, Zhengzhou Huachao Industrial Co., Ltd. (Huachao) timely certified that it had no shipments during the POR.

On January 5, 2011, the Department released CBP data for U.S. garlic imports from the PRC during the POR under Administrative Protective Order (APO), and invited comments regarding the data and respondent selection. No parties commented. On March 4, 2011, the Department selected five companies as mandatory respondents: (1) Golden Bird; (2) Longtai; (3) Xinboda; (4) Hongqiao; (5) Harmoni.[9]

On March 14, 2011, the Department issued the Non-Market Economy Antidumping Duty Questionnaire (Initial Questionnaire) to the five mandatory respondents. On March 30, 2011, Harmoni notified the Department that it would not submit a questionnaire response because it anticipated that the Department would rescind its review since Petitioners and Harmoni had each withdrawn their requests for review with respect to Harmoni (on March 28, 2011 and March 31, 2011, respectively). On April 25 and May 18, 2011, Golden Bird and Xinboda each submitted responses to Section A, C and D of the questionnaire.[10] On April 25, 2011, Hongqiao informed the Department that it would not respond to the Initial Questionnaire.[11] Longtai did not respond to the Initial Questionnaire nor did it request any extension of time to respond to the questionnaire.

On April 6, 2011, Petitioners placed on the record the CBP data that the Department released in the new shipper review which covered the first six months of the POR. On April 7, 2011, the Department placed additional CBP data on the record. On April 15, 2011, Petitioners met with the Department regarding the possible selection of additional mandatory respondents.[12] On May 9, 2011, Petitioners requested the Department to select additional mandatory respondents.[13] On May 17, 2011, Farmlady opposed Petitioners' request to select it as one of the additional mandatory respondents. On May 25, 2011, Yantai requested to be a mandatory respondent. The Department did not select any additional mandatory respondents.

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

Partial Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.

For all but one of the 84 companies, Petitioners were the only party that requested the review. The remaining company, Harmoni, also self-requested a review. As mentioned above, on March 28, 2011 and March 31, 2011, within the 90 days of publication of the notice of initiation, Petitioners and Harmoni each timely withdrew their respective review requests for Harmoni.[14] Therefore, the

[6] These 112 companies include the eight companies that requested their own reviews.

[7] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565, 81568–81569 (December 28, 2010) (*Initiation Notice*).

[8] *See* the Department's April 15, 2011 letter to Hongqiao.

[9] *See* Memorandum to Barbara E. Tillman, Through Thomas Gilgunn, From Nicholas Czajkowski, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum (March 4, 2011).

[10] The Department granted several extensions for various sections of the Initial Questionnaire.

[11] *See* Hongqiao's April 25, 2011 letter to the Department.

[12] *See* Memorandum to the File, Re: Meeting with Counsel for the Petitioners: Administrative Review of the Antidumping duty Order on Fresh Garlic from China (11/01/09–10/30/10) (April 18, 2011).

[13] Petitioners argued that the Department should select the three next largest exporters, during the POR, to serve as mandatory respondents in this review.

[14] On March 31, 2011, Golden Bird urged the Department to determine whether Harmoni had any business dealings with Petitioners before any final

Continued

Department is rescinding this review with respect to 84 companies in accordance with 19 CFR 351.213(d)(1). *See* Appendix I.

Intent To Rescind, in Part, the Administrative Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective POR. In the *Initiation Notice,* the Department stated that any company named in the notice of initiation that had no exports, sales, or entries during the POR should notify the Department within 60 days of publication of the *Initiation Notice* in the **Federal Register.** The Department stated that it would consider rescinding the review only if the company submitted a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. *See Initiation Notice.* The deadline to submit ''no shipment'' certifications was February 26, 2011.

When examining a no-shipment certification, the Department's practice is to: (1) Review the respondent's no shipment claim; (2) examine CBP entry data to determine whether these data are consistent with the claim; and (3) send a ''No Shipment Inquiry'' to CBP requesting that CBP notify the Department if it has evidence of shipments from the company making the claim. If, after taking these three steps, the Department finds no evidence to indicate that the companies at issue had exports, entries, or sales of subject merchandise under the order during the POR, the Department preliminarily rescinds its review, pursuant to 19 CFR 351.213(d)(3).[15]

As noted above, (1) Yongjia, (2) QTF, (3) Chenglong, (4) Yifa, (5) Hejia, (6) Sea-line, (7) Bainong, (8) Chengda, (9) Yuanxin, (10) Yuanli, (11) Wonderland, (12) Simple, (13) Shanghai LJ, and (14) Huachao each timely certified that it had no shipments during the POR. Yantai also submitted a no-shipment certification covering the period June 1, 2010, through October 31, 2010. However, during the period November 1, 2009, through May 31, 2010, subject merchandise produced/exported by Yantai did enter the United States for consumption.[16] As such, the Department is not intending to rescind the review with respect to Yantai.

The Department has reviewed all relevant no-shipment claims, has examined the CBP entry data, and sent no-shipment inquiries to CBP for each of these companies. In the no-shipment inquiries, we requested CBP to provide any information regarding entries by these companies during the POR within 10 days. We did not receive any responses from CBP to our no-shipment inquiries. After taking these steps, we have found no evidence that any of the above-noted fourteen companies made shipments during the POR. Therefore, pursuant to 19 CFR 357.213(d)(3), the Department is preliminarily rescinding the review with respect to Yongjia, QTF, Chenglong, Yifa, Hejia, Sea-line, Bainong, Chengda, Yuanxin, Yuanli, Wonderland, Simple, Shanghai LJ, and Huachao.

PRC-Wide Entity

Hongqiao and Longtai were selected as mandatory respondents in this review. In this review, Hongqiao timely filed a Separate Rate Certification, but did not respond to the Initial Questionnaire.[17] Longtai neither filed a Separate Rate Certification nor responded to the Initial Questionnaire. Therefore, the Department finds that Hongqiao and Longtai failed to establish eligibility for separate rate status and thus are properly considered part of the PRC-wide entity for purposes of these partial preliminary results.[18]

In addition, the Department initiated a review of five companies which were not selected as mandatory respondents and which did not file a Separate Rate Certification or Separate Rate Application to demonstrate eligibility for separate rate status. Furthermore, none of these five companies properly filed a timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. Therefore, the Department finds that these companies are part of the PRC-wide entity.[19] *See* Appendix III for a complete list of companies that are part of the PRC-wide entity.

Use of Facts Otherwise Available and Adverse Facts Available (AFA)

Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information

rescission. The regulations are clear that so long as the parties that requested the review timely withdraw the request, the Secretary will rescind the review. Since both withdrawal requests were timely, the Department has no basis to evaluate the reasoning behind a party's decision to withdraw its request. Furthermore, Golden Bird provided no evidence to support its claim that there have been business dealings between Petitioners and Harmoni.

[15] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 29174 (June 19, 2009)(*Garlic 13*).

[16] *See Fresh Garlic From the People's Republic of China: Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co., Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc.,* 76 FR 52315 (August 22, 2011).

[17] As discussed above, Hongqiao informed the Department that it would not participate in this review on April 25, 2011.

[18] The *Initiation Notice* states ''for exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.''

[19] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 37321 (June 27, 2011) (*Garlic 15*) (finding non-respondent companies to be part of the PRC-wide entity).

supplied if it can do so without undue difficulties.

Application of AFA to the PRC-Wide Entity

Hongqiao and Longtai were selected as mandatory respondents, but neither company responded to the Initial Questionnaire. As such, neither company has established its eligibility for separate rate status, and thus both companies are properly considered part of the PRC-wide entity for purposes of these preliminary results. Moreover, because the PRC-wide entity, which includes these two companies, withheld or failed to timely provide requested information, the information necessary for the Department to conduct the analysis is not available on the record. Moreover, the decision to not respond to the Initial Questionnaire constitutes a refusal to participate in the review and significantly impeded the proceeding. The PRC-wide entity, which includes Hongqiao and Longtai, neither requested an extension nor stated it was having difficulties in responding to the Initial Questionnaire. In fact, Hongqiao clearly announced its intent to not participate in this review by its letter of April 25, 2011.

Had the PRC-wide entity, which includes Hongqiao and Longtai, participated in the review, the Department may have had the opportunity to calculate a margin. Pursuant to section 776(a) of the Act, however, as a result of the PRC-wide entity's failure to participate, the Department shall use facts otherwise available to reach the applicable determination.

Because of the PRC-wide entity's complete failure to respond to the Initial Questionnaire, the Department finds that it has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Pursuant to section 776(b) of the Act, the Department shall use an inference that is adverse to the interest of this entity.

The PRC-wide entity, which includes Hongqiao and Longtai, has failed to provide requested information, which was in the sole possession of each respondent and could not be obtained otherwise. The refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[20] Therefore, the Department preliminarily determines to use an adverse inference in selecting from among the facts otherwise available. By using an inference that is adverse to the interests of the PRC-wide entity, the Department ensures the companies which comprise the entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in the review.

Selection of AFA Rates

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner'' and that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [21] Specifically, in reviews, the Department's practice in selecting a rate as total AFA is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).[22] The Court of International Trade (CIT) and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[23] In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin reflects ''a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' [24] Therefore, as AFA, the Department has assigned the PRC-wide entity a dumping margin of $4.71 per kilogram, the highest per-unit rate on the record of any segment of this proceeding.[25]

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[26] To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[27] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[28] Independent sources used to

[20] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003), where the Court of Appeals for the Federal Circuit (CAFÉ) provided an explanation of the ''failure to act to the best of its ability'' standard noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'').

[21] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8911 (February 23, 1998); *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005) and the Statement of Administrative Action accompany the Uruguay Round Agreements Act, H.R. Rep. No. 316, 103d Cong., 2d Sess. at 870 (SAA).

[22] *See Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 41121 (August 14, 2009); *see also Fujian Lianfu Forestry Co., Ltd.* v. *United States,* 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) (''Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.'').

[23] *See, e.g., NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation); *Kompass Food Trading International* v. *United States,* 24 CIT 678, 683–84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin for a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States,* 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin for a different respondent in a previous administrative review).

[24] *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (CAFC 1990).

[25] *See Garlic 13* and accompanying Issues and Decision Memorandum at Comment 8.

[26] *See* SAA.

[27] *See id.*

[28] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan:*

Continued

corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[29]

As discussed above, the $4.71 per kilogram is the highest rate on the record of any segment of the antidumping duty order. This rate was calculated using the *ad valorem* rate contained in the petition in the original investigation of garlic from the PRC and was applied to the PRC-wide entity in the immediately preceding administrative review,[30] and was not challenged. Furthermore, no information has been presented in this review that calls into question the reliability of the information. Because this rate, calculated using the *ad valorem* rate in the original investigation, was also applied in the two most recently completed reviews of this order, and the PRC-wide rate has not been challenged in court, and because no party has placed evidence on the record questioning the reliability of this rate in this review, the Department finds that the selected rate is reliable. Moreover, the rate selected is the rate currently applicable to the PRC-wide entity. The CAFC has held that the Department ''is permitted to use a 'common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' [31]

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.[32] Similarly, the Department does not apply a margin that has been discredited.[33] None of these circumstances are present with respect to the rate being used here.

In fact, where the Department has found a mandatory respondent part of the PRC-wide entity, the Department need not corroborate the PRC-wide rate with respect to information specific to that respondent because there is ''no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company.[34] The Department's permissible determination that Hongqiao and Longtai are part of the PRC-wide entity means that inquiring into Hongqiao's and Longtai's separate sales behavior ceases to be meaningful.

As this rate is both reliable and relevant, we determine that it has probative value, and is thus in accordance with the requirement under section 776(c) of the Act, that secondary information be corroborated to the extent practicable.

Assessment Rates

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption during the POR by the companies for whom the Department is rescinding reviews (*see* Appendix I), antidumping duties will be assessed on entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue these assessment instructions directly to CBP 15 days after the publication of the partial rescission final results in the **Federal Register.**

If these partial preliminary rescission of and preliminary results of review are adopted in the final results, then antidumping duties will be assessed as follows. For all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption during the POR by the companies: 1) who certified no shipments (*see* Appendix II), antidumping duties will be assessed on entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i); 2) that are part of the PRC-wide entity (including those listed in Appendix III), antidumping duties will be assessed at the PRC-wide entity rate of $4.71 per kilogram. The Department intends to issue assessment instructions directly to CBP 15 days after the publication of the partial rescission final results in the **Federal Register.**

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this partial rescission of administrative review. For all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act by the companies for whom the Department is rescinding reviews (*see* Appendix I), the cash deposit rate will continue to be the rate currently in effect for that company. These requirements, when imposed, shall remain in effect until further notice.

If these partial preliminary results are adopted in the final results, then the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies that certified no shipments (*see* Appendix II), the rate continues to be the rate currently in effect for that company; (2) for the PRC-wide entities (including those companies identified in Appendix III), the cash deposit rate will be the PRC-wide entity rate of $4.71 per kilogram. These requirements, when imposed, shall remain in effect until further notice.

Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outsider Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[29] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators From Japan,* 68 FR 35627 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators From Japan,* 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183–84 (March 11, 2005).

[30] The $4.71 PRC-wide entity rate was calculated in *Garlic 13,* and subsequently applied in both *Garlic 14* and *Garlic 15. See Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review,* 75 FR 34976 (June 21, 2010) (*Garlic 14*) and (*Garlic 15*).

[31] *See KYD, Inc.* v. *United States,* 607 F.3d 760 (Fed. Cir. 2010) (quoting *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d at 1190).

[32] *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996).

[33] *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

[34] *See Watanabe* v. *United States,* Slip Op. 2010–139 Court No. 09–00520 (Dec. 22, 2010)(citing *Peer Bearing Co.-Changshan* v. *United States,* 587 F. Supp. 2d 1319, 1327 (CIT 2008)); *Shandong Mach. Imp. & Exp. Co.* v. *United States,* Slip Op. 09–64, 2009 Ct. Intl. Trade LEXIS 76, 2009 WL 2017042, at *8 (CIT June 24, 2009)(Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate).

Comments

Since no calculations were performed for these partial preliminary results, no disclosure is required under 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first business day thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations.[35] Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments and a table of authorities cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). All briefs must be filed in accordance with the Department's e-filing regulations.[36] If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these partial preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: October 13, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—Companies For Which the Administrative Review Is Being Rescinded

The following companies were named in our *Initiation Notice.* Subsequently, interested parties timely withdrew all requests for review of these companies. Therefore, pursuant to 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to these companies.

1. APM Global Logistics (Shanghai) Co., Ltd.
2. American Pioneer Shipping
3. Anhui Dongqian Foods Ltd
4. Anqiu Friend Food Co., Ltd.
5. Anqiu Haoshun Trade Co., Ltd.
6. APS Qingdao
7. Chiping Shengkang Foodstuff Co., Ltd.
8. CMEC Engineering Machinery Import & Export Co,. Ltd.
9. Dongying Shunyifa Chemical Co., Ltd.
10. Dynalink Systems Logistics (Qingdao) Inc.
11. Feicheng Acid Chemicals Co., Ltd.
12. Frog World Co., Ltd.
13. Golden Bridge International, Inc.
14. Hangzhou Guanyu Foods Co., Ltd.
15. Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)
16. Hongqiao International Logistics Co.
17. Intecs Logistics Service Co., Ltd.
18. IT Logistics Qingdao Branch
19. Jinan Solar Summit International Co., Ltd.
20. Jinan Yipin Corporation Ltd.
21. Jining Highton Trading Co., Ltd.
22. Jining Jiulong International Trading Co., Ltd.
23. Jining Tiankuang Trade Co., Ltd.
24. Jining Trans-High Trading Co., Ltd.
25. Jinxiang County Huaguang Food Import & Export Co., Ltd.
26. Jinxiang Dacheng Food Co., Ltd.
27. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).
28. Jinxiang Fengsheng Import & Export Co., Ltd.
29. Jinxiang Jinma Fruits Vegetables Products Co., Ltd.
30. Jinxiang Meihua Garlic Produce Co., Ltd.
31. Jinxiang Shanyang Freezing Storage Co., Ltd.
32. Jinxiang Tianheng Trade Co., Ltd.
33. Jinxiang Tianma Freezing Storage Co., Ltd.
34. Juye Homestead Fruits and Vegetables Co., Ltd.
35. Kingwin Industrial Co., Ltd.
36. Laiwu Fukai Foodstuff Co., Ltd.
37. Laizhou Xubin Fruits and Vegetables
38. Linyi City Heding District Jiuli Foodstuff Co.
39. Linyi Tianqin Foodstuff Co., Ltd.
40. Ningjin Ruifeng Foodstuff Co., Ltd.
41. Qingdao Apex Shipping Co., Ltd.
42. Qingdao BNP Co., Ltd.
43. Qingdao Cherry Leather Garment Co., Ltd.
44. Qingdao Chongzhi International Transportation Co., Ltd.
45. Qingdao Lianghe International Trade Co., Ltd.
46. Qingdao Saturn International Trade Co., Ltd.
47. Qingdao Sino-World International Trading Co., Ltd.
48. Qingdao Winner Foods Co., Ltd.
49. Qingdao Yuankang International
50. Qufu Dongbao Import & Export Trade Co., Ltd.
51. Rizhao Huasai Foodstuff Co., Ltd.
52. Samyoung America (Shanghai) Inc.
53. Shandong Chengshun Farm Produce Trading Co., Ltd.
54. Shandong CHINA Bridge Imports
55. Shandong Dongsheng Eastsun Foods Co., Ltd.
56. Shandong Garlic Company
57. Shandong Jinxiang Zhengyang Import & Export Co., Ltd.
58. Shandong Sanxing Food Co., Ltd.
59. Shandong Xingda Foodstuffs Group Co., Ltd.
60. Shandong Yipin Agro (Group) Co., Ltd.
61. Shanghai Ever Rich Trade Company.
62. Shanghai Goldenbridge International Co., Ltd.
63. Shanghai Great Harvest International Co., Ltd.
64. Shenzhen Fanhui Import & Export Co., Ltd.
65. Shanghai Yijia International Transportation Co., Ltd.
66. T&S International, LLC.
67. Taian Eastsun Foods Co., Ltd.
68. Taian Fook Huat Tong Kee Pte. Ltd.
69. Taian Solar Summit Food Co., Ltd.
70. Tianjin Spiceshi Co., Ltd.
71. Taiyan Ziyang Food Co., Ltd.
72. U.S. United Logistics (Ningbo) Inv.
73. V.T. Impex (Shandong) Limited
74. Weifang Jinbao Agricultural Equipment Co., Ltd.
75. Weifang Naike Foodstuffs Co., Ltd.
76. Weifang Shennong Foodstuff Co., Ltd.
77. Weihai Textile Group Import & Export Co., Ltd.
78. WSSF Corporation (Weifang)
79. Xiamen Huamin Import Export Company
80. Xiamen Keep Top Imp. and Exp. Co., Ltd.
81. Xinjiang Top Agricultural Products Co., Ltd.
82. You Shi Li International Trading Co., Ltd.
83. Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.

[35] *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.*

[36] *Id.*

84. Zhengzhou Harmoni Spice Co., Ltd.

Appendix II—Companies That Have Certified No-Shipments

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jining Yongjia Trade Co., Ltd.
3. Jinxiang Chengda Import & Export Co., Ltd.
4. Jinxiang Hejia Co., Ltd.
5. Jinxiang Yuanxin Import & Export Co., Ltd.
6. Qingdao Sea-Line International Trading Co., Ltd.
7. Qingdao Tiantaixing Foods Co., Ltd.
8. Shandong Wonderland Organic Food Co., Ltd.
9. Shanghai LJ International Trading Co., Ltd.
10. Shenzhen Bainong Co., Ltd.
11. Weifang Chenglong Import & Export Co., Ltd.
12. XuZhou Simple Garlic Industry Co., Ltd.
13. Zhengzhou Huachao Industrial Co., Ltd.
14. Zhengzhou Yuanli Trading Co., Ltd.

Appendix III—Companies Subject to the PRC–Wide Entity Rate

The following companies are subject to these partial preliminary results and subject to the PRC-wide entity rate.

1. Linshu Dading Private Agricultural Products Co., Ltd.
2. Linyi City Kangfa Foodstuff Drinkable Co., Ltd.
3. Shandong Chenhe Int'l Trading Co., Ltd.
4. Shenzhen Greening Trading Co., Ltd.
5. Sunny Import & Export Limited
6. Shandong Longtai Fruits and Vegetables Co., Ltd.
7. Weifang Hongqiao International Logistic Co., Ltd.

Appendix IV

The following companies are subject to these partial preliminary results (companies that the Department preliminarily considers to be part of the PRC-wide entity or are subject to the Department's intent to rescind the administrative review).

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jining Yongjia Trade Co., Ltd.
3. Jinxiang Chengda Import & Export Co., Ltd.
4. Jinxiang Hejia Co., Ltd.
5. Jinxiang Yuanxin Import & Export Co., Ltd.
6. Qingdao Sea-Line International Trading Co., Ltd.
7. Qingdao Tiantaixing Foods Co., Ltd.
8. Shandong Wonderland Organic Food Co., Ltd.
9. Shanghai LJ International Trading Co., Ltd.
10. Shenzhen Bainong Co., Ltd.
11. Weifang Chenglong Import & Export Co., Ltd.
12. XuZhou Simple Garlic Industry Co., Ltd.
13. Zhengzhou Huachao Industrial Co., Ltd.
14. Zhengzhou Yuanli Trading Co., Ltd.
15. Linshu Dading Private Agricultural Products Co., Ltd.
16. Linyi City Kangfa Foodstuff Drinkable Co., Ltd.
17. Shandong Chenhe Int'l Trading Co., Ltd.
18. Shenzhen Greening Trading Co., Ltd.
19. Sunny Import & Export Limited
20. Shandong Longtai Fruits and Vegetables Co., Ltd.
21. Weifang Hongqiao International Logistic Co., Ltd.

Appendix V—Companies Under Review That Are Not Subject to the Partial Preliminary Results

Companies that remain covered by the second partial preliminary results portion of the administrative review.

1. Chengwu County Yuanxiang Industry & Commerce Co., Ltd.
2. Hebei Golden Bird Trading Co., Ltd.
3. Henan Weite Industrial Co., Ltd.
4. Jinan Farmlady Trading Co., Ltd.
5. Qingdao Xintianfeng Foods Co., Ltd.
6. Shenzhen Xinboda Industrial Co., Ltd./(Zhengzhou Dadi Garlic Industry Co., Ltd.)
7. Yantai Jinyan Trading Co., Ltd.

[FR Doc. 2011–27204 Filed 10–19–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: October 20, 2011.

SUMMARY: The Department of Commerce (the ''Department'') has decided to extend the time limit for the preliminary results of the sixth administrative review of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'') to January 30, 2012. The period of review (''POR'') is February 1, 2010, through January 31, 2011.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1655 and (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Vietnam. *See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review,* 76 FR 17825 (March 31, 2011) (''*Initiation Notice*''). The preliminary results are currently due no later than October 31, 2011.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit of Preliminary Results

We determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit because the Department requires additional time to analyze the questionnaire responses which include substantial sales and factor information, issue supplemental questionnaires, and to evaluate surrogate value submissions.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213 (h)(2), the Department is extending the time limit for the preliminary results by 90 days, until January 30, 2012. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 12, 2011.

Christian Marsh,

Deputy Assistant Secretary of Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–27208 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Standard Pipe From Turkey: Extension of Time for Preliminary Results of Countervailing Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 20, 2011.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background Information

On April 27, 2011, the Department of Commerce (the Department) published a notice of initiation of the administrative review of the countervailing duty order on certain welded carbon steel standard pipe from Turkey covering the period of review January 1, 2010, through December 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23545 (April 27, 2011). The preliminary results are currently due no later than December 1, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

In this administrative review, the Department is conducting a review of the following respondents: Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., Tosyali dis Ticaret A.S., Toscelik Profil ve Sac Endustrisi A.S., Erbosan Erciyas Boru Sanayi ve Ticaret A.S., and the Government of the Republic of Turkey. There are 14 programs under review in addition to several newly alleged subsidies programs, which the Department initiated on October 13, 2011. *See* Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from Robert Copyak, Senior Financial Analyst, AD/CVD Operations, Office 3, regarding ''Decision Memorandum on New Subsidy and Program-wide Change Allegations,'' (October 13, 2011).

Due to new subsidy allegations and the large number of companies and programs in this administrative review, we have determined that it is not practicable to complete the preliminary results of this review within the time period specified. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of the review to 365 days. The preliminary results are now due no later than March 30, 2012. The final results continue to be due 120 days after publication of the notice of preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: October 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–27205 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Extension of Time Limit for the Final Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Chris Siepmann at (202) 482–7958 or Yasmin Nair at (202) 482–3813; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2011, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the countervailing duty order on certain pasta from Italy, covering the period January 1, 2009, through December 31, 2009. *See Certain Pasta from Italy: Preliminary Results of the 14th (2009) Countervailing Duty Administrative Review,* 76 FR 48130 (August 8, 2011) (''*Preliminary Results*''). In the *Preliminary Results* we stated that we would issue our final results for the countervailing duty administrative review no later than 120 days after the date of publication of the *Preliminary Results.* The final results are currently due December 6, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of an administrative review within 120 days of the publication of the *Preliminary Results.* If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days.

Extension of Time Limits for Final Results

The Department has determined that completion of the final results of this review within the original time period (*i.e.,* by December 6, 2011) is not practicable. In the *Preliminary Results,* the Department investigated several new subsidy programs, and the Department requires more time to consider the comments of interested parties concerning the countervailability of these programs. Therefore, the Department is extending the time limit for completion of the final results to not later than February 4, 2012, which is 180 days from the date of publication of the *Preliminary Results,* in accordance with section 751(a)(3)(A) of the Act. However, February 4, 2012, is a Saturday, and, when a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the final results of review will be due no later than February 6, 2012.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: October 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–27207 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application to Shuck Surf Clams/Ocean Quahogs at Sea

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 19, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Douglas Potts, (978) 281–9341 or *Douglas.Potts@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

National Marine Fisheries Service (NMFS) Northeast Region manages the Atlantic surfclam and ocean quahog fisheries of the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMP are specified at 50 CFR 648.70.

The recordkeeping and reporting requirements at § 648.74 and § 648.75 form the basis for this collection of information. NMFS Northeast Region requests information from Atlantic surfclam and ocean quahog individual transferable quota (ITQ) allocation holders in order to process and track requests from the allocation holders to transfer quota allocation to another entity. NMFS Northeast Region also requests information from Atlantic surfclam and ocean quahog permit holders in order to track and properly account for Atlantic surfclam and ocean quahog harvest that is shucked at sea. Because there is not a standard conversion factor for estimating unshucked product from shucked product, NMFS requires vessels that choose to shuck product at sea to carry on board the vessel a NMFS-approved observer to certify the amount of Atlantic surfclam and ocean quahog harvested. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

II. Method of Collection

Requests from allocation holders to transfer quota use paper applications or an online form. Paper applications are used to process requests to shuck at sea.

III. Data

OMB Control Number: 0648–0240.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 205.

Estimated Time per Response: 5 minutes for the application to transfer quota, and 30 minutes for the application to shuck surfclams and ocean quahogs at sea.

Estimated Total Annual Burden Hours: 45.

Estimated Total Annual Cost to Public: $109,421.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 14, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–27130 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Deep Seabed Mining Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 19, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kerry Kehoe (301) 713–3155 extension 151, or *Kerry.Kehoe@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

NOAA's regulations at 15 CFR 970 govern the issuing and monitoring of exploration licenses under the Deep Seabed Hard Mineral Resources Act. Any persons seeking a license must submit certain information that allows NOAA to ensure the applicant meets the standards of the Act. The persons with licenses are required to conduct monitoring and make reports, and they may request revisions, transfers, or extensions of licenses.

II. Method of Collection

Paper submissions are used; however, applicants are encouraged to submit supporting documentation electronically when feasible.

III. Data

OMB Control Number: 0648–0145.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: Applications, 2,000–4,000 hours (no applications are expected); license renewals, 250 hours; reports, 20 hours.

Estimated Total Annual Burden Hours: 290.

Estimated Total Annual Cost to Public: $200 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 14, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–27131 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA703

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an exempted fishing permit application contains all of the required information and warrants further consideration. This permit would allow two commercial fishing vessels to test the economic viability of using electric rod and reel gear to target pollock in the Western Gulf of Maine Closure Area and to temporarily retain undersized catch for measurement and data collection. The study would be conducted by the School for Marine Science and Technology at the University of Massachusetts, Dartmouth.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before November 4, 2011.

ADDRESSES: You may submit written comments by any of the following methods:

- *E-mail: nero.efp@noaa.gov.* Include in the subject line ''Comments on Rod and Reel Fishing in WGOM Closed Area EFP.''
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on SMAST EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, 978–675–2153, *brett.alger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The School for Marine Science and Technology at the University of Massachusetts, Dartmouth (SMAST) submitted a complete application for an exempted fishing permit (EFP) on August 31, 2011, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would authorize two vessels to use electric rod and reel gear in the Western Gulf of Maine (GOM) Closure Area and to temporarily retain undersized catch for measurement and data collection.

The project, titled ''Utilization of Electric Rod and Reel to Target Pollock in WGOM Closed Area,'' is funded by NOAA's Northeast Cooperative Research Program through the network project GEARNET. In addition to testing the economic viability of using electric rod and reel gear to target pollock, and allow the vessels to temporarily retain undersized fish for data collection purposes, the project may also investigate if the gear could be used as an effective stock assessment tool within closed areas. The study would take place in the Western GOM Closure Area, during November and December 2011, with two vessels planning to fish 10 days each, for a total of 20 research days. The exemptions are necessary because groundfish vessels on commercial groundfish trips are prohibited from fishing in the Western GOM Closure Area and from retaining undersized fish. Each vessel would use four electric rod and reels each day and fish for approximately 8 hours, with an additional 4 hours of steaming, for a total trip of 12 hours. Fishing would primarily occur within the Western GOM Closure Area, with some effort being conducted outside the area. SMAST is requesting access to the Western GOM Closure Area based on its belief that pollock is concentrated in this area.

A technician would be on board the vessel to measure fish caught (retained and discarded), document fishing gear, bait, location, and fishing conditions to evaluate gear performance. Undersized fish would be discarded. All Northeast multispecies of legal size would be landed, with all catch being attributed to the sector vessel's annual catch entitlement. Proceeds from the sales would be retained by the vessels.

In order to ensure that catch does not exceed the amount of targeted and bycatch species estimated by SMAST, a trigger clause would be placed on the EFP. Based on reported landings and discards, the EFP would be rescinded should catch (landings and discards) exceed any of the following amounts (per vessel): Pollock: 6,000 lb (2,722 kg); cod: 1,000 lb (454 kg); haddock: 1,000 lb (454 kg); American plaice: 100 lb (45.4 kg); yellowtail flounder: 100 lb (45.4 kg); witch flounder: 100 lb (45.4 kg); winter flounder: 100 lb (45.4 kg);

spiny dogfish: 1,000 lb (454 kg); smooth dogfish: 200 lb (90.7 kg); thorny skate: 1,000 lb (454 kg); and winter skate: 1,000 lb (454 kg).

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

The Assistant Regional Administrator has made an initial determination that, based on a preliminary review of the proposed subject research and the criteria provided in section 5.05a–c and section 6.03c.3(a) of NAO 216–6, a Categorical Exclusion (CE) appears to be justified for this EFP. In accordance with NOA 216–6, a CE, or other appropriate NEPA document, would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP.

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

Dated: October 17, 2011.

Steven Thur,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–27211 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Years 2009 and 2010

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration's (NOAA's) Damage Assessment, Remediation, and Restoration Program (DARRP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal years (FY) 2009 and 2010. The indirect cost rates for these fiscal years and dates of implementation are provided in this notice. More information on these rates and the DARRP policy can be found at the DARRP web site at *http://www.darrp.noaa.gov.* This notice is a republication of the notice published October 3, 2011 (76 FR 61089) with corrections made to the table of indirect cost rates.

FOR FURTHER INFORMATION CONTACT: For further information, contact LaTonya Burgess at 301–713–4248, ext. 211, by fax at 301–713–4389, or e-mail at *LaTonya.Burgess@noaa.gov.*

SUPPLEMENTARY INFORMATION: The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARRP consists of three component organizations: the Office of Response and Restoration (ORR) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARRP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with Federal accounting requirements, the DARRP is required to account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARRP's Indirect Cost Effort

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: Evaluate the DARRP cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARRP. A **Federal Register** notice on R&M's effort, their assessment of the DARRP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARRP Web site at *http://www.darrp.noaa.gov.*

R&M continued its assessment of DARRP's indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARRP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARRP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARRP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARRP component organizations are consistent with Federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARRP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars, plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from I.M. Systems Group (IMSG) were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. IMSG provided on-site support to the DARRP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. IMSG continues to provide on-site support to the DARRP. Starting in FY 2010, contractors from Genwest provide on-site support for cost documentation. A third federal notice specifying the DARRP indirect rates for FY 2002 was published on October 6, 2003 (68 FR 57672), a fourth notice for the FY 2003 indirect cost rates appeared on May 20, 2005 (70 FR 29280), and a fifth notice for the FY 2004 indirect cost rates was published on March 16, 2006 (71 FR 13356). The notice for the FY 2005 indirect cost rates was published on February 9, 2007 (72 FR 6221). The notice for the FY 2006 rates was published on June 3, 2008 (73 FR 31679). Finally, the notice for the FY 2007 and FY 2008 rates was published on November 16, 2009 (74 FR 58948). Cotton's reports on these indirect rates

can also be found on the DARRP Web site at *http://www.darrp.noaa.gov.*

Cotton reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2009 and FY 2010 indirect cost rates.

The DARRP's Indirect Cost Rates and Policies

The DARRP will apply the indirect cost rates for FY 2009 and FY 2010 as recommended by Cotton for each of the DARRP component organizations as provided in the following table:

DARRP Component organization	FY 2009 Indirect rate (percent)	FY 2010 Indirect rate (percent)
Office of Response and Restoration (ORR)	197.44	125.88
Restoration Center (RC)	142.07	90.42
General Counsel for Natural Resources (GCNR)	83.93	49.49

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2009 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2008 and September 30, 2009. The FY 2010 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2009 and September 30, 2010. DARRP will use the FY 2010 indirect cost rates for future fiscal years, beginning with FY 2011, until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARRP indirect cost rate policies and procedures published in the Federal Register on December 7, 2000 (65 FR 76611), on December 2, 2002 (67 FR 71537), October 6, 2003 (68 FR 57672), May 20, 2005 (70 FR 29280), March 16, 2006 (71 FR 13356), February 9, 2007 (72 FR 6221), June 3, 2008 (73 FR 31679), and November 16, 2009 (74 FR 58948) remain in effect except as updated by this notice.

Dated: October 3, 2011.

David Westerholm,

Director, Office of Response and Restoration.

[FR Doc. 2011–26637 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Climate Assessment and Development Advisory Committee

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The National Climate Assessment and Development Advisory Committee (NCADAC) were established by the Secretary of Commerce under the authority of the Global Change Research Act of 1990 to synthesize and summarize the science and information pertaining to current and future impacts of climate.

Time and Date: The meeting will be held November 16 from 9 a.m. to 5:30 p.m. and November 17, 2011, from 9 a.m. to 3 p.m. These times are subject to change. Please refer to the Web page *http://www.nesdis.noaa.gov/NCADAC/index.html* for changes and for the most up-to-date meeting agenda.

Place: The meeting will be held at the NOAA Earth System Research Laboratory—David Skaggs Research Center (DSRC), 325 Broadway, Boulder, CO 80305–3337. Please check the Web site *http://www.nesdis.noaa.gov/NCADAC/index.html* for confirmation of the venue and for directions.

Status: Seating will be available on a first come, first served basis. Members of the public must RSVP in order to attend all or a portion of the meeting by contacting the NCADAC DFO (*Cynthia.Decker@noaa.gov*) by November 1, 2011. The meeting will be open to public participation with a 30 minute public comment period on November 16 at 5 p.m. (check Web site to confirm time). The NCADAC expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Individuals or groups planning to make a verbal presentation should contact the NCADAC DFO (*Cynthia.Decker@noaa.gov*) by November 10, 2011 to schedule their presentation. Written comments should be received in the NCADAC DFO's Office by November 10, 2011 to provide sufficient time for NCADAC review. Written comments received by the NCADAC DFO after November 10, 2011 will be distributed to the NCADAC, but may not be reviewed prior to the meeting date.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Cynthia Decker (301–563–6162, *Cynthia.Decker@noaa.gov*) by November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker Designated Federal Official, National Climate Assessment and Development Advisory Committee, NOAA OAR, R/SAB, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, E-mail: *Cynthia.Decker@noaa.gov;* or visit the NCADAC Web site at *http://www.nesdis.noaa.gov/NCADAC/index.html.*

Dated: October 14, 2011.

Sharon L. Schroeder,

Acting Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–27113 Filed 10–19–11; 8:45 am]

BILLING CODE 3510–KD–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed Nonprofit Capacity Building Program Progress Report. The Progress Report consists of two parts: A Progress Report Narrative and a Performance Measurement Reporting Workbook. The Progress Report is completed semi-annually by Nonprofit Capacity Building Grantees to summarize project accomplishments, challenges, resources generated, and progress toward achieving project goals and objectives.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 19, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Minnesota State Office; Attention Jaime Renner, State Program Specialist, Suite 2405; 431 South 7th Street, Minneapolis, MN 55415.

(2) By hand delivery or by courier to the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *By fax to:* (612) 334–4084, Attention Jaime Renner, State Program Specialist.

(4) Electronically through the Corporation's e-mail address system: *jrenner@cns.gov* or *http://www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jaime Renner, (612) 334–4085, or by e-mail at *jrenner@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

The purpose of the Nonprofit Capacity Building Program is to increase the capacity of a small number of intermediary grantees to provide specific assistance to improve the sustainability of and expand services provided by small and midsize nonprofits in communities facing resource hardship challenges. The Progress Report is completed semi-annually by Nonprofit Capacity Building Program Grantees to summarize project accomplishments, challenges, resources generated, and progress toward achieving project goals and objectives.

Current Action

This is a new information collection request. The Corporation seeks input on the Progress Report which consists of two parts: a Progress Report Narrative and a Performance Measurement Reporting Workbook. The Corporation is proposing to enhance data elements collected to better measure progress on whether the assistance being provided results in improved sustainability or expanded services.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Nonprofit Capacity Building Program Progress Report.

OMB Number: None.

Agency Number: None.

Affected Public: Current sponsoring organizations and subsite organizations and potential sponsoring organizations and subsite organizations.

Total Respondents: 10.

Frequency: Semi-annually.

Average Time per Response: Averages six (6) hours.

Estimated Total Burden Hours: 60 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 12, 2011.

Bruce Cline,

Colorado State Program Director, Nonprofit Capacity Building Program Officer.

[FR Doc. 2011–27100 Filed 10–19–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, a Defense Health Board (DHB) meeting is announced:

DATES:

November 14, 2011

9:30 a.m.–12 p.m. (Open Session).

12 p.m.–1 p.m. (Administrative Working Meeting).

1 p.m.–5 p.m. (Open Session).

ADDRESSES: Hilton Crystal City at Washington/Reagan National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Bader, Director, Defense Health Board, 5111 Leesburg Pike, Suite

810, Falls Church, Virginia 22041–3206, (703) 681–8448, Ext. 1215, Fax: (703) 681–3317, *Christine.bader@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: Additional information, including the agenda and electronic registration are available at the DHB Web site, *http://www.health.mil/dhb/default.cfm.* Anyone intending to attend is encouraged to register to ensure that adequate seating is available.

Purpose of the Meeting

The purpose of the meeting is to address and deliberate pending and new issues before the Board.

Agenda

On November 14, 2011, the Board will receive briefings regarding military health needs and priorities from guest speakers and representatives of the Department of Defense.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the DHB meeting on November 14, 2011 will be open to the public from 9:30 a.m. to 12 p.m. and 1 p.m. to 5 p.m.

Written Statements

Any member of the public wishing to provide comments to the DHB may do so in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Written statements should address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least 10 calendar days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB Chairperson, may allot time for members of the public to present their issues for review and discussion by the Defense Health Board.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by November 1, 2011.

Dated: October 17, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 2011–27202 Filed 10–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0114]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on November 21, 2011 unless comments are received which 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, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703)767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record 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 address in **FOR FURTHER INFORMATION CONTACT**.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: October 17, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S180.10

SYSTEM NAME:

Congressional, Executive, and Political Inquiry Records (August 7, 2009, 74 FR 39656).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the last five words from the second paragraph.

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name, home address, representative's name, and control number, if known.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name, home address, representative's name, and control number, if known.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S180.10

SYSTEM NAME:

Congressional, Executive, and Political Inquiry Records.

SYSTEM LOCATION:

Office of Legislative Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2545, Fort Belvoir, VA 22060–6221, and the DLA Primary Level Field Activities. Mailing addresses for the DLA Primary Level Field Activities may be obtained from the System manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, organizations, and other entities who have requested Members of State and Federal Legislative and Executive Branches of Government make inquiries on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain representative's name, constituent's name, details surrounding the issue being researched and control number. The records may also contain the constituent's home address, home telephone number, or related personal information provided by the constituent/representative making the inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; and DOD Directive 5400.04, Provision of Information to Congress.

PURPOSE(S):

Information is collected to reply to inquiries and to determine the need for and course of action to be taken for resolution. Information may be used by the DLA Director, Chief of Staff, DLA Senior Leadership and DLA Primary Level Field Activity Commanders and decision makers as a basis to institute policy or procedural changes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is furnished to Members/Staff of State and Federal Legislative and Executive Branches of Government who wrote to DLA on behalf of the constituent and who use it to respond to the constituent.

To Federal and local government agencies having cognizance over or authority to act on the issues involved.

The DoD ''Blanket Routine Uses'' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by constituent name, representative name, or control number.

SAFEGUARDS:

Records are maintained in a secure, limited access, or monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted to DL staff only. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Records are destroyed after eight years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Legislative Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the DLA Primary Level Field Activity Commanders.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name, home address, representative's name, and control number, if known.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name, home address, representative's name, and control number, if known.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by constituent, the constituent's representative, and from agency files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–27150 Filed 10–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Request for Public Comments on How the Department of Defense Can Improve the Way It Procures Defense Items and Defense Services in Support of Foreign Military Sales (FMS) Programs

AGENCY: Department of Defense (DoD).

ACTION: Request for public comments.

SUMMARY: Defense Federal Acquisition Regulation Supplement (DFARS) subpart 225.73—Acquisition for Foreign Military Sales (FMS) implements 22 U.S.C. 2762 of the Arms Export Control Act (AECA) that authorizes DoD to enter into contracts for resale to foreign countries or international organizations. In a recent report signed by the Secretary of Defense titled ''Security Cooperation Reform Phase 1'', a requirement directs the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD(AT&L)) to seek information from industry on how to improve the FMS process. The report is available at *http://www.acq.osd.mil/dpap/cpic/ic/docs/Signed_SCRTF_Report_Phase_1_-July%202011.pdf.*

DATES: *Submission of Comments:* Submit written comments to the address shown below on or before December 2, 2011. Comments received will be considered by DoD in the formation of a recommendation to the Secretary of Defense if a revision to the regulation or policy is necessary and appropriate.

ADDRESSES: Submit comments to: Director, Defense Procurement and Acquisition Policy, 3060 Defense Pentagon, Washington, DC 20301–3060, or e-mail to *jeffrey.grover@osd.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Grover, telephone 703–697–9352.

SUPPLEMENTARY INFORMATION: The Foreign Military Sales (FMS) Program is authorized under the Arms Export Control Act (AECA). The FMS program is an important instrument of U.S foreign policy. It allows the United States to provide defense articles and defense services to friendly countries and international organizations in order to deter and defend against aggression, facilitate a common defense, address security issues of mutual strategic concern, and to strengthen the security of the United States. The sales agreement between the United States and a foreign country or international organization is executed via a Letter of Offer and Acceptance (LOA). Security Assistance Management Manual, DoD 5105.38–M, found at *http://www.dsca.osd.mil/samm/,* provides guidance for the administration and implementation of Security Assistance and related activities. The articles and services acquired via FMS sales are procured through the Department of Defense Acquisition System. In the LOA, the Department of Defense (DoD) promises that when procuring for the purchaser, DoD will, in general, employ the same contract clauses, the same contract administration, and the same quality and audit inspection procedures as would be used in DoD procurements. Pricing for FMS contracts typically use the same principles used in pricing of other defense contracts. However, the application of the pricing principles in Federal Acquisition Regulation (FAR) parts 15 and 31 to an FMS contract may result in prices that differ from other defense contract prices for the same item. Direct costs associated with meeting a foreign customer's additional or unique requirements are allowable under such contracts. Indirect burden rates applicable to such direct costs are permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use. If the foreign government has conducted a competition resulting in adequate price competition as identified in FAR part 15, the contracting officer shall not require the submission of cost or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred. In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. Relating to offset costs, a U.S. defense contractor may recover all costs incurred for offset agreements with a foreign government or international organization if the LOA is financed wholly with customer cash or repayable Foreign Military Financing (FMF) credits. The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs. Typically, costs not authorized under FAR part 31 are not allowable in pricing FMS contracts. On November 22, 2002, the Defense Federal Acquisition Regulation Supplement (DFARS) was amended to increase FMS customer participation and acquisition transparency in DoD contracts awarded on behalf of FMS customers. DFARS subpart 225.73 provides authorization for FMS customers to participate in specifications development, delivery schedule planning, identification of warranties and other contractual requirements unique to the customer, as well as the review of pricing needed to make price-performance tradeoffs. This DFARS change encourages customer participation in both the acquisition process and industry discussions. Customers also are allowed to participate in the contract negotiation process within the limitations of DFARS subpart 225.73, to the degree authorized by the contracting officer (CO). This section specifically protects against unauthorized release of proprietary data and improper influence on the contracting process.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–27218 Filed 10–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting

AGENCY: US Air Force Scientific Advisory Board, Department of the Air Force, DoD.

ACTION: Meeting Cancellation Notice.

SUMMARY: Due to difficulties, beyond the control of the U.S. Air Force Scientific Advisory Board or its Designated Federal Officer, the Board must cancel its October 13–14, 2011 meeting of the U.S. Air Force Scientific Advisory Board (76 FR 57026, September 15, 2011). Since the Department of the Air Force is unable to file a **Federal Register** notice cancelling the meeting within the 15-calendar day period the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. The meeting was cancelled due to lack of approval of the Fiscal Year 2012 Board membership. This meeting will not be rescheduled.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Matthew E. Zuber, 240–612–5503, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762, *matthew.zuber@pentagon.af.mil*

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. 2011–27140 Filed 10–19–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (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 reporting burden on the public and helps the public understand the Department's information collection

requirements and provide the requested data in the desired format. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 17, 2011.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: High School Longitudinal Study of 2009 (HSLS:09) High School Transcript Collection and College Update Field Test and Second Follow-up Panel Maintenance.

OMB Control Number: 1850–0852.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 48,888.

Total Estimated Annual Burden Hours: 24,830.

Abstract: The High School Longitudinal Study of 2009 (HSLS:09) is a nationally representative, longitudinal study of more than 20,000 ninth graders in 944 schools who will be followed through their secondary and postsecondary years. The main study students will be re-surveyed in 2012 when most are high school 11th graders. The study focuses on understanding students' trajectories from the beginning of high school into university or the workforce and beyond. What students decide to pursue when, why, and how are crucial questions for HSLS:09, especially, but not solely, in regards to science, technology, engineering, and math courses, majors, and careers. This study includes a new student assessment in algebraic skills, reasoning, and problem solving and, like past studies, will survey students, their parents, school administrators, and school counselors. Students will be administered a questionnaire and an assessment instrument. This submission will ask for the clearance for a field test of the high school transcript collection and college update of HSLS:2009 high school students who were in 9th grade in the base year; second follow-up panel maintenance; and a 60-day waiver for the full scale submission for these activities.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4730. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–27210 Filed 10–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 21, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 14, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Consolidated State Application.

OMB Control Number: 1810–0576.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion; annually.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 30.

Total Estimated Annual Burden Hours: 2,400.

Abstract: Title IX, Part C, Sections 9301–9306, of the Elementary and Secondary Education Act (ESEA), as amended, authorizes the Secretary of Education to provide States the option of submitting consolidated applications to obtain funds for covered programs in which the State participates. The purpose of consolidated applications as defined in ESEA is to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery; to enhance program integration; and to provide greater flexibility and less burden for State educational agencies.

The U.S. Department of Education will use the information from the consolidated State application as the basis for approving funding under the covered ESEA, as amended programs (in which the State participates). The Department also will use the performance targets, baseline data, and other related information in the consolidated application to continue to assess the degree of progress States make over time in achieving ESEA goals. As with previous collections, the information in this collection will allow the Department to continue to monitor effectiveness of the use of program funds, and provide grantees with technical assistance.

Copies of the information collection submission for OMB review may be accessed from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4691. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–27099 Filed 10–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 21, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 14, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Perkins Loan Program: School Closure and False Certification Loan Discharge Applications.

OMB Control Number: 1845–0015.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 29,543.

Total Estimated Annual Burden Hours: 14,774.

Abstract: These forms serve as the means by which eligible borrowers in the Federal Family Education Loan Program, the William D. Ford Federal Direct Loan Program, and the Federal Perkins Loan Program apply for discharge of a loan based on school closure or false certification of loan eligibility in accordance with federal regulations. The holders of the borrower's loans use the information collected on these forms to determine whether a borrower meets the regulatory eligibility requirements for loan discharge.

Copies of the information collection submission for OMB review may be accessed from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4690. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–27090 Filed 10–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (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 reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 13, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: 21st Century Community Learning Centers Annual Performance Report.

OMB Control Number: 1810–0668.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 1,400.

Total Estimated Annual Burden Hours: 36,400.

Abstract: The purpose of the 21st Century Community Learning Centers program (21st CCLC) program, as reauthorized under Title IV, Part B, of the No Child Left Behind Act of 2001, 4201 *et seq.,* (20 U.S. Code 7171 *et seq.*), is to provide expanded academic enrichment opportunities for children attending low-performing schools. To reflect the changes in the authorization and administration of the 21st CCLC program and to comply with its reporting requirements, the U.S. Department of Education (ED) is requesting authorization for the collection of data through Web-based, data-collection modules, the Annual Performance Report, the Grantee Profile, the Competition Overview, and the State Activities module, which collectively will be housed in an application called the 21st CCLC Profile and Performance Information Collection System. The data will continue to be used to fulfill ED's requirement under the Government Performance and Results Act to report to Congress annually on the implementation and progress of 21st CCLC projects and the use of state administrative and technical assistance funds allocated to the states to support the program. The data collection will also provide State Educational Agency (SEA) liaisons with needed descriptive data about their grantees and allow SEA liaisons to conduct performance monitoring and identify areas of needed technical assistance.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4738. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–27086 Filed 10–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 9, 2011, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or e-mail: *noemp@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be on the Oak Ridge National Laboratory Hot Cell Cleanup.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical

disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on October 14, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–27156 Filed 10–19–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3494–003.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35: Second Compliance Filing—2198 Kansas Power Pool NITSA NOA to be effective 4/1/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5107.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER11–4665–001.
Applicants: North Branch Resources, LLC.
Description: North Branch Resources, LLC submits tariff filing per 35: Application for Designation of Category 1 Status to be effective 10/12/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5108.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER11–4673–001.
Applicants: Air Liquide Large Industries U.S. LP.
Description: Air Liquide Large Industries U.S. LP submits tariff filing per 35: MBR Tariff to be effective 10/12/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5126.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER12–67–000.
Applicants: Northeast Energy Associates, L.P.
Description: Northeast Energy Associates, L.P. submits tariff filing per 35.13(a)(2)(iii: Northeast Energy Associates, A Limited Partnership Revisions to MBR Tariff to be effective 7/26/2010.
Filed Date: 10/12/2011.
Accession Number: 20111012–5158.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER12–68–000.
Applicants: North Jersey Energy Associates, L.P.
Description: North Jersey Energy Associates, L.P. submits tariff filing per 35.13(a)(2)(iii: North Jersey Energy Associates, A Limited Partnership to be effective 7/26/2010.
Filed Date: 10/12/2011.
Accession Number: 20111012–5159.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER12–69–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: GMC Tariff Update 2012 to be effective 1/1/2012.
Filed Date: 10/12/2011.
Accession Number: 20111012–5160.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–2–000.
Applicants: Government of Singapore Investment Corporation.
Description: FERC–65A Exemption Notification of Government of Singapore Investment Corporation (Ventures) Pte Ltd.
Filed Date: 10/12/2011.
Accession Number: 20111012–5185.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–7–000.
Applicants: City of Kinston, NC.
Description: City of Kinston at Dopaco submits FERC Form 556—Notice of Certification of Qualifying Facility Status for a Small Power Production Facility.
Filed Date: 10/12/2011.
Accession Number: 20111012–5161.
Comment Date: None Applicable.

Docket Numbers: QF12–8–000.
Applicants: PowerSecure, Inc.
Description: PowerSecure, Inc. for City of Washington, NC at Beaufort County Courthouse submits FERC Form 556—Notice of Certification of Qualifying Facility Status for a Small Power Production Facility.
Filed Date: 10/12/2011.
Accession Number: 20111012–5172.
Comment Date: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27142 Filed 10–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER10–1401–000, ER11–2256–000, ER11–3149–000, ER11–3856–000, ER11–4580–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO).

The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com.*

October 18, 2011	Renewables Integration Market and Product Review.
October 19, 2011	Settlements and Market Clearing User Group.
	Congestion Revenue Rights.
	2012 Grid Management Charge.
October 20, 2011	Market Update.
	Generated Bids for Outages of Non Resource Specific.
	Resource Adequacy Resources.
October 25, 2011	Operation and Maintenance Cost Adder Review BPM Change Management.
October 26, 2011	Market Performance and Planning Forum.
	Settlements and Market Clearing User Group.
	Congestion Revenue Rights.
October 27, 2011	Board of Governors Meeting and Audit Committee.
October 28, 2011	Board of Governors Meeting and Audit Committee.
October 31, 2011	Transmission Planning and Generator Interconnection.
	Integration Draft Final Proposal.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov;* (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov,* (916) 294–0275.

Dated: October 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27141 Filed 10–19–11; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: Eastern Sierra Broadcasting, Station KCWK, Facility ID 160324, BMP–20111004AED, from North Las Vegas, NV, to Laughlin, NV; Episcopo, Joseph A., Station NEW, Facility ID 189518, BNPH–20110929AGK, from Rotan, TX, to Roscoe, TX; Everglades City Broadcasting Company, Inc., Station WBGY, Facility ID 47386, BPED–20110928AIO, from Naples, FL, to Everglades City, FL; Heeren, Wayne L., Station NEW, Facility ID 166079, BNPH–20060310AEF, from Burke, SD, to Wagner, SD; Kona Coast Radio, LLC, Station KIMI, Facility ID 189501, BPH–20110926AEC, from Humboldt, NE, to Sidney, IA.

DATES: The agency must receive comments on or before December 19, 2011.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division Media Bureau.

[FR Doc. 2011–27107 Filed 10–19–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0022)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection described below.

DATES: Comments must be submitted on or before December 19, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room F–1086, 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 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number (3064–0022). A copy of the comments 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, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

OMB Number: 3064–0022.

Form Number: MSD–4; MSD–5.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 75.

Estimated Time per Response: 1 hour.

Total Annual Burden: 75 hours.

General Description of Collection: An insured state nonmember bank which serves as a municipal securities dealer must file Form MSD–4 or MSD–5, as applicable, to permit an employee to become associated or to terminate the association with the municipal securities dealer. FDIC uses the form to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board.

Request for Comment

Comments are invited on: (a) Whether the 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 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 17th day of October, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–27138 Filed 10–19–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve.

DATES: Friday, November 4, 2011, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/goto/fdic/communitybanking.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Dated: October 17, 2011.

Robert E. Feldman,

Committee Management Officer, Federal Deposit Insurance Corporation.

[FR Doc. 2011–27151 Filed 10–19–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 76 FR 64088 (October 17, 2011).

DATE AND TIME: *Thursday, October 20, 2011 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

CHANGES IN THE MEETING: The following item has been added to the agenda:

Draft Final Rules and Explanation and Justification for Standards of Conduct.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, 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.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–27309 Filed 10–18–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)-Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

AB Global Logistics Consulting Inc. (OFF), 1010 19th Street, #10, Santa Monica, CA 90403. Officer: Andrea Bigi, President (Qualifying Individual), Application Type: Business Structure Change.

Alibaba Global Shipping Inc (NVO), 1260 57th Avenue, Oakland, CA

94621. Officers: Gary Sachs, CFO (Qualifying Individual); Ali Ismailzada, CEO/President, Application Type: New NVO License.

All Transport Export Inc (NVO & OFF), 4224 Shackleford Road, #3, Norcross, GA 30093. Officer: Valery Baranouski, President/Secretary (Qualifying Individual), Application Type: New NVO & OFF License.

Associated Global Systems, Inc. (NVO & OFF), 3333 New Hyde Park Road, #207, New Hyde Park, NY 11042. Officers: James N. Tucci, Chief Executive Officer/Secretary (Qualifying Individual); Tanya Freeman, Director, Application Type: QI Change.

Broom U.S.A., Inc. (NVO & OFF), 2149 NW., 79th Avenue, Miami, FL 33122. Officers: Julian A. Scattolini, Vice President/Director/Secretary (Qualifying Individual); Hector A. Espinoza, President, Application Type: New NVO & OFF License.

Centro Marine Freight Forward, LLC (OFF), 155 S. Kingsley Drive, Los Angeles, CA 90004. Officers: Ana Serrano, Managing Member (Qualifying Individual); Victor Ortiz, Member Application Type: New OFF License.

Cargo Management Group Inc. dba CMG (NVO & OFF), 6124 NW., 74th Avenue, Miami, FL 33166. Officers: Cristian Afanador, Vice President (Qualifying Individual); Vivian Cobo-Afanador, President/Secretary/Treasurer/Dir., Application Type: Name Change.

CR & J Logistics, Inc. (OFF), 8401 Lake Worth Road, Lake Worth, FL 33467. Officers: Joseph G. Mazzarise, Vice President (Qualifying Individual); Ronald S. Penn, President, Application Type: New OFF License.

Earth Relocation Inc (NVO & OFF), 239 Washington Street, #404, Jersey City, NJ 07302. Officers: Samir Shah, Vice President Operations/Secretary (Qualifying Individual); Falguni Patel, President/Treasurer, Application Type: New NVO & OFF License.

H S H K, Corp. (NVO & OFF), 19 Plymouth Road, Staten Island, NY 10314. Officer: Hanan W. Seif, President/VP/Secretary/Treasurer (Qualifying Individual); Application Type: Add NVO License.

Interlog USA, Inc. (NVO), 2818A Anthony Lane S., Minneapolis, MN 55418. Officers: Brent A. Koughan, Secretary/Treasurer (Qualifying Individual); David K. Canfield, President, Application Type: QI Change.

Inter-Trade Liner Shipping Co., Inc. (NVO), 2196 Signal Place, San Pedro, CA 90731. Officer: Kyung H. Oh, Dir./Pres./Sec./Treas./CFO/VP (Qualifying Individual); Application Type: New NVO License.

J & S Infinity, Inc. (NVO), 226 2nd Street, #B, Palisades Park, NJ 07650. Officers: Choong G. Jung, Vice President (Qualifying Individual); Sang W. Song, President/Secretary/Treasurer, Application Type: New NVO License.

JS Logistics, Inc. (NVO), 5116 Buckwheat, Chino Hills, CA 91709. Officers: Lee Wong, Secretary/Treasurer/CFO (Qualifying Individual); Victor L. Sheng, Director/President/CEO, Application Type: Name Change.

Korea Express U.S.A. Inc. dba Korea Express Lines (NVO & OFF), 11 Commerce Ct West, Cranbury, NJ 08512. Officers: Tony S. Chon, Assistant Secretary (Qualifying Individual); Sang G. Lee, President/CEO/Treasurer, Application Type: QI Change.

LDS Global Corp (NVO & OFF), 2 East Union Avenue, East Rutherford, NJ 07073. Officer: James M. Ryoo, President/Treasurer/Secretary (Qualifying Individual); Application Type: New NVO & OFF License.

Rapidex USA LLC (NVO), 71 Veronica Avenue, Suite 2, Somerset, NJ 08873. Officers: Mohamed Y. Ali, Manager (Qualifying Individual); Abdul S. Mohamed, Member, Application Type: New NVO License.

Speedier Shipping Inc. (NVO), 120 Horace Harding Blvd., Great Neck, NY 11020. Officers: Kasinee Thongprasert, President/Secretary/Treasurer (Qualifying Individual); Application Type: New NVO License.

Straight Line Logistics, LLC (NVO & OFF), 2250 NW 96th Avenue, Suite 209, Doral, FL 33172. Officers: Carlos H. Ortiz, Managing Member/Director, (Qualifying Individual); Felice G. Snider, Manager/Director, Application Type: New NVO & OFF License.

Thuan Loi Shipping (NVO), 7771 Garvey Avenue, #D, Rosemead, CA 91770. Officer: Stacy Duong, CEO/Secretary/CFO (Qualifying Individual); Application Type: New NVO License.

Dated: October 14, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–27124 Filed 10–19–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License Number: 020445NF.

Name: Freight It, Inc.

Address: 11222 La Cienega Blvd., Suite 555, Inglewood, CA 90304.

Order Published: FR: 9/23/11 (Volume 76, No. 185, Pg. 59129).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–27125 Filed 10–19–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 2160F.

Name: Shirley De Sinclair dba Sincl-Air Maritime Service.

Address: 2336 Stranahan Drive, Alhambra, CA 90803.

Date Revoked: September 19, 2011.

Reason: Failed to maintain a valid bond.

License Number: 2391F.

Name: Leonel Silva dba Best Forwarders.

Address: 411 North Oak Street, Inglewood, CA 90302.

Date Revoked: September 22, 2011.

Reason: Failed to maintain a valid bond.

License Number: 2442F.

Name: Williams International, Inc.

Address: 3443 Rivers Avenue, Charleston, SC 29405.

Date Revoked: September 24, 2011.

Reason: Failed to maintain a valid bond.

License Number: 3242F.

Name: H.L.M. Intertrans, Corp.
Address: 8355 N.W. 74th Street, Miami, FL 33166.
Date Revoked: September 10, 2011.
Reason: Failed to maintain a valid bond.

License Number: 003874NF.
Name: World Project Services International, Inc.
Address: 650 East North Sam Houston Parkway, Suite 231, Houston, TX 77060.
Date Revoked: September 17, 2011.
Reason: Failed to maintain valid bonds.

License Number: 4646NF.
Name: Choiceone Logistics, Inc.
Address: 10025 NW 116th Way, Medley, FL 33178.
Date Revoked: September 19, 2011.
Reason: Failed to maintain valid bonds.

License Number: 018784N.
Name: Champion Cargo Services, LLC.
Address: 9523 Jamacha Blvd., Spring Valley, CA 91977.
Date Revoked: September 22, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019041N.
Name: Grupo Delpa Corp.
Address: 7970 NW 56th Street, Miami, FL 33166.
Date Revoked: August 30, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020832F.
Name: Orca Int'l Freight Forwarders Inc.
Address: 6993 NW 50th Street, Miami, FL 33166.
Date Revoked: September 14, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020727N.
Name: Grand Power Express International (USA) Corp.
Address: 654 North Spring Street, Los Angeles, CA 90012.
Date Revoked: September 10, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021370NF.
Name: Encargo Export Corporation dba Encargo Lines dba Encargo Logistics.
Address: 10800 NW 103 Street, Suite 5–E, Miami, FL 33178.
Date Revoked: September 17, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021659N.
Name: Alto Air Freight, Inc.
Address: 145 Hook Creek Blvd., Bldg. B–6–A, Valley Stream, NY 11581.
Date Revoked: September 21, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022686N.
Name: Razak Logistics, Inc.
Address: 28451 Ficus Court, Murrieta, CA 92563.
Date Revoked: September 9, 2011.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. 2011–27123 Filed 10–19–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long range (75 year) projection methods and assumptions in projecting Medicare health expenditures and projecting National Health Expenditures and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately project health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

DATES: *Meeting Date:* November 9, 2011, 9:15 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at HHS headquarters at 200 Independence Ave., SW., Washington, DC., 20201, Room 443E.

Comments: The meeting will allocate time on the agenda to hear public comments at the end of the meeting. In lieu of oral comments, formal written comments may be submitted for the record to Donald T. Oellerich, OASPE, 200 Independence Ave., SW., 20201, Room 405F. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Donald T Oellerich (202) 690–7409, *Don.oellerich@hhs.gov.* Note: Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Oellerich by Monday November 7, 2011, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately project health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda

This meeting is open to the public. The Panel will likely hear presentations by panel members and HHS staff regarding long range projection methods and assumptions. After any presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Sherry Glied,
Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–27106 Filed 10–19–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority; Office of the National Coordinator for Health Information Technology

ACTION: Notice.

SUMMARY: The Office of the National Coordinator for Health Information Technology has reorganized its office in order to more effectively meet the mission outlined by The Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA). The reorganization adds the position of Principal Deputy.

FOR FURTHER INFORMATION CONTACT: Sam Shellenberger, Office of the National Coordinator, Office of the Secretary, 200 Independence Ave., SW., Washington, DC 20201, 202–690–7151.

SUPPLEMENTARY INFORMATION: Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Chapter AR, Office of the National Coordinator for Health Information Technology (ONC), as amended at 74 FR 62785–62786, dated December 1, 2009, as corrected at 75 FR 49494, dated August 13, 2010, and as last amended at 76 FR 6795, dated February 8, 2011 is amended as follows:

I. Under Part A, Chapter AR, Office of the National Coordinator for Health Information Technology, Section AR.10 Organization, insert Office of the Principal Deputy as item B as follows and renumber items B through F accordingly:

B. Office of the Principal Deputy (ARA1): The Office of the Principal Deputy works with and reports directly to the National Coordinator and will be responsible for day-to-day operations, decision making and staff management of ONC. The Principal Deputy will oversee the activities of four offices within ONC: Office of the Deputy National Coordinator for Programs and Policy; Office of the Deputy National Coordinator for Operations; Office of Economic Analysis, Evaluation and Modeling; and, Office of the Chief Scientist. One of the current ONC offices, the Office of the Chief Privacy Officer, is a position mandated by the American Recovery and Reinvestment Act of 2009, and will continue to report to the National Coordinator.

II. Under Part A, Chapter AR, Office of the National Coordinator for Health Information Technology, Section AR.10 Organization, Paragraph C, ''Office of Economic Analysis, Evaluation and Modeling (ARB),'' delete the first sentence in its entirety and replace with the following: ''The Office of Economic Analysis, Evaluation and Modeling is headed by a Director.''

III. Delegation of Authority. Pending further delegation, directives or orders by the Secretary or by the National Coordinator for Health Information Technology, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Authority: 44 U.S.C. 3101.

Dated: October 13, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–27116 Filed 10–19–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New Routine Use for Selected CMS System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a new routine use for selected CMS system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, CMS is adding a new routine use to disclose information to Qualified Entities (QEs) for selected Centers for Medicare & Medicaid Services (CMS) systems of records. Section 10332 of the Patient Protection and Affordable Care Act (ACA) adds a new subsection to Section 1874 of the Social Security Act, requiring that the Secretary establish a process to allow for the use of standardized extracts of Medicare Parts A, B, and D claims data by QEs to evaluate and report on the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resource use.

New Routine Use for Qualified Entities

1. To assist a public or private entity that is qualified (as determined by the Secretary of the Department of Health and Human Services (the Secretary)) to use Medicare claims data to evaluate the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resource use; and who agrees to meet the requirements regarding the transparency of their methods and their use and protection of Medicare data as the Secretary may specify, if CMS:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained; and

b. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions. Every Qualified Entity receiving data must have an agreement with CMS in the form of an Information Exchange Agreement or contract with all security and privacy requirements included. A Data Use Agreement (DUA) (CMS Form 0235) must be completed by the person receiving CMS data in accordance with current CMS policies.

This routine use fulfills the requirement in section 1174(e) of the Social Security Act (42 U.S.C. 1395kk (e)) to make standardized extracts of claims data under Medicare Parts A, B, and D available to a Qualified Entity (QE), recognized by the Secretary to make evaluations of provider/supplier performance in accordance with that section, and that agrees to meet specific requirements regarding the transparency of their methods and their use and protection of Medicare data. The IDR, National Claims History (NCH), CCDR, and Part D data will provide QEs, a broader, longitudinal, national perspective of the performance of Medicare providers/suppliers for use in authorized QE projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

CMS Systems of Records To Be Modified by This Routine Use

This new routine use, when published, will be added to the compatible systems of records used to disclose Medicare claims information and numbered as the next consecutive number in the order of published routine uses for the following systems of records notices:

1. *''National Claims History (NCH),''* System No. 09–70–0558, last published at 71 FR 67137 (November 20, 2006). The primary purpose of this system is to collect and maintain billing and utilization data on Medicare beneficiaries enrolled in hospital insurance (Part A) or medical insurance (Part B) of the Medicare program for

statistical and research purposes related to evaluating and studying the operation and effectiveness of the Medicare program.

2. ''*Medicare Drug Data Processing System (DDPS),*'' System No. 09–70–0553, last published at 73 FR 30943 (May 29, 2008). The primary purpose of this system is to collect, maintain, and process information on all Medicare covered, and as many non-covered drug events as possible, for people with Medicare who have enrolled into a Medicare Part D plan.

3. ''*Medicare Integrated Data Repository (IDR),*'' System No. 09–70–0571, published at 71 FR 74915 (December 13, 2006). The primary purpose of this system is to establish an enterprise resource that provides one integrated view of all CMS data to administer the Medicare and Medicaid programs.

4. ''*Chronic Condition Data Repository (CCDR),*'' System No. 09–70–0573, published at 71 FR 54495 (September 15, 2006). The purpose of this system is to collect and maintain a person-level view of identifiable data to establish a data repository to study chronically ill Medicare beneficiaries. This system utilizes data extraction tools to support accessing data by chronic conditions and processes complex customized research data requests related to chronic illnesses.

DATES: The Centers for Medicare & Medicaid Services (CMS) invites interested parties to submit written comments on the proposed system until November 16, 2011. As required by the Privacy Act (5 U.S.C. 552a(r)), CMS on October 17, 2011 sent a report of a new system of records to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The proposed action described in this notice is effective on November 26, 2011, unless CMS receives comments which result in a republication of the notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Information Security & Privacy Management, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N1–24–08, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Chris Haffer, Ph.D., Program Manager, Data Development and Services Group, Center for Strategic Planning, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Mail-stop: C3–24–07, Baltimore, MD 21244–1850. *Office:* 410–786–8764, *Facsimile:* (410) 786–5515, *E-mail address: chris.haffer@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The statute defines QEs as public or private entities that are determined by the Secretary to be qualified to use Medicare claims data to make such evaluations of provider/supplier performance, and that agree to meet specific requirements regarding the transparency of their methods and their use and protection of Medicare data. The statute requires that Medicare claims extracts be combined with other claims data, although the statute is not specific on what, or how much, other claims data should be combined with Medicare claims data. The statute requires that the only use of such data and the derived performance information about providers and suppliers be in reports in an aggregate form, released and made available to the public, after first making such reports available to any identified provider or supplier and affording an opportunity to appeal and correct errors. The statute also instructs the Secretary to take such actions as she deems necessary to protect the identity of individual beneficiaries, and authorizes her to establish additional requirements that she may specify for QEs to meet, such as ensuring the security of data. The Medicare claims extracts are to be made available to QEs at a fee equal to the cost of making such data available (the fees will be deposited into the Part B Trust Fund).

Dated: October 12, 2011.

Michelle Snyder,

Deputy Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–27149 Filed 10–19–11; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 70, No. 249, pp. 77160–77161, dated December 29, 2005; Vol. 75, No. 56, pp. 14176—14178, dated March 24, 2010; and Vol. 76, No. 144, pp. 44933–44934, dated July 27, 2011) are amended to: (1) Realign the survey and certification function from the Center for Medicaid, CHIP and Survey & Certification to the Office of Clinical Standards and Quality (OCSQ) and to change the organizational title for the Center for Medicaid, CHIP and Survey & Certification to the Center for Medicaid and CHIP Services (CMCS), and (2) realign the governmental relations function from the Office of Legislation (OL) to CMCS. Part F, Sections FC.10 (Organization) and FC.20 (Functions) is revised as follows:

- Section FC. 10 (Organization):

Office of the Administrator (FC)
Office of Equal Opportunity and Civil Rights (FCA)
Office of Legislation (FCC)
Office of the Actuary (FCE)
Office of Strategic Operations and Regulatory Affairs (FCF)
Office of Clinical Standards and Quality (FCG)
Center for Medicare (FCH)
Center for Medicaid and CHIP Services (FCJ)
Center for Strategic Planning (FCK)
Center for Program Integrity (FCL)
Chief Operating Officer (FCM)
Office of Minority Health (FCN)
Center for Medicare and Medicaid Innovation (FCP)
Federal Coordinated Health Care Office (FCQ)
Center for Consumer Information and Insurance Oversight (FCR)
Office of Public Engagement (FCS)
Office of Communications (FCT)

- Section FC.20 (Functions):

Center for Medicaid and CHIP Services (FCJ)

- Serves as CMS' focal point for the formulation, coordination, integration, implementation, and evaluation of all national program policies and operations relating to the Medicaid and Children's Health Insurance Program (CHIP).
- In partnership with States, evaluates the success of State agencies in carrying out their responsibilities for effective State program administration and beneficiary protection, and, as necessary, assists States in correcting problems and improving the quality of their operations.
- Identifies and proposes modifications to Medicaid and CHIP program measures, regulations, laws and policies to reflect changes or trends

in the health care industry, program objectives, and the needs of Medicaid beneficiaries. Collaborates with OL on the development and advancement of new legislative initiatives and improvements.

• Serves as CMS' lead for management, oversight, budget and performance issues relating to Medicaid, CHIP, and the related interactions with the States.

• Coordinates with the Center for Program Integrity on the identification of program vulnerabilities and implementation of strategies to eliminate fraud, waste, and abuse.

• In conjunction with the Office of Public Engagement, oversees all CMS interactions and collaboration relating to Medicaid and CHIP with beneficiaries, States and territories and key stakeholders (e.g., health facilities and other health care providers, other Federal government entities, local governments) and communication and dissemination of policies, guidance and materials to same to understand their perspectives, support their efforts, and to drive best practices for beneficiaries, in States and throughout the health care industry.

• Develops and implements a comprehensive strategic plan, objectives and measures to carry out CMS' Medicaid and CHIP mission and goals and position the organization to meet future challenges with the Medicaid and CHIP programs.

Office of Clinical Standards and Quality (FCG)

• Serves as the focal point for all quality, clinical, medical science issues, survey and certification, and policies for CMS' programs. Provides leadership and coordination for the development and implementation of a cohesive, CMS-wide approach to measuring and promoting quality and leads CMS' priority-setting process for clinical quality improvement. Coordinates quality-related activities with outside organizations. Monitors quality of Medicare, Medicaid, and the Clinical Laboratory and Improvement Amendments (CLIA). Evaluates the success of interventions.

• Identifies and develops best practices and techniques in quality improvement; implementation of these techniques will be overseen by appropriate components. Develops and collaborates on demonstration projects to test and promote quality measurement and improvement.

• Develops, tests, evaluates, adopts and supports performance measurement systems (i.e., quality measures) to evaluate care provided to CMS beneficiaries except for demonstration projects residing in other components.

• Assures that CMS' quality-related activities (survey and certification, technical assistance, beneficiary information, payment policies and provider/plan incentives) are fully and effectively integrated. Carries out the Health Care Quality Improvement Program for the Medicare, Medicaid, and CLIA programs.

• Oversees the planning, policy, coordination and implementation of the survey, certification and enforcement programs for all Medicare and Medicaid providers and suppliers, and for laboratories under the auspices of CLIA.

• Serves as CMS' lead for management, oversight, budget, and performance issues relating to the survey and certification program and the related interactions with the States.

• Leads in the specification and operational refinement of an integrated CMS quality information system, which includes tools for measuring the coordination of care between health care settings; analyzes data supplied by that system to identify opportunities to improve care and assess success of improvement interventions.

• Develops requirements of participation for providers and plans in the Medicare, Medicaid, and CLIA programs. Revises requirements based on statutory change and input from other components.

• Operates the Quality Improvement Organization and End-Stage Renal Disease Network program in conjunction with Regional Offices, providing policies and procedures, contract design, program coordination, and leadership in selected projects.

• Identifies, prioritizes and develops content for clinical and health related aspects of CMS' Consumer Information Strategy; collaborates with other components to develop comparative provider and plan performance information for consumer choices.

• Prepares the scientific, clinical, and procedural basis for coverage of new and established technologies and services and provides coverage recommendations to the CMS Administrator. Coordinates activities of CMS' Technology Advisory Committee and maintains liaison with other departmental components regarding the safety and effectiveness of technologies and services; prepares the scientific and clinical basis for, and recommends approaches to, quality-related medical review activities of carriers and payment policies.

Office of Legislation (FCC)

• Provides leadership and executive direction within CMS for legislative planning to address the Administration's agenda.

• Tracks, evaluates and develops provisions of annual legislative proposals for Medicare, Medicaid, CHIP, private health insurance programs, CLIA, Health Insurance Portability and Accountability Act and related statutes affecting health care financing, health insurance, quality, and access in concert with CMS components, the Department and the Office of Management and Budget.

• Advances the legislative policy process through analysis, review and development of health care initiatives and issues.

• Develops the long-range legislative plans for CMS in collaboration with the CMS Centers, Offices, and the Chief Operating Officer (COO).

• Participates with other CMS components in the development of CMS policy, including implementing regulations and administrative actions.

• Manages pro-actively CMS' response in times of heightened congressional oversight of CMS in collaboration with the Centers, Offices, and COO. Manages, coordinates and develops policies for responding to congressional inquiries.

• Coordinates activities with the Office of the Assistant Secretary for Legislation (ASL) and serves as the ASL's principal contact point on legislative and congressional relations.

• In collaboration with CMS Centers, Offices, and the COO, provides technical assistance, consultation and information services to congressional committees and individual members of Congress on the Medicare, Medicaid, CHIP, and private health insurance programs, new CMS initiatives, and pertinent legislation.

• In collaboration with the CMS Centers, Offices, and COO, provides technical, analytical, advisory, and information services to CMS' components, the Department, the White House, OMB, other government agencies, private organizations and the general public on CMS legislation.

• Tracks and reports on legislation relating to CMS programs and maintains legislative reference library.

• Coordinates CMS' participation in congressional hearings, including preparation of testimony and briefing materials, and covers all other congressional hearings on matters of interest to CMS except Appropriations Committee hearings specifically on the appropriation budget.

Authority: 44 U.S.C. 3101.

Dated: October 13, 2011.

Michelle Snyder,

Deputy Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–27169 Filed 10–19–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0720]

International Conference on Harmonisation; E2B(R3) Electronic Transmission of Individual Case Safety Reports; Draft Guidance on Implementation; Data Elements and Message Specification; Appendix on Backwards and Forwards Compatibility; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''E2B(R3) Electronic Transmission of Individual Case Safety Reports (ICSRs): Implementation Guide—Data Elements and Message Specification'' (the draft E2B(R3) implementation guidance) and an appendix to the draft guidance entitled ''ICSRs: Appendix to the Implementation Guide—Backwards and Forwards Compatibility'' (the draft BFC appendix). The draft E2B(R3) implementation guidance and draft BFC appendix were prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft E2B(R3) implementation guidance is intended to revise the standards for submission of ICSRs and improve the inherent quality of the data, enabling improved handling and analysis of ICSR reports. The draft BFC appendix describes the relationship between data elements from the 2001 ICH E2B guidance and draft E2B(R3) implementation guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on these draft documents before it begins work on the final versions of the documents, submit either electronic or written comments on the draft documents by January 18, 2011.

ADDRESSES: Submit written requests for single copies of the draft documents to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft documents may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft documents.

Submit electronic comments on the draft documents to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance:

Krishna K. Chary, Center for Drug Evaluation and Research, Food and Drug Administration, 8201 Corporate Dr., suite 540, Landover, MD 20785, 240–487–7377, *fax:* 301–459–2285, *e-mail: krishna.Chary@fda.hhs.gov;* or

Deborah F. Yaplee, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3288, *fax:* 301–827–9434, *e-mail: deborah.yaplee@fda.hhs.gov.*

Regarding the ICH:

Michelle Limoli, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 3506, Silver Spring, MD 20993, 301–796–4600.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory Agencies.

The ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June and July 2011, the ICH Steering Committee agreed that a draft guidance entitled ''E2B(R3) Electronic Transmission of Individual Case Safety Reports (ICSRs): Implementation Guide—Data Elements and Message Specification'' and a draft appendix entitled ''ICSRs: Appendix to the Implementation Guide—Backwards and Forwards Compatibility'' should be made available for public comment. The documents are the product of the E2B(R3) Expert Working Group of the ICH. Comments about these documents will be considered by FDA and the E2B(R3) Expert Working Group.

The key intention of the draft E2B(R3) implementation guidance is to revise the standards for submission of ICSRs and improve the inherent quality of the data, enabling improved handling and analysis of ICSRs. The draft E2B(R3) implementation guidance provides support for the implementation of software tools for creating, editing, sending, and receiving electronic ICSR messages. The draft E2B(R3) implementation guidance provides instruction for how pharmaceutical industries and regulatory authorities should use Part 2 of the International Organization for Standardization (ISO) ICSR standard to construct messages for exchanging pharmacovigilance information among themselves in ICH regions, and in other countries adopting ICH guidelines. The draft BFC appendix describes the relationship between data

elements from E2B(R2) and E2B(R3) and is intended to assist reporters and recipients in implementing systems with special focus on the recommendations for converting back and forth between E2B(R2) and E2B(R3) ICSR reports. The draft E2B(R3) implementation guidance and draft BFC appendix are being issued as a package that includes schema files and additional technical information.

The draft E2B(R3) implementation guidance and BFC appendix are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The documents, when finalized, will represent the Agency's current thinking on this topic. The documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding these documents. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: October 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27147 Filed 10–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee: Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee scheduled for December 1, 2011. The meeting was announced in the **Federal Register** of Friday, October 7, 2011 (76 FR 62419). The meeting is postponed so that FDA can review and consider additional information that was submitted. A future meeting date will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Avena Russell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1535, Silver Spring, MD 20993–0002, 301–796–3805, e-mail: *Avena.Russell@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

Dated: October 14, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–27209 Filed 10–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0731]

Risk Assessment on Norovirus in Bivalve Molluscan Shellfish: Request for Comments and for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information.

SUMMARY: The Food and Drug Administration (FDA) is undertaking a collaboration with Health Canada, the Canadian Food Inspection Agency, Environment Canada, and Fisheries and Oceans Canada, to conduct a quantitative food safety risk assessment on norovirus in bivalve molluscan shellfish, specifically, oysters, clams, and mussels. FDA, on behalf of the collaborative team, is requesting submission of comments and scientific data and information that would assist in the development of the risk assessment.

DATES: Submit either electronic or written comments and scientific data and information by January 18, 2012.

ADDRESSES: Submit electronic comments and scientific data and information to *http://www.regulations.gov.* Submit written comments and scientific data and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jane M. Van Doren, Center for Food Safety and Applied Nutrition (HFS—005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2927.

SUPPLEMENTARY INFORMATION:

I. Background

Noroviruses constitute a genus of genetically diverse, single-stranded ribonucleic acid (RNA) viruses belonging to the family Caliciviridae (Ref. 1). Noroviruses cause millions of cases of acute gastroenteritis in the United States and thousands of cases in Canada annually (Refs. 2 to 4). The viruses can be transmitted through consumption of norovirus-contaminated food or water, through person-to-person contact, or through contact with contaminated surfaces (Refs. 1 and 5). Most norovirus outbreaks attributed to bivalve molluscan shellfish consumption have been traced to contamination during growth and harvest (Refs. 1 and 6). Bivalve molluscan shellfish are typically grown in estuaries, which may contain norovirus-contaminated human fecal material from municipal wastewater outfalls, combined sewer overflow, or non-point sources of pollution including human waste discharged from marine vessels (Refs. 6 to 8). Under some conditions, bivalve molluscan shellfish bioaccumulate waste contaminants (Ref. 9), thereby increasing the contaminant level in the bivalve molluscan shellfish relative to that in the water.

Both the United States and Canada have developed detailed guidelines, in collaboration with their respective federal, state or provincial, tribal, and industry partners, to help ensure

shellfish food safety. The requirements described in these documents (Refs. 10 and 11) reflect a risk-based approach to reduce levels of indicator organisms, including total and fecal coliforms, thereby decreasing the probability of pathogenic contamination of shellfish.

FDA, in collaboration with Health Canada, the Canadian Food Inspection Agency, Environment Canada, and Fisheries and Oceans Canada (the joint U.S.-Canada risk assessment team), is planning to conduct a quantitative risk assessment that can be used to evaluate the impact of preventive practices and controls on the risk of human norovirus illness associated with consumption of bivalve molluscan shellfish. The risk assessment will focus on norovirus contamination of bivalve molluscan shellfish arising from growth, harvest, and post-harvest processing. This risk assessment will focus on oysters, clams, and mussels. The principal objectives of this risk assessment are to:

- Evaluate the relative impact of selected factors (e.g., size of the community contributing to the municipal wastewater catchment, wastewater treatment, water temperature in bivalve molluscan shellfish growing and harvest areas, harvest season, post-harvest processes, food production practices, and consumption patterns) on the risk of human norovirus illness associated with the consumption of bivalve molluscan shellfish;
- Assess the impact on the level of risk of specified control measures currently used to mitigate risks from norovirus contamination of bivalve molluscan shellfish growing waters including those recommended by National Shellfish Sanitation Program (NSSP) and Canadian Shellfish Sanitation Program (CSSP);
- Identify additional preventive practices and controls that could be implemented in the future; and
- Inform the development of a Food Safety Objective (Ref. 12) for norovirus contamination in bivalve molluscan shellfish and/or a Performance Objective (Ref. 12) for bivalve molluscan shellfish growth and harvest waters.

Contamination arising from transmission of norovirus from infected or ill food workers in food manufacturing or retail establishments to bivalve molluscan shellfish is outside the scope of this risk assessment.

II. Request for Comments, Scientific Data, and Information

FDA, on behalf of the joint U.S.-Canada risk assessment team, is requesting comments, scientific data, and information to be considered in the design and development of the risk assessment. Data that include measurements of norovirus or enteric viral surrogate should identify the methods of analysis and detection, virus/surrogate and genotype detected, and recovery rate, if available (e.g., analysis of single oyster diverticulum using real-time reverse transcription quantitative polymerase chain reaction (RT-qPCR) for norovirus GII with 80% recovery). Areas of particular interest include epidemiology of norovirus illness, pre-harvest preventive practice and controls, post-harvest preventive practices and controls, food preparation and consumption practices, and the relationship between norovirus dose and adverse health effects.

A. Epidemiology of Norovirus Illness

We request data and information about the following aspects of the epidemiology of norovirus illness:

1. Patterns of transmission of norovirus in different settings, such as in a community, a nursing facility, or a household;
2. Proportion of norovirus illness due to person-to-person transmission, food consumption, and bivalve molluscan shellfish consumption;
3. Proportion and determinants of individual resistance to norovirus infection;
4. Underreporting rate for norovirus illnesses arising from consumption of norovirus-contaminated food in United States or Canada; and
5. Models describing the transmission of norovirus in a population.

B. Preventive Practices and Controls and Other Factors Influencing Bivalve Molluscan Shellfish Contamination Levels

We request data and information about the following aspects of preventive practices and controls and other factors influencing bivalve molluscan shellfish contamination levels:

1. Prevalence of different types of treatment in municipal wastewater treatment (WWT) facilities in the United States and Canada, their relative size (population served), and their location relative to bivalve molluscan shellfish growing/harvest areas. Data submitted should also include information about treatment process(es) (e.g., sequence,timing, and/or concentration of bacteria/viral reducing agent) and effluent flow (volumerates of flow observed in the facility and the factors that influence the rate);
2. Norovirus or enteric viral surrogate loads in raw wastewater and treated effluent from municipal WWT facilities as a function of type of treatment, water temperature, and season. Data should include the date and time of the measurement, volume rate of flow, weather, size of the community served, and the presence of norovirus outbreaks in the population at the time of measurement (if known). FDA specifically requests comparisons of norovirus or enteric viral surrogate loads in raw wastewater and WWT effluent obtained during the same time period and from the same facility;
3. Experimental data and models describing dilution of WWT effluent in the estuary (e.g., water exchange rate and tidal flush volume) for a representative estuary or estuaries in general. Information should include details on calculations used within the model;
4. Experimental data and models describing norovirus or enteric viral surrogate loss processes that may occur in an estuary, including inactivation by ultraviolet radiation or sunlight, association with particulate followed by sedimentation, and predation by marine organisms. Data submitted should include experimental conditions and ranges (e.g., water temperature, water salinity, season, and estuary water exchange rate);
5. Concentration of norovirus or enteric viral surrogates in sediments, events that cause re-suspension of sediment, and data describing the relationship between nearby sediment and the concentration of norovirus or enteric viral surrogates in bivalve molluscan shellfish. Data submitted should include information about the sediment sampled (e.g., depth, temperature, water salinity, season) and shellfish sampled (e.g., nutrient availability, growth substrate, water temperature, water salinity, season, species, and animal variance), if applicable;
6. Characteristics of sites where stratification of WWT effluent discharge in the water column occurs (e.g., temperature, salinity, depth, surface winds, storm activity, local hydrodynamics, and outfall design) and the impact of these characteristics on norovirus or enteric viral surrogate concentrations in bivalve molluscan shellfish growing/harvest areas (e.g., plume movement and mixing);
7. Norovirus or enteric viral surrogate loads from marine vessel discharge, combined sewer overflow, or other sporadic events that might contaminate bivalve molluscan shellfish growing/harvest areas;
8. Uptake rate of norovirus or enteric viral surrogates by bivalve molluscan shellfish and determinations of the

bioaccumulation factor (BAF). Data and information should include a description of the impacts of pathogen particle association, concentration of the pathogen in the water surrounding the bivalve molluscan shellfish, nutrient availability, growth substrate, water temperature, water salinity, season, species, and animal variance on this rate and the BAF. Data submitted should specify the experimental conditions during which uptake was measured (e.g., batch feeding, flow-through feeding, or natural environmental conditions);

9. Inactivation rate of norovirus or enteric viral surrogates within bivalve molluscan shellfish, including the impacts of nutrient availability, growth substrate, water temperature, water salinity, season, species, and animal variance on this rate. Data submitted should specify the experimental conditions during which inactivation was measured (e.g., batch, flow-through, or natural environmental conditions);

10. Elimination rate of norovirus or enteric viral surrogates from bivalve molluscan shellfish including the impacts of nutrient availability, growth substrate, water temperature, water salinity, season, species, and animal variance on this rate. Data submitted should specify the experimental conditions during which elimination was measured (e.g., batch, flow-through, or natural environmental conditions); and

11. Models that specifically address uptake, inactivation and elimination of norovirus or enteric viral surrogates by bivalve molluscan shellfish.

C. Post-Harvest Preventive Practice and Controls and Other Factors Influencing Bivalve Molluscan Shellfish Contamination Levels

We request data and information about the following aspects of post-harvest preventive practice and controls and other factors influencing bivalve molluscan shellfish contamination levels:

1. Regional and seasonal landings of bivalve molluscan shellfish species in the United States and Canada;

2. Prevalence and concentration of norovirus or enteric viral surrogates in bivalve molluscan shellfish at the time of harvest, classified by species, location, and seasonal landing;

3. Proportion of bivalve molluscan shellfish, by species, that undergo wet storage, relaying and depuration and the conditions (e.g., times and temperatures) of these practices as applied by the shellfish industry. Data are also requested to determine whether shellfish undergoing these different treatments preferentially serve different postmarkets (e.g., raw/cooked);

4. Experimental data and models that describe the impact of wet storage, relaying, and depuration on the concentration of norovirus or enteric viral surrogate in bivalve molluscan shellfish. Data submitted should specify process and experimental conditions including parameter ranges (e.g., process time, water temperature, water salinity, nutrient availability, growth substrate, species, and season) as well as animal variance;

5. Proportion of bivalve molluscan shellfish, by species, that undergo high hydrostatic pressure (HHP), mild heat, irradiation, freezing, or other postharvest processes. Data are also requested to determine whether bivalve molluscan shellfish undergoing these different treatments preferentially serve different postmarkets (e.g., raw/cooked);

6. Protocols/conditions and parameter ranges for HHP, mild heat, irradiation, freezing, or other postharvest processes as applied to bivalve molluscan shellfish by the shellfish industry; and

7. Experimental data and models that describe the impact of HHP, mild heat, irradiation, freezing, or other post-harvest processes on the concentration of norovirus or enteric viral surrogate in bivalve molluscan shellfish. Data submitted should specify the processing and experimental conditions, parameter ranges (e.g., time, pressure and temperature), species, and animal variance.

D. Preventive Practice and Controls and Other Factors Influencing Bivalve Molluscan Shellfish Contamination Levels During Food Preparation and Bivalve Molluscan Shellfish Consumption Data

We request data and information about the following aspects of preventive practice and controls and other factors influencing bivalve molluscan shellfish contamination levels during food preparation and bivalve molluscan shellfish consumption:

1. Proportion of bivalve molluscan shellfish, by species, eaten raw and cooked, including method of cooking (e.g., steaming, frying, or baking);

2. Distribution of bivalve molluscan shellfish meal sizes, categorized by species, with regard to season, region, and preparation technique;

3. Distribution of temperatures and times associated with cooking methods (e.g., steaming, frying, or baking) for bivalve molluscan shellfish, by species;

4. Experimental data and models describing the impact of food preparation technique on the concentration of norovirus or enteric viral surrogates in bivalve molluscan shellfish, by species. Data submitted should include food preparation and cooking parameters and ranges (e.g., temperature and time); and

5. Prevalence distribution of norovirus or enteric viral surrogate in bivalve molluscan shellfish, by species, at the point of consumption as a function of season, region and preparation technique.

E. Relationship Between Norovirus Dose and Adverse Human Health Effects

We request data and information about the following aspects of the relationship between norovirus dose and adverse human health effects including:

1. Human or animal studies that describe the relationship between norovirus dose and the probability and severity of human illness;

2. Human norovirus outbreak data that describe the relationship between norovirus dose and the probability and severity of human illness; and

3. Epidemiological and mechanistic data identifying/describing different rates of illness or health outcomes for particular populations (e.g., vulnerable/susceptible populations and resistant populations) exposed to norovirus.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and scientific data and information regarding this document. It is only necessary to send one set of comments and scientific data and information. It is no longer necessary to send two copies of mailed comments and scientific data and information. Identify comments and scientific data and information with the docket number found in brackets in the heading of this document. Received comments and scientific data and information may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Centers for Disease Control and Prevention, Norovirus Technical Fact

Sheet, *http://www.cdc.gov/ncidod/dvrd/revb/gastro/norovirus-factsheet.htm.*

2. Centers for Disease Control and Prevention, Norovirus: Surveillance, Disease Burden, and Disease Reduction Activities, *http://www.cdc.gov/ncidod/dvrd/revb/gastro/norovirus-surv-disease-burden.htm.*

3. National Microbiology Laboratory and Public Health Agency of Canada, National Enteric Surveillance Program, ''Annual Summary of Laboratory Surveillance Data for Enteric Pathogens in Canada,'' 2009.

4. Majowicz, S.E., V.L. Edge, A. Fazil, *et al.,* ''Estimating the Under-Reporting Rate for Infectious Gastrointestinal Illness in Ontario,'' *Canadian Journal of Public Health,* vol. 96, pp. 178–181, 2005.

5. Gerba, C.P. and D. Kayed, ''Caliciviruses: A Major Cause of Foodborne Illness,'' *Journal of Food Science,* vol. 68, pp. 1136–1142, 2003.

6. Kohn, M.A., T.A. Farley, T. Ando, *et al.,* ''An Outbreak of Norwalk Virus Gastroenteritis Associated With Eating Oysters: Implications for Maintaining Safe Oyster Beds,'' *Journal of the American Medical Association,* vol. 273, pp. 466–471, 1995.

7. Shieh, Y.C., R.S. Baric, J.W. Woods, *et al.,* ''Molecular Surveillance of Enterovirus and Norwalk-Like Virus in Oysters Relocated to a Municipal-Sewage-Impacted Gulf Estuary,'' *Applied and Environmental Microbiology,* vol. 69, pp. 7130–7136, 2003.

8. J.A. Lowther, K. Henshilwood, and D.N. Lees, ''Determination of Norovirus Contamination in Oysters From Two Commercial Harvesting Areas Over an Extended Period, Using Semiquantitative Real-Time Reverse Transcription PCR,'' *Journal of Food Protection,* vol. 71, pp. 1427–1433, 2008.

9. Burkhardt, W., III and K. Calci, ''Selective Accumulation May Account for Shellfish-Associated Viral Illness,'' *Applied Environmental Microbiology,* vol. 66, pp. 1375–1378, 2000.

10. National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish 2009 Revision, *http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/Seafood/FederalStatePrograms/NationalShellfishSanitationProgram/ucm046353.htm.*

11. Canadian Shellfish Sanitation Program (CSSP) Manual of Operations, *http://www.inspection.gc.ca/english/fssa/fispoi/man/cssppccsm/shemolalle.pdf.*

12. Joint Food and Agriculture Organization of the United Nations/World Health Organization Food Standards Program, Codex Alimentarius Commission Procedural Manual, 20th ed. 113, 2011, *ftp://ftp.fao.org/codex/Publications/ProcManuals/Manual_20e.pdf.*

Dated: October 14, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27101 Filed 10–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging

ACTION: Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Mechanisms of Osteoporosis II.

Date: November 15, 2011.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *Parsadaniana@NIA.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27180 Filed 10–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative: PAR 09–153 R01s for Clinical and Services Studies of Mental Disorders, AIDS and Alcohol Use Disorders.

Date: November 9, 2011.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington, DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: HIV/AIDS Innovative Research Applications.

Date: November 9, 2011.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington, DC Hotel. 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.

Date: November 21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications. Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214,

MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.

Date: November 21, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Academic Research Enhancement AREA Grant Applications.

Date: November 21–22, 2011.

Date: 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: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@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: October 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27224 Filed 10–19–11; 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, 2011.

Open: November 14, 2011, 5:45 p.m. to 7:30 p.m.

Agenda: Updates from the Director and Scientific Director.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Salon II, Rockville, MD 20852.

Closed: November 14, 2011, 7:30 p.m. to 11 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Closed: November 15, 2011, 8 a.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Human Genome Research Institute, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: November 16, 2011, 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Human Genome Research Institute, 5635 Fishers Lane, Bethesda, MD 20892.

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*.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27178 Filed 10–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee.

Date: November 15, 2011.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–0985, *vijhs@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27241 Filed 10–19–11; 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 Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic Resource Grants (U41) SEP.

Date: November 15, 2011.

Time: 1 p.m. to 5 p.m.

Agenda To review and evaluate grant applications.

Place: NHGRI 5635/3rd Floor Conf. Room, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; eMERGE Committee.

Date: November 28, 2011.

Time: 1 p.m. to 3 p.m.

Agenda To review and evaluate grant applications.

Place: NHGRI Twinbrook Conference Room (4th floor), 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27177 Filed 10–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

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 Office of AIDS Research Advisory Council.

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: Office of AIDS Research Advisory Council.

Date: November 10, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda The theme of the Office of AIDS Research Advisory Council (OARAC) meeting will be ''AIDS Research in MSM: Opportunities and Challenges.'' The meeting will focus on: the evolving HIV/AIDS epidemic in the U.S. and internationally; HIV prevention research in MSM; behavioral research in MSM; engaging MSM in vaccine clinical trials; the development of microbicides; treatment research issues for MSM; and research on prevention and treatment of comorbidities and clinical complications among MSM. An update will be provided on the latest changes made to the federal treatment and prevention guidelines by the OARAC Working Groups responsible for the guidelines.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level, Rockville, MD 20852.

Contact Person: Robert Eisinger, PhD, Executive Secretary, Director of Scientific and Program Operations, Therapeutics Coordinating Committee, Office of Aids Research, 5635 Fishers Lane, MSC 9310, Suite 400, Rockville, MD 20852, (301) 496–0357, *be4y@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 Institute's/Center's home page: *http://www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(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: October 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27223 Filed 10–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0979]

Commercial Fishing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Commercial Fishing Safety Advisory Committee (CFSAC) will meet in Seattle, Washington to discuss various issues relating to safety in the commercial fishing industry. This meeting will be open to the public.

DATES: The Committee will meet on November 14, 2011, from 9 a.m. to 5 p.m., and on November 15–16, 2011, from 8:30 a.m. to 5 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 4, 2011.

ADDRESSES: The Committee will meet at the Henry M. Jackson Federal Building (Room 440), 915 2nd Ave, Seattle, Washington 98174.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. You may submit written comments no later than November 4, 2011, and they must be identified by docket number [USCG–2011–0979] using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. We encourage use of electronic submissions because security screening may delay delivery of mail.
- *Fax:* (202) 493–2251
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number [USCG–2011–0979]. All submissions

received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Docket: Any background information or presentations available prior to the meeting will be published in the docket. For access to the docket to read background documents or submissions received by the CFSAC, go to *http://www.regulations.gov.,* insert ''USCG–2011–0979'' in the ''Keyword'' box, and then click ''Search''.

Public comments may be taken by the DFO throughout themeetings. Additionally, a public presentation/comment period will be held during the meetings on November 14–16, 2011, from 4 p.m. to 5 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period will end following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kemerer, Alternate Designated Federal Official (ADFO) of CFSAC, Commandant (CG–5433), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Stop 7581, Washington, DC 20593–7581; telephone 202–372–1249, fax 202–372–1917, email: *jack.a.kemerer@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The CFSAC is authorized by 46 U.S.C. 4508 and the Committee's purpose is to provide advice and recommendations to the U.S. Coast Guard and the Department of Homeland Security on matters relating to the safety of commercial fishing industry vessels.

Agenda

The CFSAC will meet to review, discuss and formulate recommendations on the following topics contained in this agenda:

Day 1 of the meeting and, if necessary, the morning of Day 2 will include the following reports and presentations:

(1) Review of Commercial Fishing Vessel Safety Requirements amended, added or deleted by the Coast Guard Authorization Act of 2010.

(2) Status of Commercial Fishing Vessel Safety Rulemaking.

(3) Commercial Fishing Vessel Safety District Coordinators reports on activities and initiatives.

(4) Industry Representatives updates including safety and survival equipment, and class rules for fishing vessels.

(5) Presentation on fatality rates by regions and fisheries and update on safety related projects such as wearing of Personal Floatation Device (PFD) when working on deck by the National Institute for Occupational Safety and Health.

(6) Presentation on safety standards by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

Days 2 and 3 of the meeting will be primarily dedicated to subcommittee sessions and reports on these topics: USCG communications and outreach to the fishing industry; risk management for vessel owners, operators, and crews; operator competency training requirements; vessel construction standards and alternate safety compliance program requirements; safety and survival equipment requirements, inspections, and testing; mandatory safety examinations and certificates of compliance; and safety program strategies, future plans, and long range goals.

Dated: October 14, 2011.

Paul F. Thomas,

Captain, U.S. Coast Guard, Acting Director, Prevention Policy.

[FR Doc. 2011–27127 Filed 10–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Small Vessel Reporting System

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Establishment of a new collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Small Vessel Reporting System (SVRS). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before December 19, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Small Vessel Reporting System.

OMB Number: Will be assigned upon approval.

Form Number: None.

Abstract: CBP proposes to establish a collection of information for the Small Vessel Reporting System (SVRS), which is a pilot program to allow certain participants using small pleasure boats to report their arrival telephonically instead of having to appear in person for inspection by a CBP officer each time they enter the United States. In some cases, a participant may also be asked to report to CBP for an in person inspection upon arrival. Participants

may be U.S. citizens, U.S. lawful permanent residents, Canadian citizens, and permanent residents of Canada who are nationals of Visa Waiver Program countries listed in 8 CFR 217.2(a). In addition, participants of one or more trusted traveler pilot programs and current Canadian Border Boater Landing Permit (CBP Form I–68) holders may also participate in SVRS.

In order to register for the SVRS pilot program, participants enter data via the SVRS Web site which collects information such as biographical information and vessel information. Participants will go through the in person CBP inspection process during SVRS registration, and in some cases, upon arrival in the United States. SVRS is authorized by 8 U.S.C. 1103, 8 U.S.C. 1225, 8 CFR 235.1, 19 U.S.C. 1433, 19 U.S.C. 1498, and 19 CFR 4.2.

Current Actions: CBP proposes to establish a new collection of information.

Type of Review: Approval of a new collection.

Affected Public: Individuals.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Responses: 40,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 20,000.

Dated: October 17, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–27153 Filed 10–19–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
Gwin Customs Consulting, Inc	23512	Seattle
Compass Customs Brokerage, Inc	16272	Houston
Delaware Valley Floral Group, Inc	21225	Miami
Deborah L. Butler	10964	Houston
Neutral Customs Broker, Inc.	13905	Los Angeles

Dated: October 11, 2011.

Richard DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2011–27152 Filed 10–19–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N208; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before November 21, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Dallas World Aquarium Corporation, Dallas, TX; PRT–43310A

The applicant requests a permit to import 2.2 live, captive-bred horned guan (*Oreophasis derbianus*) from Mexico for the purposes of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Guy Gorney, Manhattan, IL; PRT–54826A

Joseph Hand, DelRay Beach, FL; PRT–54893A

James Combs, Peoria, AZ; PRT–52516A

Kenneth Cypress, Ochopee, FL; PRT–56285A

Michael Rush, Nashua, NH; PRT–56284A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–27111 Filed 10–19–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N217; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
28295A	Rosamond Gifford Zoo at Burnet Park	76 FR 14985; March 18, 2011	October 7, 2011.
47165A	James Kelly	76 FR 48880; August 9, 2011	September 26, 2011.
49806A	Robert Oswald	76 FR 52965; August 26, 2011	September 26, 2011.
45900A	Stephen Pasquan	76 FR 48880; August 26, 2011	September 26, 2011.
48778A	Rulon Anderson	76 FR 54480; September 1, 2011	October 5, 2011.

MARINE MAMMALS

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
166346	Matson's Laboratory	76 FR 35464; June 17, 2011	October 5, 2011.
31164A	Wild Horizons, Ltd.	76 FR 10623; February 25, 2011	October 5, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–27104 Filed 10–19–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes an Approval of the Gaming Compact between the Confederated Tribes of the

Warm Springs Reservation of Oregon and the State of Oregon.

DATES: *Effective Date:* October 20, 2011.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Compact amends the 2005 Amended and Restated Tribal-State Government-to-Government Compact for Regulation of Class III Gaming on the Warm Springs Reservation (''2005 Compact'' or ''Kah-Nee-Ta compact''), approved on May 20, 2005. The following is a list of the changes:

1. Addresses relocation of Class Gaming on the Reservation from the Tribe's Kah-Nee-Ta Resort facility to a temporary facility on U.S. Highway 26 in the Warm Springs community. See Section 3.M. (definitions) and Section 4.C. (gaming location).

2. Increases the number of approved VLT's from 400 to 700. See, Section 4.D. The compact also deletes the ''one player at a time'' provision of the definition of ''Video Lottery Terminal,'' thereby allowing for multi-player VLT's. Section 3EE. The compact also provides a methodology for counting multi-player VLT's. Section 4D.

3. Adds disclaimer regarding any impact of the 2011 Amended and Restated Compact on the Cascade Locks casino ''two-part'' determination. See Section 4.C.3.

4. Revises ''Health and Safety Standards'' section to be consistent with Cascade Locks compact (dated November 2010) and other Oregon compacts. See Section 12.A.

5. Revises ''Traffic Standards'' section providing for access improvements and consultations with Oregon Department of Transportation. See Section 12.B.

6. Revises and updates regulatory provisions to be consistent with Cascade Locks compact and other current Oregon compacts. See Section 7, 8, 9, 10 and 11.

Dated: October 14, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2011–27233 Filed 10–19–11; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L51100000–GA0000–LVEMK09CK370; WYW173408]

Notice of Availability of the Record of Decision for the Wright Area North Porcupine Coal Lease-by-Application and Environmental Impact Statement, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the North Porcupine Coal Lease-by-Application (LBA) included in the Wright Area Coal Lease Applications Environmental Impact Statement (EIS).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/HighPlains/Wright-Coal.html.* Paper copies of the ROD are also available at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming, 82009; and
- Bureau of Land Management, Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming, 82604.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Muller Ogle, Coal Program Coordinator, at 307–775–6206, or Ms. Sarah Bucklin, EIS Project Manager, at 307–261–7541. Ms. Ogle's office is located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Ms. Bucklin's office is located at the BLM High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability is for the North Porcupine Coal Tract and addresses leasing Federal coal in Campbell County, Wyoming, administered by the BLM Wyoming High Plains District Office. The BLM approves Alternative 2, which is the preferred alternative for this LBA in the Wright Area Coal Final EIS. Under Alternative 2, the BLM will offer the North Porcupine Coal LBA area, as modified by the BLM for lease. The modified LBA area includes approximately 6,364 acres. The BLM estimates that it contains approximately 721,154,828 tons of mineable Federal coal reserves under the selected configuration. The BLM will announce a competitive coal lease sale in the **Federal Register** at a later date. The Environmental Protection Agency published a **Federal Register** notice announcing the Final EIS was publicly available on July 30, 2010 (75 FR 44951).

This decision is subject to appeal to the Interior Board of Land Appeals (IBLA), as provided in 43 CFR part 4, within thirty (30) days from the date of publication of this NOA in the **Federal Register.** The ROD contains instructions for filing an appeal with the IBLA.

Donald A. Simpson,

State Director.

[FR Doc. 2011–27043 Filed 10–19–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD01000–2011–L13110000–EJ0000–LXSI016K0000]

Notice of Meetings of the Pinedale Anticline Working Group, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will hold a series of meetings in Pinedale, Wyoming. All PAWG meetings are open to the public.

DATES: The PAWG will meet on the following dates: February 7, 2012, May 22 and 23, 2012, and August 7 and 8, 2012, beginning at 9 a.m. MST at the Bureau of Land Management (BLM) Pinedale Field Office.

ADDRESSES: BLM Pinedale Field Office, 1625 West Pine Street, Pinedale, Wyoming.

FOR FURTHER INFORMATION CONTACT: Shelley Gregory, BLM Pinedale Field Office, 1625 West Pine Street, PO Box

768, Pinedale WY 82941; 307–315–0612; *ssgregory@blm.gov.* Persons who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The PAWG was established by the Environmental Impact Statement (EIS) Record of Decision (ROD) for the PAPA on July 27, 2000 and carried forward with the release of the ROD for the PAPA Supplemental EIS on September 12, 2008.

The PAWG is a Federal Advisory Committee Act (FACA) chartered group which develops recommendations and provides advice to the BLM on mitigation, monitoring, and adaptive management issues as oil and gas development in the PAPA proceeds. Additional information about the PAWG can be found at: *http://www.blm.gov/wy/st/en/field_offices/pinedale/pawg.html.*

Mary E. Trautner,

Acting State Director.

[FR Doc. 2011–27148 Filed 10–19–11; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–568]

Certain Products and Pharmaceutical Compositions Containing Recombinant Human Erythropoetin; Termination of Investigation on the Basis of Settlement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation on the basis of settlement between the private parties.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. 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: This investigation was instituted on May 12, 2006, based on a complaint filed by Amgen Inc. (''Amgen'') of Thousand Oaks, California. 71 FR 27,742 (May 12, 2006). The complaint alleged a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, sale for importation, or sale within the United States after importation of certain products and pharmaceutical compositions containing recombinant human erythropoietin by reason of infringement of various claims of six United States patents: U.S. Patent Nos. 5,441,868; 5,547,933 (''the '933 patent''); 5,618,698 (''the '698 patent''); 5,621,080 (''the '080 patent''); 5,756,349; and 5,955,422. The complaint named Roche Holding Ltd. of Basel, Switzerland, F. Hoffman-La Roche Ltd. of Basel, Switzerland, Roche Diagnostics GmbH of Mannheim, Germany, and Hoffman La Roche Inc. of Nutley, New Jersey (collectively, ''Roche'') as respondents.

After separate remands by the Court of Appeals for the Federal Circuit of this investigation and a parallel civil action involving many of the same patents asserted in this investigation, on December 18, 2009, the private parties executed a settlement agreement that allows Roche to begin selling accused products in the United States in mid-2014. Form 10–K, Amgen Inc., at 8 (Mar. 1, 2010); *see also* Settlement Agreement (Dec. 18, 2009). On December 21, 2009, Amgen and Roche submitted a proposed consent order to the district court in that parallel civil action, and on December 22, 2009, the district court entered judgment.

On December 22, 2009, Amgen moved to withdraw certain patent claims from this investigation that had not been asserted in the district court. Unopposed Compl't Amgen Inc.'s Mot. to Terminate Investigation as to Claims 4, 5 and 11 of the '933 Patent, Claims 4 and 6 of the '080 Patent, and Claims 4 and 5 of the '698 Patent (Dec. 22, 2009). The Commission granted that motion. 75 FR 18,548 (Apr. 12, 2010).

Also on December 22, 2009, Amgen moved the Commission to terminate this investigation by entry of an exclusion order based on preclusion caused by the district court judgment. Addendum to August 24, 2009 Stipulation (Dec. 22, 2009). Two Amgen motions regarding claim 7 of the '349 patent followed. By notice on April 6, 2010, the Commission sought clarification from the parties about, among other things, the effect of the stipulated district court judgment on this investigation. 75 FR 18,548 (Apr. 12, 2010).

On March 11, 2011, the Commission issued an order to show cause why the investigation should not be terminated in view of the parties' settlement. In response, Amgen and Roche declined to pursue their request for an exclusion order and instead requested the issuance of a consent order. In support of their proposed consent order, Amgen and Roche stated that ''the Commission has previously terminated investigations when there is both a settlement agreement and an executed consent order stipulation.'' Joint Response of Complainant and Respondents to the Commission's Order to Show Cause and Request for Termination on the Basis of a Consent Order 2–3 (Apr. 21, 2011) (''Joint Response'') (citing Notices, *Certain Digital Multimeters and Products with Multimeter Functionality,* Inv. No. 337–TA–588 (May 31, 2007 and July 3, 2007)). In a corrected response that the Commission hereby grants leave to file, the Commission investigative attorney did not object to the issuance of a consent order.

As will be discussed further in an accompanying opinion, the facts of the 588 investigation are readily distinguished from the facts here. Amgen and Roche have offered no basis, in law or policy, to support the Commission's issuance of a consent order under the unusual facts of this investigation. Nor is the Commission itself aware of any such basis. Accordingly, the Commission terminates this investigation on the basis of the settlement agreement between the private parties. 19 U.S.C. 1337(c); 19 CFR 210.21(b), 210.41.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: October 14, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–27167 Filed 10–19–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 11–11]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Friday, October 28, 2011

10 a.m. Oral hearing on objection to Commission's Proposed Decision in Claim No. LIB–II–016

11 a.m. Issuance of Proposed Decisions in claims against Libya

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. 2011–27321 Filed 10–18–11; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

159th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 159th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on November 8–9, 2011.

The meeting will take place in C–5515 Room 1–A, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 on November 8, from 1 p.m. to approximately 5 p.m. On November 9, the meeting will start at 9 a.m. and conclude at approximately 4 p.m., with a break for lunch, in Room S–2508 at the same address. The purpose of the open meeting is for the Advisory Council members to finalize the recommendations they will present to the Secretary. At the November 9 afternoon session, the Council members will receive an update from the Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA) and present their recommendations.

The Council recommendations will be on the following issues: (1) Current Challenges and Best Practices for ERISA Compliance for 403(b) Plan Sponsors; (2) Hedge Funds and Private Equity Investments; and, (3) Privacy and Security Issues Affecting Employee Benefit Plans (other than health care plans). Descriptions of these topics are available on the Advisory Council page of the EBSA web site, at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.*

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before November 1, 2011 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as e-mail attachments in text or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the e-mail. Statements deemed relevant by the Advisory Council and received on or before November 1, 2011 will be included in the record of the meeting and available in the EBSA Public Disclosure room. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations wishing to address the Advisory Council should send their requests to the Executive Secretary at one of the addresses provided above or call (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by November 1.

Signed at Washington, DC this 14th day of October, 2011.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2011–27064 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,297]

Steiff North America, Lincoln, RI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application received September 26, 2011, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers Steiff North America, Lincoln, Rhode Island (Steiff North America). The negative determination was issued on September 13, 2011. The Department's Notice of Determination was published in the **Federal Register** on October 5, 2011 (76 FR 61743). The workers of Steiff North America, Lincoln, Rhode Island, are engaged in activities related to the supply of distribution and sales of plush toys.

The negative determination was based on the Department's findings that Steiff North America does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Trade Act of 1974, as amended.

In the request for reconsideration, the petitioner asserts that subject firm produces ''plush toys, clothing, wooden toys, and other children related items.''

The Department has carefully reviewed the petitioner's request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 5th day of October, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27163 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,430]

Product Dynamics LTD, Levittown, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated September 28, 2011, a petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Product Dynamics, LTD, Levittown, Pennsylvania (Product Dynamics). The negative determination was issued on September 14, 2011. The Department's Notice of Determination will soon be published in the **Federal Register**.

The negative determination was based on the Department's findings that the subject firm did not produce an article. Further, the investigation revealed that the subject firm is not a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a).

In the request for reconsideration, the petitioner alleges that workers at Product Dynamics are engaged in activities related to the production of toy prototypes (stating that workers ''machine, fabricate and sculpt various items to create prototype models, samples and patterns.'')

The Department has carefully reviewed the petitioner's request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 3rd day of October, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27158 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,805]

Henkel Corporation, Currently Known as Henkel Electronic Materials, LLC, Electronic Adhesives Division, Including On-Site Leased Workers from Aerotek Professional Services, Billerica, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 12, 2010, applicable to workers of Henkel Corporation, Electronic Adhesives Division, including on-site leased workers from Aerotek Professional Services, Billerica, Massachusetts. The notice was published in the **Federal Register** on August 2, 2010 (75 FR 45163).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers supply new product development and other support functions related to the production of electrical materials.

Information shows that on January 1, 2011, Henkel Corporation created a new legal entity applicable to only the Canton, Massachusetts location to combine the legacy Henkel Electronic Materials business and The National Starch Electronic Materials business following a company purchase in April 2008. Workers separated from employment at the Billerica, Massachusetts location of Henkel Corporation, Electronic Adhesives Division had their wages reported under a separate unemployment insurance (UI) tax account under the name Henkel Electronic Materials, LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected as a secondary service supplier directly to a TAA certified firm.

The amended notice applicable to TA–W–73,805 is hereby issued as follows:

All workers of Henkel Corporation, currently known as Henkel Electronic Materials, LLC, Electronic Adhesives, Division, including on-site leased workers from Aerotek Professional Services, Billerica, Massachusetts, who became totally or partially separated from employment on or after March 23, 2009 through July 12, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 5th day of October 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27160 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,725]

Caterpillar, Inc., Large Power Systems Division, Including On-Site Leased Workers From Gray Interplant Systems, Inc, ATS, URS, River City, GCA, Lozier, Obrien Bros., HK, FCA and Clifton Gunderson, Mossville, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 2, 2009, applicable to Caterpillar, Inc., Large Power Systems Division, Mossville, Illinois. The workers produce on-highway and off-highway diesel engines for commercial trucks. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3935).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Gray Interplant Systems, Inc., ATS, URS, River City, GCA, Lozier, Obrien Bros., HK, FCA, and Clifton Gunderson were employed on-site at the Mossville, Illinois location of Caterpillar, Inc., Large Power Systems Division. The Department has determined that these workers were sufficiently under the control of Caterpillar, Inc., Large Power

Systems Division, Mossville, Illinois to be included in this certification.

Based on these findings, the Department is amending this certification to include workers leased from Gray Interplant Systems, Inc., ATS, URS, River City, GCA, Lozier, Obrien Bros., HK, FCA, and Clifton Gunderson working on-site at the Mossville, Illinois location of Caterpillar, Inc., Large Power Systems Division.

The amended notice applicable to TA–W–71,725 is hereby issued as follows:

''All workers of Caterpillar, Inc., Large Power Systems Division, including on-site leased workers from Gray Interplant Systems, Inc., ATS, URS, River City, GCA, Lozier, Obrien Bros., HK, FCA, and Clifton Gunderson, Mossville, Illinois, who became totally or partially separated from employment on or after July 6, 2008, through November 2, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed at Washington, DC this 4th day of October 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27159 Filed 10–19–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,158; TA–W–80,158A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; FLEXTRONICS International USA, INC.,FLEXMEDICAL Division, Including On-Site Leased Workers From AEROTEK Commerical Staffing, San Diego, CA; FLEXTRONICS International USA, Inc., Infrastructure Division, Foothill Ranch, CA

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor (Department) issued a certification of eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on July 29, 2011, applicable to former workers of Flextronics International USA, Inc., FlexMedical Division, including on-site leased workers from Aerotek Commercial Staffing, San Diego, California (subject firm). The Department's Notice was published in the **Federal Register** on August 18, 2011 (76 FR 51433).

Workers at Flextronics International USA, Inc., FlexMedical Division, San Diego, California, are engaged in activity related to the production of disposable medical devices.

New information provided by Flextronics International USA, Inc. revealed that workers of the Infrastructure Division, Foothill Ranch, California location (TA–W–80,158) provided procurement support services for the production of disposable medical devices at the FlexMedical Division, San Diego, California location (TA–W–80,158). Both locations experienced worker separations due to a shift in production of disposable medical devices (or like or directly competitive articles) by Flextronics International USA, Inc. to Mexico.

In accordance with Section 246 the Trade Act of 1974, as amended (''Act''), 26 U.S.C. 2813, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA for older workers, applicable to workers of Flextronics International USA, Inc., Infrastructure Division, Foothill Ranch, California (TA–W–80,158A)

The group eligibility requirements for workers of a firm under Section 246 (a)(3)(A)(ii) of the Trade Act are satisfied if the following criteria are met:

(I) Whether a significant number of workers in the workers' firm are 50 years of age or older;

(II) Whether the workers in the workers' firm possess skills that are not easily transferable; and

(III) The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

The Department has determined that criterion (I) has not been met for the workers covered by TA–W–80,158A.

A significant number of workers at Flextronics International USA, Inc., Infrastructure Division, Foothill Ranch, California is not 50 years of age or older.

Based on these findings, the Department is amending the TAA certification to include workers of the Infrastructure Division of Flextronics International USA, Inc., Foothill Ranch, California (TA–W–80,158A). The certification does not include a certification of eligibility to apply for ATAA, applicable to workers covered by TA–W–80,158A. The worker group at the Foothill Ranch, California facility does not include on-site leased workers from temporary agencies.

The amended notice applicable to TA–W–80,158 is hereby issued as follows:

All workers of Flextronics International USA, Inc., FlexMedical Division, including on-site leased workers from Aerotek Commercial Staffing, San Diego, California (TA–W–80,158), who became totally or partially separated from employment on or after May 3, 2010, through July 29, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974 as amended.

AND

All workers of Flextronics International USA, Inc., Infrastructure Division, Foothill Ranch, California (TA–W–80,158A), who became totally or partially separated from employment on or after May 3, 2010, through July 29, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, as amended; and I further determine that all workers of Flextronics International USA, Inc., Infrastructure Division, Foothill Ranch, California (TA–W–80,158A), are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed at Washington, DC this 4th day of October, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27161 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of September 26, 2011 through September 30, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–80,335; Linear Motion, LLC, Saginaw, MI: July 21, 2010

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,168; Morbark, Inc., Mt. Pleasant, MI: May 9, 2010

TA–W–80,267; Henkel Corp., Canton, MA: September 18, 2011

TA–W–80,267A; Henkel Corp., City of Industry, CA: September 18, 2011

TA–W–80,351; Neapco Components, LLC, Pottstown, PA: October 21, 2011

TA–W–80,396 GE Oil & Gas Operations LLC, Oshkosh, WI: August 26, 2010

TA–W–80,437; Stylecraft Services LLC, Milford, IA: August 27, 2011

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,270; Avery Dennison, Sayre, PA: July 7, 2011

TA–W–80,312; Nilar, Inc., Centennial, CO: July 22, 2010

TA–W–80,406; SC Johnson Home Storage, LLC, Fresno, CA: August 31, 2010

TA–W–80,436; Ornamental Mouldings, LLC, Archdale, NC: September 6, 2010

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

TA–W–80,335; Linear Motion, LLC, Saginaw, MI

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–80,431; Covidien, Argyle, NY

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,395; Simpson Lumber Company, LLC, Shelton, WA

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,275; Pfizer Therapeutic Research, Groton, CT

TA–W–80,315; Marlette Homes, Inc., Lewistown, PA

TA–W–80,316; PreMedia Global, Inc., York, PA

TA–W–80,362; RockTenn, Williamsport, PA

TA–W–80,403; Capgemini America, Inc., Irving, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–80,125; Shine Electronics Co., Inc., Long Island City, NY

TA–W–80,265; MWH Americas, Inc., Broomfield, CO

TA–W–80,372; Walgreens Company, Deerfield, IL

TA–W–80,398; Simpson Lumber Company, LLC, Shelton, WA

TA–W–80,412; Moneygram Payment Systems, Inc., Lakewood, CO

TA–W–80,420; MGM Transport, Lenoir, NC

TA–W–80,420A; MGM Transport, Martinsville, VA

TA–W–80,420B; MGM Transport, High Point NC

TA–W–80,420C; Caldwell Freight Lines, High Point, NC

TA–W–80,420D; Caldwell Freight Lines, Martinsville, VA

TA–W–80,420E; Caldwell Freight Lines, Pontotoc, MS

TA–W–80,420F; Caldwell Freight Lines, Lenoir, NC

TA–W–80,420G; Caldwell Freight Lines, Newton, NC

TA–W–80,440; Bank of America, Scranton, PA

Determinations Terminating Investigations of Petitions For Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–80,419; Centurion Medical Products, Jeannette, PA

Insert T1

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W–80,016; World Color Mt. Morris II, LLC, Mt. Morris, IL

TA–W–80,377; Symantec Corp., Mountain View, CA

TA–W–80,387; Quad Graphics, Inc., Depew, NY

I hereby certify that the aforementioned determinations were issued during the period of September 26, 2011 through September 30, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov*. These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: October 7, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27165 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 31, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of October 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[26 TAA petitions instituted between 9/26/11 and 9/30/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80460	Briggs & Stratton Poplar Bluff Facility (Company)	Poplar Bluff, MO	09/26/11	09/22/11
80461	Wilson Sporting Goods Company (Company)	Sparta, TN	09/26/11	09/23/11
80462	Tradewins LLC (Company)	Woodinville, WA	09/26/11	09/23/11
80463	Clow Water Systems (State/One-Stop)	Coshocton, OH	09/26/11	09/23/11
80464	Brunswick Bowling & Billiards (Corp) (State/One-Stop)	Bristol, WI	09/26/11	09/23/11
80465	JDS Uniphase (State/One-Stop)	Santa Rosa, CA	09/26/11	09/23/11
80466	InterMetro Industries Corporation-Coatesville Facility (Company)	Coatesville, PA	09/26/11	09/23/11
80467	Covad (DBA MegaPath/Formerly Speakeasy) (State/One-Stop)	Seattle, WA	09/26/11	09/23/11
80468	Worthington Steel (formerly MISA Metals, Inc.) (Union)	Middletown, OH	09/26/11	09/26/11

APPENDIX—Continued

[26 TAA petitions instituted between 9/26/11 and 9/30/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80469	CEVA Logistics—Project HCL (State/One-Stop)	Houston, TX	09/27/11	09/13/11
80470	Precision Valve, SC—Plant 2 (State/One-Stop)	Greenville, SC	09/27/11	09/26/11
80471	Precision Valve, SC—Plant 1 (State/One-Stop)	Travelers Rest, SC	09/27/11	09/26/11
80472	Tiger Drylac USA Inc. (Company)	Reading, PA	09/27/11	09/26/11
80473	Reading Powder Coatings Inc. (Company)	Reading, PA	09/27/11	09/26/11
80474	Simonton Windows (State/One-Stop)	McAlester, OK	09/27/11	09/26/11
80475	Fairlane Division VRTX, Inc. (Company)	New York, NY	09/27/11	09/26/11
80476	Wells Fargo Bank N/A (Workers)	Bethlehem, PA	09/28/11	09/27/11
80477	Allstate Insurance Co. (State/One-Stop)	Northbrook, IL	09/28/11	09/27/11
80478	Skip's Cutting, Inc. (Workers)	Ephrata, PA	09/28/11	09/27/11
80479	Excelsior Services Group (Company)	Dallas, TX	09/29/11	09/28/11
80480	Elsevier, Inc (Company)	San Diego, CA	09/30/11	09/28/11
80481	Kyowa America Corporation (State/One-Stop)	Westminster, CA	09/30/11	09/29/11
80482	Weather Shield Mfg Inc. (Workers)	Park Falls, WI	09/30/11	09/10/11
80483	American Apparel (State/One-Stop)	Garden Grove, CA	09/30/11	09/29/11
80484	Cummins Filtration (Company)	Lake Mills, IA	09/30/11	09/27/11
80485	R. R. Donnelley—Bloomsburg (Union)	Bloomsburg, PA	09/30/11	09/27/11

[FR Doc. 2011–27166 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,350]

Baby Bliss, Inc., Middleville, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application received September 26, 2011, a company official requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers Baby Bliss, Inc., Middleville, Michigan (Baby Bliss). The determination was issued on September 2, 2011. The Department's Notice of determination was published in the **Federal Register** on September 19, 2011 (76 FR 58046). The workers of Baby Bliss were engaged in activities related to the production of children's clothing.

The petition (dated August 8, 2011) stated that ''Pleasant Company has been a customer of ours since 1985. New owners (Mattel) took over that company and proceeded to all of the apparel and other production to a foreign country (China).''

The negative determination was based on the Department's findings that Baby Bliss did not employ a certifiable worker group during the period under investigation within the meaning of Section 222(a) or Section 222(b) of the Act.

Criterion (1) has not been met because Baby Bliss did not employ a worker group during the relevant time period. A worker group means that the firm must have at least three full-time workers during the year preceding the TAA petition date. Baby Bliss did not meet this threshold level. Further, the criteria set forth in 29 CFR 90.16(e) was not met.

In the request for reconsideration, the petitioner stated that he was ''the only officer/employee who possessed the information to file this petition'' and asserted that he did not file a petition earlier because he was out of the country from November 2004 through February 2008, then incarcerated from February 2008 through March 2011.

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

After careful review of the request for reconsideration, previously submitted materials, the applicable statute, and relevant regulation, the Department determines that there is no new information, mistake in fact, or misinterpretation of the facts or of the law.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of October, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27164 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,219]

Beacon Medical Services, LLC, Aurora, CO; Notice of Negative Determination Regarding Application for Reconsideration

By application received July 25, 2011, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Beacon Medical Services, LLC, Aurora, Colorado (Beacon Medical Services). The negative determination was issued on June 22, 2011. The Department's Notice of Determination was published in the **Federal Register** on July 8, 2011 (76 FR 40401). The workers of Beacon Medical Services are engaged in activities related

to the supply of third party medical billing and coding services.

The petition filed on behalf of ''medical coders'' at Beacon Medical Services, LLC, Aurora, Colorado, states that ''our jobs were outsourced to India.''

The negative determination was based on the Department's findings that Beacon Medical Services does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Act. In order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, the worker group seeking certification (or on whose behalf certification is being sought) must work for a ''firm'' or appropriate subdivision that produces an article.

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

After the Trade Act of 2009 expired in February 2011, petitions for TAA were instituted under the Trade Adjustment Assistance Reform Act of 2002 (Trade Act of 2002). Therefore, the statute applicable to TA–W–80,219 is the Trade Act of 2002. The applicable regulation is codified in 29 CFR Part 90, Subpart B.

Section 222 of the Trade Act of 2002 establishes the worker group eligibility requirements. The requirements include either ''imports of articles like or directly competitive with articles produced by such firm or subdivision have increased'' or ''a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision.''

In the request for reconsideration, the petitioner asserts that Beacon Medical Services ''sent our jobs OVESEAS TO INDIA.''

A shift in the supply of services (or like or directly competitive services) by Beacon Medical Services to a foreign country is not a basis for certification under the criteria set forth by the Trade Act of 2002.

After careful review of the request for reconsideration, previously submitted materials, the applicable statute, and relevant regulation, the Department determines that there is no new information, mistake in fact, or misinterpretation of the facts or of the law.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of October, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27162 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0186]

Inorganic Arsenic Standard; 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 comments.

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 Inorganic Arsenic Standard (29 CFR part 1910.1018).

DATES: Comments must be submitted (postmarked, sent, or received) by December 19, 2011.

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 your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0186, 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–2011–0186) 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 also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, 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 information collection requirements in the Inorganic Arsenic Standard provide protection for workers from the adverse health effects associated with exposure to inorganic arsenic. The Inorganic Arsenic Standard requires employers to: monitor workers' exposure to inorganic arsenic; monitor worker health; develop and maintain worker exposure monitoring and medical records; establish and implement written compliance programs; and provide workers with information about their exposures and the health effects of exposure to inorganic arsenic.

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

The Agency is requesting an adjustment in the number of burden hours from 385 to 637 due to an increase in the number of establishments from three to five. The cost burden also increased from $31,165 to $54,197 due primarily to the increase in the cost of medical examinations and chest x-rays from $196 to $210.

Type of Review: Extension of a currently approved collection.

Title: Inorganic Arsenic Standard (29 CFR 1910.1018).

OMB Number: 1218–0104.

Affected Public: Business or other for-profits.

Number of Respondents: 5.

Frequency: On occasion; quarterly; semi-annually; annually.

Total Responses: 1,936.

Average Time per Response: Varies from five minutes (.08 hour) for a secretary to prepare and post each notification to eight hours for a supervisor to update each compliance plan.

Estimated Total Burden Hours: 637.

Estimated Cost (Operation and Maintenance): $54,197

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; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2011–0186). 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 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 dates 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, Ph.D., M.P.H., 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. 4–2010 (75 FR 55355).

Signed at Washington, DC, on October 17, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–27181 Filed 10–19–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Electronic Records Archives (ACERA)

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Electronic Records Archives (ACERA). The committee serves as a deliberative body to advise the Archivist of the United States, on technical, mission, and service issues related to the Electronic Records Archives (ERA). This includes, but is not limited to, advising and making recommendations to the Archivist on issues related to the development, implementation and use of the ERA system. This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Electronic Records Archives Program at *era.program@nara.gov.* This meeting will be recorded for transcription purposes.

DATES: The meeting will be held on November 2, 2011, 8:30 a.m.–4:45 p.m.

ADDRESSES: The Washington Room, 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001.

FOR FURTHER INFORMATION CONTACT: Kimberly Scates, Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740; (301) 837–3176.

SUPPLEMENTARY INFORMATION:

Agenda

- Opening Remarks.
- Approval of Minutes.
- Transition Update.
- Activities Reports.
- Agency Experience With ERA.
- Subcommittee Break Out.
- Subcommittee Reports.
- Adjournment.

Dated: October 13, 2011.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2011–27085 Filed 10–19–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral and Economic Sciences (#1171)

Date/Time: November 3, 2011; 1 p.m. to 5:30 p.m. November 4, 2011; 8:45 a.m. to 4 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford II, Room 595, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Ms. Lisa Jones, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703–292–8700.

Summary of Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

Agenda

Thursday, November 3, 2011

Updates and discussions on continuing activities

- Budget priorities for FY 2012
- New Staff
- New Directions in the Directorate for Education and Human Resources
- Interdisciplinary Training in SBE Science

Friday, November 4, 2011

Discussion With NSF Director and Deputy Director

Overview and Discussion

- National Center for Science and Engineering Statistics (NCSES) Update
- Strategic Plan for the Division of Behavioral and Cognitive Science
- SBE–Supported Surveys and Infrastructure
- Future membership of the Advisory Committee

Dated: October 17, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–27143 Filed 10–19–11; 8:45 am]

BILLING CODE 7555–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Evidence for Application of Overall Minimum: OMB 3220–0083.

Under Section 3(f)(3) of the Railroad Retirement Act (RRA), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act. This is referred to as the Social Security Overall Minimum Guarantee, which is prescribed in 20 CFR part 229. To administer this provision, the Railroad Retirement Board (RRB) requires information about a retired employee's spouse and child(ren) who would not be eligible for benefits under the RRA but would be eligible for benefits under the Social Security Act if the employee's railroad service had been covered by that Act. The RRB obtains the required information by the use of Forms G–319, Statement Regarding Family and Earnings for Special Guaranty Computation, and G–320, Student Questionnaire for Special Guaranty Computation. One response is required of each respondent. Completion is required to obtain or retain benefits. The RRB proposes no changes to Form G–319 or Form G–320.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (Minutes)	Burden (Hours)
G–319 (completed by the employee):			
With assistance	5	26	2
Without assistance	330	55	302
G–319 (completed by spouse):			
With assistance	5	30	3
Without assistance	15	60	15
G–320:			
(Age 18 at Special Guaranty Begin Date or Special Guaranty Age 18 Attainments)	150	15	37
(Student Monitoring done in Sept, March and at end of school year)	50	15	12

2. *Title and purpose of information collection:* Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings; OMB 3220–0107.

Under Section 2 of the Railroad Retirement Act (RRA), a railroad employee's retirement annuity or an annuity paid to the spouse of a railroad employee is subject to work deductions in the Tier II component of the annuity

and any employee supplemental annuity for any month in which the annuitant works for a Last Pre-Retirement Non-Railroad Employer (LPE). The LPE is defined as the last person, company, or institution, other than a railroad employer, that employed an employee or spouse annuitant. In addition, the employee, spouse, or divorced spouse Tier I annuity benefit is subject to work deductions under Section 2(f)(1) of the RRA for earnings from any non-railroad employer that are over the annual exempt amount. The regulations pertaining to non-payment of annuities by reason of work and LPE are contained in 20 CFR 230.1 and 230.2.

The RRB utilizes Form RL–231–F, Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings, to obtain the information needed to determine if a work deduction should be applied because an annuitant worked in non-railroad employment after the annuity beginning date. One response is requested of each respondent. Completion is voluntary. The RRB proposes no changes to Form RL–231–F.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (Minutes)	Burden (Hours)
RL–231–F	300	30	150

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or e-mailed to *Patricia.Henaghan@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–27120 Filed 10–19–11; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15c1–6; SEC File No. 270–423; OMB Control No.3235–0472.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c1–6 (17 CFR 240.15c1–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 481 respondents collect information annually under Rule 15c1–6 and that each respondent would spend approximately 10 hours annually complying with the collection of information requirement (approximately 4,810 hours in aggregate).

Written comments are invited on: (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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 13, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27094 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15c1–7, SEC File No. 270–146, OMB Control No. 3235–0134.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c1–7 (17 CFR 240.15c1–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c1–7 states that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The

record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place.

The Commission estimates that 481 respondents collect information related to approximately 400,000 transactions annually under Rule 15c1–7 and that each respondent would spend approximately 5 minutes on the collection of information for each transaction, for approximately 33,333 aggregate hours per year (approximately 69 hours per respondent).

Written comments are invited on: (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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 13, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27095 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15c2–7, SEC File No. 270–420, OMB Control No. 3235–0479.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c2–7 places disclosure requirements on broker-dealers who have correspondent relationships, or agreements identified in the rule, with other broker-dealers. Whenever any such broker-dealer enters a quotation for a security through an inter-dealer quotation system, Rule 15c2–7 requires the broker-dealer to disclose these relationships and agreements in the manner required by the rule. The inter-dealer quotation system must also be able to make these disclosures public in association with the quotation the broker-dealer is making.

When Rule 15c2–7 was adopted in 1964, the information it requires was necessary for execution of the Commission's mandate under the Securities Exchange Act of 1934 to prevent fraudulent, manipulative and deceptive acts by broker-dealers. In the absence of the information collection required under Rule 15c2–7, investors and broker-dealers would have been unable to accurately determine the market depth of, and demand for, securities in an inter-dealer quotation system.

There are approximately 4,810 broker-dealers registered with the Commission. Any of these broker-dealers could be potential respondents for Rule 15c2–7, so the Commission is using that figure to represent the number of respondents. Rule 15c2–7 applies only to quotations entered into an inter-dealer quotation system, such as the OTC Bulletin Board (''OTCBB''), or OTC Link (formerly, ''Pink Sheets''), operated by OTC Markets Group Inc. (''OTC Link''). According to representatives of both OTC Link and the OTCBB, neither entity has recently received, or anticipates receiving any Rule 15c2–7 notices. However, because such notices could be made, the Commission estimates that one filing is made annually pursuant to Rule 15c2–7.

Based on prior industry reports, the Commission estimates that the average time required to enter a disclosure pursuant to the rule is .75 minutes, or 45 seconds. The Commission sees no reason to change this estimate. We estimate that impacted respondents spend a total of .0125 hours per year to comply with the requirements of Rule 15c2–7 (1 notice (x) 45 seconds/notice). Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 13, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27096 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 24b–1; OMB Control No. 3235–0194; SEC File No. 270–205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval, Rule 24b–1 (17 CFR 240.24b–1)—Documents to be Kept Public by Exchanges

Rule 24b–1 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto.

There are 15 national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of 7.5 hours per year. The staff

estimates that the average cost per respondent is $65.18 per year, calculated as the costs of copying ($13.97) plus storage ($51.21), resulting in a total cost of compliance for the respondents of $977.70.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission'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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

October 14, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27098 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19d–2; OMB Control No. 3235–0205; SEC File No. 270–204.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19d–2—Applications for Stays of Final Disciplinary Sanction (17 CFR 240.19d–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19d–2 under the Exchange Act prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency.

It is estimated that approximately fifteen respondents will utilize this application procedure annually, with a total burden of 45 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours.

Based on the most recent available information, the Commission staff estimates that the cost to respondents of complying with the requirements of Rule 19d–2 is $876 per response. Therefore, the Commission staff estimates that the total annual reporting cost per respondent is $876 (1 response/respondent/year × $876 cost/response), for a total annual related cost to all respondents of $13,140 ($876 cost/respondent × 15 respondents).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 13, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27097 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 11a1–1(T); OMB Control No. 3235–0478; SEC File No. 270–428.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval for Rule 11a1–1(T)—Transactions Yielding Priority, Parity, and Precedence.

On January 27, 1976, the Commission adopted Rule 11a1–1(T)—Transactions Yielding Priority, Parity, and Precedence (17 CFR 240.11a1–1(T)) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) (''Exchange Act''), to exempt certain transactions of exchange members for their own accounts that would otherwise be prohibited under Section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange

Act to promote fair and orderly markets and ensure that exchange members have, as the principle purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 763 respondents that require an aggregate total of 22 hours to comply with this rule. Each of these approximately 763 respondents makes an estimated 20 annual responses, for an aggregate of 15,260 responses per year. Each response takes approximately 5 seconds to complete. Thus, the total compliance burden per year is 22 hours (15,260 × 5 seconds/60 seconds per minute/60 minutes per hour = 22 hours). The approximate cost per hour is $282, resulting in a total cost of compliance for the annual burden of $6,204 (22 hours @ $282).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

October 14, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27093 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Reports of Evidence of:

SEC File No. 270–514, OMB Control No. 3235–0572.

Material Violations

Notice is hereby given that pursuant to the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Sections 3501–3520, the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension.

On February 6, 2003, the Commission published final rules, effective August 5, 2003, entitled ''Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer'' (17 CFR 205.1–205.7). The information collection embedded in the rules is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the rule and required by Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7245). The rules impose an ''up-the-ladder'' reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. An issuer may choose to establish a qualified legal compliance committee (''QLCC'') as an alternative procedure for reporting evidence of a material violation. In the rare cases in which a majority of a QLCC has concluded that an issuer did not act appropriately, the information may be communicated to the Commission. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the Federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

The respondents to this collection of information are attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. We believe that, in providing quality representation to issuers, attorneys report evidence of violations to others within the issuer, including the Chief Legal Officer, the Chief Executive Officer, and, where necessary, the directors. In addition, officers and directors investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Except as discussed below, we therefore believe that the reporting requirements imposed by the rule are ''usual and customary'' activities that do not add to the burden that would be imposed by the collection of information.

Certain aspects of the collection of information, however, may impose a burden. For an issuer to establish a QLCC, the QLCC must adopt written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation. We estimate for purposes of the PRA that there are approximately 16,517 issuers that are subject to the rules.[1] Of these, we estimate that approximately 3.8%, or 637, have established or will establish a QLCC.[2] Establishing the written procedures required by the rule should not impose a significant burden. We assume that an issuer would incur a greater burden in the year that it first establishes the procedures than in subsequent years, in which the burden would be incurred in updating, reviewing, or modifying the procedures. For purposes of the PRA, we assume that an issuer would spend 6 hours every three-year period on the procedures. This would result in an average burden of 2 hours per year. Thus, we estimate for purposes of the PRA that the total annual burden imposed by the collection of information would be 1,274 hours. Assuming half of the burden hours will be incurred by outside counsel at a rate of $500 per hour would result in a cost of $318,500.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not

[1] This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10–K, Form 20–F, or Form 40–F, during the 2011 fiscal year and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (14,000). In addition, we estimate that approximately 2,517 investment companies currently file periodic reports on Form N–SAR.

[2] We base this estimate on the number of issuers who have reported in filings with the Commission that they have created QLCCs. Indications are that the 2005 estimate of the percentage of issuers that would establish QLCCs (10%) was high. Our adjusted estimate in the percentage of QLCCs (3.8%) results in a reduced burden estimate as compared to the previously-approved collection.

derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 13, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27092 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65577; File No. SR–CME–2011–10]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Its Rules Relating to Interest Rate Swaps Clearing

October 14, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 7, 2011, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule changes amend current CME rules to expand its interest rate swaps offering to include interest rate swaps denominated in certain additional currencies and rate options and to clarify certain registration requirements for clearing interest rate swap products. CME is also at the same time amending its Manual of Operation for CME Cleared Interest Rate Swaps to reflect the new denominations and rate options. The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

CME currently offers clearing services for certain interest rate swap products. These proposed rule changes are intended to expand the listing of interest rate swaps denominated in certain additional currencies and rate options. CME expects to accept euro denominated interest rate swaps referencing Euribor for clearing on or around October 17, 2011. Great British Pound, Japanese Yen, Canadian Dollar and Swiss Franc denominated interest rate swaps and related interbank rates are expected to be accepted for clearing prior to the end of the year. Additionally, CME Rule 90005 is being amended to clarify certain registration requirements for clearing interest rate swap products.

To accommodate the changes, CME has also included changes to its Manual of Operations for CME Cleared Interest Rate Swaps to reflect the new denominations and rate options.

CME notes that it has also submitted the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''). The text of the CME rule proposed amendments is attached to CME's filing of proposed rule change as Exhibit 5, with additions underlined and deletions in brackets.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act because they involve clearing of swaps and thus relate solely to the CME's swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'') and do not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. CME further notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. The proposed rule changes accomplish those objectives by offering investors clearing for an expanded range of interest rate swap products.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CME–2011–10 on the subject line.

Paper Comments

• Paper comments should be sent 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–CME–2011–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2011–10 and should be submitted on or before November 10, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[4] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow CME to enhance its services in clearing interest rate swaps, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.[5]

The Commission finds good cause for accelerating approval because: (i) The proposed rule change does not significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on the swap clearing business of CME as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another regulator.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) [6] of the Act, that the proposed rule change (SR–CME–2011–10) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27201 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65576; File No. SR–Phlx–2011–133]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To the RSQT Fee

October 14, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Remote Streaming Quote Trader (''RSQT'') [3] Fee in Section VI of the Exchange's Fee Schedule entitled ''Access Service, Cancellation, Membership, Regulatory and Other Fees.''

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov/* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the RSQT Fee in Section VI of the Exchange's Fee Schedule, entitled ''Access Service, Cancellation, Membership, Regulatory and Other Fees,'' in order to simplify its RSQT Fee and automate its billing of this fee.

An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned.[4] An RSQT may only submit such quotations electronically from off the floor of the Exchange.[5] An RSQT shall not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options.[6]

Currently, the Exchange assesses its RSQT Fee in seven categories as follows:

RSQT Category I	$1700.00 per calendar month. RSQT is Eligible to trade: • 1 issue selected from the top 5 national volume leaders. • 1 issue selected from the 6th to 10th national volume leaders. • 3 issues selected from the 11th to 25th national volume leaders. • 4 issues selected from the 26th to 50th national volume leaders. • 1 index issue. • 190 other issues.
RSQT Category II	$3200.00 per calendar month. RSQT is Eligible to trade: • 2 issues selected from the top 5 national volume leaders. • 2 issues selected from the 6th to 10th national volume leaders. • 6 issues selected from the 11th to 25th national volume leaders. • 8 issues selected from the 26th to 50th national volume leaders. • 2 index issues. • 380 other issues.
RSQT Category III	$4700.00 per calendar month. RSQT is Eligible to trade: • 3 issues selected from the top 5 national volume leaders. • 3 issues selected from the 6th to 10th national volume leaders. • 9 issues selected from the 11th to 25th national volume leaders. • 12 issues selected from the 26th to 50th national volume leaders. • 3 index issues. • 570 other issues.
RSQT Category IV	$6200.00 per calendar month. RSQT is Eligible to trade: • 4 issues selected from the top 5 national volume leaders. • 4 issues selected from the 6th to 10th national volume leaders. • 12 issues selected from the 11th to 25th national volume leaders. • 16 issues selected from the 26th to 50th national volume leaders. • 5 index issues. • 759 other issues.
RSQT Category V	$7700.00 per calendar month. RSQT is Eligible to trade: • 5 issues selected from the top 5 national volume leaders. • 5 issues selected from the 6th to 10th national volume leaders. • 15 issues selected from the 11th to 25th national volume leaders. • 20 issues selected from the 26th to 50th national volume leaders. • 7 index issues. • 948 other issues.
RSQT Category VI	$9200.00 per calendar month. RSQT is Eligible to trade: • 5 issues selected from the top 5 national volume leaders. • 5 issues selected from the 6th to 10th national volume leaders. • 15 issues selected from the 11th to 25th national volume leaders. • 25 issues selected from the 26th to 50th national volume leaders. • 9 index issues. • 1141 other issues.
RSQT Category VII	$10,700.00 per calendar month. RSQT is eligible to trade all equity option and index option issues.

[4] A qualified RSQT may function as a Remote Specialist upon Exchange approval.

[5] *See* Exchange Rule 1014(b)(ii)(B). No person who is either directly or indirectly affiliated with an RSQT shall submit quotations as a specialist, SQT, RSQT or non-SQT ROT in options in which such affiliated RSQT is assigned. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist.

[6] *See* Exchange Rules 1014(b) and 507 for qualifications relating to assignments.

Currently, each RSQT is assessed an RSQT Fee based on the number and type of option issues (as described above) in which an RSQT is assigned. The national volume leader calculations are performed by the Exchange.[7] Each additional category is a progressively higher fee for an RSQT to submit quotations from off the floor of the Exchange in a progressively greater number of options in each aforementioned national volume grouping and in a greater number of index options. Accordingly, in order to submit electronic quotations from off the floor of the Exchange in all options traded on the Exchange, an RSQT would be required to pay fees applicable to a Category VII RSQT. The RSQT Fee is assessed based on the highest RSQT category level in which the RSQT was qualified to trade at any time during a particular calendar month.[8]

The Exchange proposes to eliminate the current RSQT Fee and instead adopt a new RSQT Fee based solely on the number of options assigned to a particular RSQT. The Exchange proposes to adopt the following monthly RSQT Fee based on the corresponding number of option class assignments:[9]

Number of option class assignments	RSQT fee
Less than 100 classes	$5,000 per month.
More than 100 classes and less than 999 classes	$8,000 per month.
1000 or more classes	$11,000 per month.

In calculating the RSQT Fee, the Exchange will calculate the number of option class assignments for equity options including exchange-traded funds (''ETFs''), exchange-traded notes (''ETNs'')[10] and HOLDRS.[11] The Exchange will not include and therefore not assess a fee for currencies or indexes in calculating the number of option class assignments.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed amendments to the RSQT Fee are reasonable because the Exchange is creating a simple method for calculating the RSQT Fee. The proposal will calculate the RSQT Fee on the number of option assignments as compared to the national volume for equity options and options overlying Exchange-Traded Fund Shares. This new calculation will enable RSQTs to easily determine the amount of option class assignments and therefore the RSQT Fee on a monthly basis without the need for a more comprehensive calculation. The Exchange believes that this revised form of calculating the RSQT Fee will be more transparent to members, create a simple calculation of the fee based solely on the number of option class assignments and allow for ease of automation of this fee.

The Exchange believes that the proposed RSQT Fee is equitable and not unfairly discriminatory because the proposed fee is more representative of system usage by RSQTs and costs to the Exchange. While several factors determine a particular RSQT's Fee in any given month, a comparison of the current RSQT Fee and the proposal which is based solely on option assignments is not a fair determination of the impact of this fee proposal. The Exchange believes that a majority of RSQTs will experience an increase or decrease in the RSQT Fee of approximately $300–$1800 a month based on this proposal. The Exchange has not increased this fee since it was established in 2005 and believes that the proposed fee is a fair representation of the Exchange's technology costs and the increased amount of system usage attributable to each RSQT.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[7] The Exchange calculates the national volume for equity options and options overlying Exchange-Traded Fund Shares every six months, effective from January 1 through June 30, and again from July 1 through December 31. The January–June national volume rankings are based on the total national volume for a particular option traded during the previous month of October, as determined by The Options Clearing Corporation (''OCC''); the July–December national volume rankings will be based on the total national volume for a particular option traded during the previous month of May, as determined by the OCC. *See* Securities Exchange Act Release No. 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR–Phlx–2005–12).

[8] For example, if an RSQT is eligible to trade at any time in a given calendar month as a Category I RSQT, and sometime during that calendar month becomes qualified and eligible to trade as a Category II RSQT, the RSQT will be assessed the fee applicable to a Category II RSQT, regardless of when such RSQT became eligible to trade at the Category II level, and regardless of whether or not, during that calendar month, the RSQT resumed eligibility as a Category I RSQT.

[9] For purposes of this filing, the term ''issues'' and ''classes'' have the same meaning.

[10] ETNs are also known as ''Index-Linked Securities,'' which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

[11] HOLDRS are Holding Company Depository Receipts.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–133 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–133. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–133 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27200 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65574; File No. SR–Phlx–2011–134]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To the Permit Fee and the Inactive Nominee Fee

October 14, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the applicability of the Permit Fee and also proposes to amend the Inactive Nominee Fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov/* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (i) Amend the applicability of the Permit Fee for members and member organizations transacting an options business; and (ii) amend the Inactive Nominee Fee. The Exchange desires to automate its billing processes further and therefore proposes to require members and member organizations to transact business using an assigned Phlx house account. In addition, the Exchange proposes to allow affiliated member organizations the opportunity to benefit from each other's transactions for purposes of assessing the Permit Fee. Also, the Exchange proposes to increase the Inactive Nominee Fee from $500 each six months to $100 a month for the applicable six month period. Assessing the Inactive Nominee Fee on a monthly basis enables member organizations the ability to terminate an Inactive Nominee prior to the six month period and avoid paying the $100 for the remaining months.

Permit Fee

Currently, the Exchange assesses a Permit Fee of $1,100 for members and member organizations who transact business on the Exchange and $7,500 for members and member organizations who do not transact business on the Exchange. Further, the $7,500 Permit Fee is assessed only if that member is (i) not a PSX[3] Only Participant; or (ii) not engaged in an options business at Phlx in a particular month.[4]

The Exchange proposes two amendments to the eligibility of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PSX is the Exchange's cash equities market electronic trading platform.

[4] A member or member organization will pay an additional permit fee for each sponsored options participant. *See* Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

$1,100 Permit Fee for those members transacting an options business. First, the Exchange proposes to require that transaction(s) executed on the Exchange be transacted in a Phlx house account assigned to the member or member organization by the Exchange. The Exchange will use the member's house account in its automated billing process to confirm a member's options trading activity for purposes of assessing them a Permit Fee. Currently members utilize house accounts as well as other accounts, such as accounts in the name of the member's clearing firm, to transact their options business. The Exchange assesses members the $1,100 Permit Fee today for transacting business in any of these accounts. This proposal will require members to transact business in a house account in order for the Exchange to identify the member's eligibility for the $1,100 Permit Fee.[5] The Exchange's automated billing process will utilize the house account to determine the appropriate Permit Fee to be assessed each member. Members will be notified in advance in the form of an Options Trader Alert of the necessity to obtain a Phlx house account if they are not currently assigned such an account.[6] Members will need to obtain such an account prior to November 1, 2011. The Exchange intends to provide its members ample notice to obtain such an account.

Second, the Exchange is proposing to amend the applicability of the $1,100 Permit Fee for members and member organizations transacting an options business by permitting a member organization under common ownership with another member organization, which transacts at least one options trade in an assigned Phlx house account, to be eligible for the $1,100 Permit Fee. For purposes of this Permit Fee, ''common ownership'' is defined as at least 75% common ownership between member organizations. In other words the transactions of member organizations under common ownership will be viewed together in assessing the Permit Fee. Each member organization under common ownership will continue to pay a Permit Fee of $1,100 each as long as one member has options trading activity recorded under their assigned Phlx house account number. The proposed amendments to the Permit Fee do not apply to members solely engaged in an equities business on PSX.

Inactive Nominee Fee

Currently, the Exchange assesses a member organization an Inactive Nominee Fee of $500 for each of its inactive nominees[7] for a six month period, as provided for in Exchange Rule 925.[8] The member organization is required to pay a fee for the privilege of maintaining the inactive nominee status of an individual.[9] An inactive nominee's status terminates after six months unless it has been reaffirmed in writing by the member organization or is terminated sooner.[10] An inactive nominee is assessed the $500 fee every time the status is reaffirmed.[11]

The Exchange proposes to increase the Inactive Nominee Fee from $500 to $600 for the six month period described in Exchange Rule 925 and assess the member organization an Inactive Nominee Fee of $100 per month for the applicable six month period as opposed to $500 upon notification or reaffirmation of the inactive nominee status for the applicable six month period. The proposal will allow member organizations to discontinue payment of the Inactive Nominee Fee in the next full month after notice of termination of the inactive nominee status as the fee will be assessed per month. The member organization is therefore required to provide the Exchange notice of its intent to terminate an inactive nominee before the end of the month in order to avoid an assessment of the $100 fee in the following month. For example, if on January 1, 2012 a member organization designated an individual as an inactive nominee, pursuant to Exchange Rule 925, and subsequently notified the Exchange on April 19, 2012 that the member organization desired to terminate the inactive nominee, the member organization would not be assessed the $100 Inactive Nominee Fee in May and June 2012 for that inactive nominee. The Exchange will not however retroactively reimburse any fees, but rather would allow a member organization to terminate the remaining full months.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to require members transacting an options business to transact orders using an assigned Phlx house account is reasonable because the Exchange is transitioning permit billing to an automated billing process for its Permit Fees and this information will be utilized to more accurately ascertain if a member is transacting an options business in a particular month.

The Exchange believes that its proposal to allow member organizations under common ownership to be assessed a $1,100 Permit Fee for transacting an options business on the Exchange, as long as one of the member organizations transacted an options trade in an assigned Phlx house account, is reasonable because the

[5] The Exchange will require at least one transaction occur in an assigned Phlx house account in order for the Exchange's automated billing system to identify that member's eligibility for the $1,100 Permit Fee. If the member determines to transact some transactions in a non-Phlx house account, that will not impact the member's eligibility for the $1,100 Permit Fee as long as one trade was transacted in the assigned Phlx house account.

[6] The Exchange's Membership Department assigns Phlx house accounts to members and member organizations upon request. There is no fee to obtain a Phlx house account.

[7] An inactive nominee is also assessed the Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in the inactive nominee's membership status. However, an inactive nominee would not be assessed the Application and Initiation Fees if such inactive nominee applied for membership without a lapse in that individual's association with a particular member organization. *See* Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR–Phlx–2011–07). *See also* By-Law Article XII, Section 12 10.

[8] Pursuant to Exchange Rule 925, a member organization may designate an individual as an inactive nominee. To be eligible to be an inactive nominee an individual must be approved as eligible to hold a permit in accordance with the Exchange's By-Laws and Rules. An inactive nominee has no rights and privileges of a permit holder until the inactive nominee becomes an effective permit holder and all applicable Exchange fees are paid. *See* Exchange Rule 925.

[9] *See* Securities Exchange Act Release No. 39851 (April 10, 1998), 63 FR 19282 (April 17, 1998) (SR–Phlx–97–35) (a rule change which subjected inactive nominees to the membership application process, including fees, including a fee for the privilege of maintaining an inactive nominee status).

[10] *See* By-Law Article XII, Section 12–10.

[11] An inactive nominee is also assessed the Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in the inactive nominee's membership status. However, an inactive nominee would not be assessed the Application and Initiation Fees if such inactive nominee applied for membership without a lapse in that individual's association with a particular member organization. *See* Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR–Phlx–2011–07). *See also* By-Law Article XII, Section 12–10.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

Exchange believes that viewing commonly owned members together for purposes of billing the Permit Fee will provide an opportunity for an entity that has multiple operations to maintain reasonable expenses while maintaining multiple permits for various member organizations.

The Exchange believes that it is equitable and not unfairly discriminatory to require members transacting an options business to transact orders using an assigned Phlx house account, because the Exchange is requiring all option members to utilize this process in order to increase the efficiency of identifying a member's eligibility for the $1,100 Permit Fee. This will allow the Exchange to readily determine a member's level of activity in a particular month.

The Exchange believes that it is equitable and not unfairly discriminatory to consider together those transactions of member organizations under common ownership for purposes of assessing the Permit Fee because the Exchange will uniformly calculate the Permit Fee in this manner for all applicable member organizations under common ownership. Each member organization will continue to be assessed a Permit Fee of $1,100 in the event that a member organization under common ownership transacts one options transaction in an assigned Phlx house account each month. The Exchange believes that a member organization that has multiple operations should not incur greater expenses merely because it determined to conduct its business under separate legal structures. In addition, those members that are not under common ownership with another member can still qualify for the $1,100 Permit Fee by executing at least one trade in their assigned Phlx house account.

The Exchange believes that increasing the Inactive Nominee Fee from $500 to $600 is reasonable because the Exchange incurs administrative costs with respect to its administration of inactive nominees. The Exchange believes that its proposal to assess the Inactive Fee on a monthly basis ($100 per month) is also reasonable because it will allow member organizations to discontinue payment of the Inactive Nominee Fee in the next full month after notice of termination of the inactive nominee status as the fee will be assessed per month.

The Exchange believes that the amendments to the Inactive Nominee Fee are equitable and not unfairly discriminatory because these fee amendments will be uniformly applied in calculating Inactive Nominee Fees and assessing those fees on member organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–134 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–134. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–134 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27199 Filed 10–19–11; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65567; File No. SR–NYSEArca–2011–72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of Alpha Beta Netherlands Holding N.V.

October 14, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2011, NYSE Arca, Inc. (the ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared substantially by NYSE Arca. 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

A. Overview of the Proposed Combination

NYSE Arca, a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the ''Proposed Rule Change'') to the Commission in connection with the proposed business combination (the ''Combination'') of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (''Deutsche Börse'').

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—NYSE Arca, New York Stock Exchange, LLC (''Exchange'') and NYSE Amex LLC (''NYSE Amex'')—and (2) 100% of the equity interest of NYSE Market, Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. (''NYSE Arca LLC'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the ''NYSE U.S. Regulated Subsidiaries'' and each, a ''NYSE U.S. Regulated Subsidiary''). The Exchange and NYSE Amex will be separately filing a proposed rule change in connection with the Combination that will be substantially the same as the Proposed Rule Change.

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (''ISE Holdings''), which in turn holds 100% of the equity interest of International Securities Exchange, LLC (''ISE''), a registered national securities exchange and self-regulatory organization. ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings, LLC (''Direct Edge Holdings''), which in turn indirectly holds 100% of the equity interest of two registered national securities exchanges and self-regulatory organizations—EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') (each of ISE, EDGA and EDGX, a ''DB Exchange'' and a ''DB U.S. Regulated Subsidiary'' and together, the ''DB Exchanges'' and the ''DB U.S. Regulated Subsidiaries''). The DB Exchanges will be separately filing a proposed rule change in connection with the Combination.

If the Combination is completed, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''), will be held under a single, publicly traded holding company organized under the laws of the Netherlands (''Holdco'').[3] The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

B. Summary of Proposed Rule Change

NYSE Arca is proposing that, pursuant to the Combination, its indirect parent, NYSE Euronext, will become a wholly owned subsidiary of Holdco. In addition, NYSE Arca is proposing that, in connection with the Combination, the Commission approve certain amendments to the organizational and other governance documents of Holdco, NYSE Euronext, NYSE Group and certain of the NYSE U.S. Regulated Subsidiaries as well as certain rules of the Exchange, NYSE Amex and NYSE Arca Equities.[4] The Proposed Rule Change is summarized as follows:

• *Proposed Approval of Waiver of Ownership and Voting Restrictions of NYSE Euronext.* The Amended and Restated Certificate of Incorporation of NYSE Euronext (the ''NYSE Euronext Certificate'') currently restricts any person, either alone or together with its related persons, from being entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially owning shares of stock of NYSE Euronext representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.[5] NYSE Euronext is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Euronext shares that are held in excess of the ownership restriction. The NYSE Euronext Certificate and the Amended and Restated Bylaws of NYSE Euronext (the ''NYSE Euronext Bylaws'') provide that the board of directors of NYSE Euronext may waive these voting and ownership restrictions if it makes certain determinations and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act[6] and filed with, and approved by, each European Regulator (as defined in the NYSE Euronext Certificate) having appropriate jurisdiction and authority.[7] Acting pursuant to this waiver provision, the board of directors of NYSE Euronext has adopted the resolutions set forth in Exhibit 5A (the ''NYSE Euronext Resolutions'') in order to permit Holdco to own and vote 100% of the outstanding common stock of NYSE Euronext as of and after the Combination. NYSE Arca is requesting approval by the Commission of the NYSE Euronext Resolutions in order to allow the Combination to take place.

• *Proposed Amendments to Voting and Ownership Restrictions of NYSE Euronext.* Because NYSE Euronext would become a wholly owned subsidiary of Holdco as a result of the Combination, NYSE Arca is proposing to amend the voting and ownership restrictions in the NYSE Euronext Certificate to be consistent with the analogous provisions in the Second Amended and Restated Certificate of Incorporation of NYSE Group (the ''NYSE Group Certificate''): (1) First, the NYSE Euronext Certificate would be amended to provide that all of the issued and outstanding shares of NYSE Euronext will be held by Holdco, and that Holdco may not transfer or assign any shares without approval by the Commission under the Exchange Act and the relevant European Regulators under the applicable European Exchange Regulations (as defined in the

[3] Holdco is currently named ''Alpha Beta Netherlands Holding N.V.,'' but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse.

[4] Proposed amendments to the governance documents and rules of the Exchange and/or NYSE Amex are included in this Proposed Rule Change, and the text of those proposed amendments are attached as exhibits to this Proposed Rule Change, because they are part of the overall set of changes proposed by the NYSE Exchanges to be made in connection with the Combination.

[5] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2.

[6] 15 U.S.C. 78s(b).

[7] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2, and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

NYSE Euronext Certificate);[8] and (2) second, the NYSE Euronext Certificate would be amended to provide that the voting and ownership restrictions contained therein would only apply in the event that Holdco does not own all of the issued and outstanding shares of NYSE Euronext and only for so long as NYSE Euronext directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYSE Euronext Certificate).[9] In addition, the voting and ownership restrictions in the NYSE Euronext Certificate would be amended to (a) Change the 10% threshold for the voting restriction to a 20% threshold; (b) change the 20% threshold for the ownership restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is, or with respect to whom a related person is, (A) A Member of the Exchange, as defined in the NYSE Euronext Certificate (a ''NYSE Member''), (B) a Member of NYSE Amex as defined in the current NYSE Euronext Bylaws (including any person who is a related person of such member, an ''Amex Member''), (C) an ETP Holder of NYSE Arca Equities, as defined in the NYSE Euronext Certificate (an ''ETP Holder''), or (D) an OTP Holder or OTP Firm of NYSE Arca, as defined in the NYSE Euronext Certificate (an ''OTP Holder'' and ''OTP Firm,'' respectively)); (c) add the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE Amex in order to waive the voting and ownership restrictions to the NYSE Euronext Certificate, and delete this provision from the NYSE Euronext Bylaws; (d) update the names of certain European regulatory entities in the definition of ''European Regulator'' (as currently defined in the NYSE Euronext Certificate and the NYSE Euronext Bylaws); and (e) expand the definition of ''Related Persons'' to address Amex Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

• *Proposed Amendments to Voting and Ownership Restrictions of NYSE Group.* The NYSE Group Certificate currently provides that, if NYSE Euronext and the trust[10] established pursuant to the Trust Agreement, dated as of April 4, 2007, by and among NYSE Euronext, NYSE Group and the other parties thereto, do not hold 100% of the outstanding stock of NYSE Group, no person, either alone or together with its related persons, may be entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.[11] NYSE Group is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Group shares which are held in excess of the ownership restriction.[12] Under the Proposed Rule Change, the voting and ownership restrictions in the NYSE Group Certificate would be amended to (1) Change the 10% threshold for the voting restriction to a 20% threshold; (2) change the 20% threshold for the ownership restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is, or with respect to whom a related person is, a NYSE Member, an Amex Member, an ETP Holder or an OTP Holder or OTP Firm); (3) provide that the ownership and voting limitations would apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate); and (4) expand the definition of ''Related Persons'' regarding Amex Members so that it is consistent with the language in the NYSE Rules, which language will be incorporated in the NYSE Euronext Certificate pursuant to this Proposed Rule Change.

• *Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents.* Under the Proposed Rule Change, in light of the fact that NYSE Euronext would become a wholly owned subsidiary of Holdco following completion of the Combination, the NYSE Euronext Certificate and the NYSE Euronext Bylaws would be amended to (1) Simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly owned subsidiary of Holdco following completion of the Combination; and (3) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions, and to update cross-references to sections, consistent with the other amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth in this Proposed Rule Change). In addition, the current Independence Policy of the NYSE Euronext board of directors would cease to be in effect.

• *Proposed Amendments to Board Composition Requirements for the Exchange, NYSE Amex, NYSE Market and NYSE Regulation.* Under the Proposed Rule Change, certain provisions of the Third Amended and Restated Operating Agreement, dated as of April 1, 2009, of the Exchange (the ''Exchange Operating Agreement'') relating to the composition of the Exchange's board of directors would be amended, including to provide that the independent directors of the Exchange would perform certain functions currently allocated to the NYSE Euronext nominating and governance committee and that the Exchange's board of directors would have its own director independence policy, instead of referring to the director independence policy of NYSE Euronext. Substantially the same revisions would be made to the analogous provisions of the Amended and Restated Operating Agreement of NYSE Amex,[13] the Amended and Restated Bylaws of NYSE Market[14] and the Third Amended and Restated Bylaws of NYSE Regulation.[15]

• *Proposed Amendments to the NYSE Group Certificate and NYSE Group Bylaws.* Under the Proposed Rule Change, the NYSE Group Certificate and the NYSE Group Bylaws would be amended in order to (1) Conform certain provisions to analogous provisions of the organizational documents of NYSE Euronext, which will likewise be a wholly owned subsidiary of Holdco following completion of the Combination; and (2) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions to be consistent with the other amendments to the NYSE Group Certificate and the

[8] The analogous provision in the NYSE Group Certificate is Section 4(a) of Article IV.

[9] The analogous provision in the NYSE Group Certificate is Section 4(b) of Article IV.

[10] No changes are being proposed to the current Delaware trust and stichting for ''regulatory overspill'' matters, except that references to the Nominating and Governance Committee of NYSE Euronext would be replaced with references to the Holdco Nominating, Governance and Corporate Responsibility Committee.

[11] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Section 4(b)(1) & (2).

[12] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Sections 4(b)(1)(A) & 4(b)(2)(D).

[13] *See* Amended and Restated Operating Agreement of NYSE Amex LLC, Section 2.03(a).

[14] *See* Amended and Restated Bylaws of NYSE Market, Inc., Article III Section 1.

[15] *See* Third Amended and Restated Bylaws of NYSE Regulation, Inc., Article III Section 1.

NYSE Group Bylaws set forth in this Proposed Rule Change).

• *Proposed Amendments to the Exchange Rules, NYSE Amex Rules and NYSE Arca Equities Rules.* Under the Proposed Rule Change, certain technical amendments would be made to the rules of the Exchange (the ''Exchange Rules'') to (1) Replace references therein to ''NYSE Euronext'' with references to Holdco; and (2) delete the definitions of ''member'' and ''member organization'' relating to NYSE Amex which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because the Proposed Rule Change will revise the NYSE Euronext Certificate to include analogous language relating to NYSE Amex Members. In addition, certain technical amendments would be made to the rules of NYSE Amex (the ''NYSE Amex Rules'') and to the rules of NYSE Arca Equities (the ''NYSE Arca Equities Rules'') to replace references therein to ''NYSE Euronext'' with references to Holdco.

The text of the proposed amended NYSE Euronext Certificate, NYSE Euronext Bylaws, NYSE Group Certificate, NYSE Group Bylaws, Exchange Operating Agreement, Amended and Restated Operating Agreement of NYSE Amex, Amended and Restated Bylaws of NYSE Market, Third Amended and Restated Bylaws of NYSE Regulation, Exchange Rules, form of Director Independence Policy for certain NYSE U.S. Regulated Subsidiaries, NYSE Amex Rules and NYSE Arca Equities Rules are attached to the Proposed Rule Change as Exhibits 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5P and 5Q, respectively.

Under the Proposed Rule Change, Holdco would take appropriate steps to incorporate voting and ownership restrictions, requirements relating to submission to jurisdiction, access to books and records and other requirements related to its control of the U.S. Regulated Subsidiaries. Specifically, the Articles of Association of Holdco in effect as of the completion of the Combination (the ''Holdco Articles'') would contain provisions [16] to incorporate these concepts with respect to itself, as well as its directors, officers, employees and agents (as applicable):

• *Voting and Ownership Restrictions in the Holdco Articles.* The Holdco Articles would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the then outstanding votes entitled to be cast on a matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes entitled to be cast on a matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or OTP Firm, a Member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an ''ISE Member''), or a member of EDGA or EDGX (as such terms are defined in the rules of EDGA and EDGX, respectively, an ''EDGA Member'' and ''EDGX Member,'' respectively)). The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any such person(s) exceeds the ownership restriction, it will be required to offer for sale and transfer the number of Holdco shares required to comply with the ownership restriction, and the rights to vote, attend general meetings of Holdco shareholders and receive dividends or other distributions attached to shares held in excess of the 40% threshold (or 20% threshold, if applicable) will be suspended for so long as such threshold is exceeded. If such person(s) fails to comply with the transfer obligation within two weeks, then the Holdco Articles would provide that Holdco will be irrevocably authorized to take actions on behalf of such person(s) in order to cause it to comply with such obligations. Consistent with the current NYSE Euronext Certificate, the Holdco board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements which are currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the current NYSE Euronext Certificate and the Certificate of Incorporation of ISE Holdings (the ''ISE Certificate''), as applicable) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.

• *Jurisdiction.* The Holdco Articles will provide that Holdco and its directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the Holdco Articles would provide that so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary. Furthermore, the Holdco Articles would provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with these provisions of the Holdco Articles.

• *Books and Records.* The Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S.

[16] The text of the proposed Holdco Articles is attached to the Proposed Rule Change as Exhibit 5L.

Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

• *Amendments to Holdco Articles.* The Holdco Articles would provide that before any amendment to the Holdco Articles may be effectuated by execution of a notarial deed of amendment, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective.

• *Additional Matters.* The Holdco Articles would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of Holdco's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act. In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary. The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco will sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [17] that it will comply with these provisions of the Holdco Articles.[18]

In addition, Holdco would adopt a Director Independence Policy in the form attached hereto as Exhibit 5N (the ''Holdco Independence Policy''), which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except for certain changes described in this Proposed Rule Change.

The text of the Proposed Rule Change is available at NYSE Arca, the Commission's Public Reference Room, and on the Web site of NYSE Euronext (*http://www.nyse.com*). The text of Exhibits 5A through 5Q of the Proposed Rule Change are also available on NYSE Euronext's Web site and on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

Other than as described herein and set forth in the attached Exhibits 5A through 5Q, NYSE Arca will continue to conduct its regulated activities in the manner currently conducted and will not make any changes to its regulated activities in connection with the Combination. If NYSE Arca determines to make any such changes, it will seek approval of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Purpose [sic]

The purpose of this rule filing is to adopt the rules necessary to permit NYSE Euronext to effect the Combination and to amend certain provisions of the organizational and other governance documents of NYSE Euronext, NYSE Group and certain of the NYSE U.S. Regulated Subsidiaries, including certain Exchange Rules, NYSE Amex Rules and NYSE Arca Equities Rules.

1. Overview of the Combination

NYSE Arca is submitting this Proposed Rule Change to the Commission in connection with the Combination of NYSE Euronext and Deutsche Börse. The Combination will create a holding company, Holdco, which will hold the businesses of NYSE Euronext and Deutsche Börse. Following the Combination, each of NYSE Euronext and Deutsche Börse will be a separate subsidiary of Holdco. Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide.

Other than as described herein, Holdco and the NYSE Exchanges will not make any changes to the regulated activities of the NYSE U.S. Regulated Subsidiaries in connection with the Combination, and, other than as described in the separate proposed rule changes filed by each of the DB Exchanges in connection with the Combination, Holdco and the DB Exchanges will not make any changes to the regulated activities of the DB U.S. Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Combination will occur pursuant to the terms of the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011 (as it may be further amended from time to time, the ''Combination Agreement''), by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco (''Merger Sub''). Subject to the terms and conditions set forth in the Combination Agreement and in compliance with applicable law, Holdco has conducted a public exchange offer (the ''Exchange Offer''), in which shareholders of Deutsche Börse have been afforded the opportunity to tender each share of Deutsche Börse for one ordinary share of Holdco (each, a ''Holdco Share'').

Immediately after the time that Holdco accepts for exchange, and exchanges, the Deutsche Börse shares that are validly tendered and not withdrawn in the Exchange Offer, Merger Sub will merge with and into NYSE Euronext, as a result of which NYSE Euronext will become a wholly owned subsidiary of Holdco (the ''Merger''). In the Merger, each outstanding share of NYSE Euronext common stock will be converted into the right to receive 0.47 of a fully paid

[17] The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

[18] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

and non-assessable Holdco Share. NYSE Euronext's obligation to complete the Merger is subject to the completion of the Exchange Offer and the acquisition by Holdco of all of the Deutsche Börse shares validly tendered and not withdrawn in the Exchange Offer. The completion of the Exchange Offer (and, therefore, the completion of the Merger) is subject to the satisfaction of a number of conditions, including that Deutsche Börse shares representing at least 75% of the Deutsche Börse shares outstanding, on a fully diluted basis, must be validly tendered and not withdrawn in the Exchange Offer, and that holders of a majority of the outstanding shares of NYSE Euronext shall have adopted the Combination Agreement. Both of these conditions have been satisfied.

Following the completion of the Exchange Offer, and depending on the percentage of Deutsche Börse shares acquired by Holdco in the Exchange Offer, Deutsche Börse and Holdco intend to complete a post-completion reorganization pursuant to which Holdco will enter into a domination agreement, or a combination of a domination agreement and a profit and loss transfer agreement, pursuant to which the remaining shareholders of Deutsche Börse will have limited rights, including a limited ability to participate in the profits of Deutsche Börse.

Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide. Following the Combination, Holdco and its subsidiaries (together, the ''Holdco Group'') expect to serve as a benchmark regulatory model, facilitating transparency and harmonization of capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks and their respective brand names.

2. Overview of the Holdco Group Following the Combination

Following the Combination, Holdco will be a for-profit, publicly traded corporation formed under the laws of the Netherlands and will act as the holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold all of the equity interests in NYSE Euronext, which holds (1) 100% of the equity interest of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom). Holdco will also hold a majority of the equity interests in Deutsche Börse, which indirectly holds 50% of the equity interest of ISE Holdings (which, in turn, holds (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings indirectly holds 100% of the equity interest of EDGA and EDGX. Holdco intends to list its ordinary shares on the New York Stock Exchange, the Frankfurt Stock Exchange and Euronext Paris. The Holdco Group will have dual headquarters in Frankfurt and New York.

After the Combination, NYSE Group will continue to be directly wholly owned by NYSE Euronext and will continue to directly or indirectly own the three NYSE Exchanges—the Exchange, NYSE Arca and NYSE Amex—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYSE Group, oversees FINRA's performance of certain market surveillance and enforcement functions for NYSE Euronext's U.S. securities exchanges, enforces listed company compliance with applicable standards, and oversees regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, the Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des Services et Marchés Financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários—CMVM*) and the U.K. Financial Services Authority (*FSA*).

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of each NYSE U.S. Regulated Subsidiary will be preserved. Specifically, after the Combination, NYSE Group's businesses and assets will continue to be structured as follows:

- The Exchange will remain a direct wholly owned subsidiary of NYSE Group and an indirectly wholly owned subsidiary of NYSE Euronext.
- NYSE Market will remain a wholly owned subsidiary of the Exchange and will continue to conduct the Exchange's business.
- NYSE Regulation will remain a wholly owned subsidiary of the Exchange and continue to perform, and/or oversee the performance of, regulatory responsibilities of the Exchange pursuant to a delegation agreement with the Exchange and regulatory functions of NYSE Arca and NYSE Amex pursuant to services agreements with them.[19]
- Archipelago Holdings, Inc., a Delaware corporation (''Arca Holdings''), will remain a wholly owned subsidiary of NYSE Group and indirect wholly owned subsidiary of NYSE Euronext.
- NYSE Arca Holdings, Inc., a Delaware corporation (''NYSE Arca Holdings''), and NYSE Arca, L.L.C., a Delaware limited liability company (''NYSE Arca LLC''), will remain wholly owned subsidiaries of Arca Holdings.
- NYSE Arca will remain a wholly owned subsidiary of NYSE Arca Holdings.
- NYSE Arca Equities, a Delaware corporation, will remain a wholly owned subsidiary of NYSE Arca.
- NYSE Amex will remain a direct wholly owned subsidiary of NYSE Group and an indirectly wholly owned subsidiary of NYSE Euronext.
- The Combination will have no effect on the ability of any party to trade securities on the Exchange, NYSE Arca or NYSE Amex.

[19] Certain regulatory functions have been allocated to, and/or are otherwise performed by, FINRA.

Similarly, Deutsche Börse and its subsidiaries, and NYSE Euronext and its subsidiaries, will continue to conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

Holdco acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, NYSE Arca or NYSE Amex, it will be responsible for referring such possible violations to each such exchange, respectively. In addition, Holdco will become a party to the agreement among NYSE Euronext, NYSE Group, the Exchange, NYSE Market and NYSE Regulation to provide for adequate funding for NYSE Regulation.

3. Proposed Approval of Waiver of Voting and Ownership Restrictions of NYSE Euronext

Article V of the current NYSE Euronext Certificate provides that (1) No person, either alone or together with its ''related persons'' (as defined in the NYSE Euronext Certificate), may be entitled to vote or cause the voting of shares of NYSE Euronext beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Euronext (the ''NYSE Euronext Voting Restriction'').[20] NYSE Euronext must disregard any votes purposed to be cast in excess of the NYSE Euronext Voting Restriction.[21]

In addition, the NYSE Euronext Certificate provides that no person, either alone or together with its related persons, may at any time beneficially own shares of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the ''NYSE Euronext Ownership Restriction'').[22] If any person, either alone or together with its related persons, owns shares of NYSE Euronext in excess of the NYSE Euronext Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Euronext is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Euronext necessary so that such person, together with its related persons, will beneficially own shares of NYSE Euronext representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.[23]

The NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction are applicable to each person unless and until (1) Such person has delivered a notice in writing to the board of directors of NYSE Euronext, not less than 45 days (or such shorter period as the board of directors of NYSE Euronext expressly permits) prior to any vote or, in the case of the NYSE Euronext Ownership Restriction, prior to the acquisition of any shares of NYSE Euronext that would cause such person, either alone or together with its related persons, to exceed the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Euronext stock beneficially owned by such person or its related persons in excess of the NYSE Euronext Voting Restriction or, in the case of the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Euronext has resolved to expressly permit such voting or ownership, as applicable; (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act[24] and has become effective thereunder; and (4) such resolution has been filed with, and approved by, each European Regulator having appropriate jurisdiction and authority. Subject to its fiduciary duties under applicable law, the NYSE Euronext board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless it has determined that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- Will not impair the ability of any NYSE U.S. Regulated Subsidiary, NYSE Euronext or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- Will not impair the ability of any of the European Market Subsidiaries (as defined in the NYSE Euronext Bylaws) of NYSE Euronext or Euronext (to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations (as defined in the NYSE Euronext Bylaws);
- Is otherwise in the best interest of NYSE Euronext, its stockholders, the NYSE U.S. Regulated Subsidiaries and the European Market Subsidiaries, and will not impair the Commission's ability to enforce the Exchange Act or the European Regulators' ability to enforce the European Exchange Regulations;
- For so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, neither such person nor any of its related persons is a NYSE Member;
- For so long as NYSE Euronext directly or indirectly controls NYSE Amex, neither such person nor any of its related persons is an Amex Member;
- For so long as NYSE Euronext directly or indirectly controls NYSE Arca, NYSE Arca Equities or any facility of NYSE Arca, neither such person nor any of its related persons is an ETP Holder, an OTP Holder or an OTP Firm; and
- Neither such person nor any of its related persons is a U.S. Disqualified Person or a European Disqualified Person (as such terms are defined in the NYSE Euronext Certificate).[25]

In order to allow Holdco to wholly own and vote all of the outstanding common stock of NYSE Euronext upon consummation of the Combination, Holdco has delivered written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the NYSE Euronext Certificate requesting approval of its voting and ownership of NYSE Euronext shares in excess of the NYSE Euronext Voting Restriction and the NYSE Euronext

[20] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1.

[21] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1(A).

[22] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2.

[23] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2(D).

[24] 15 U.S.C. 78s(b).

[25] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1(B), 1(C), 2(B) and 2(C), and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of NYSE Euronext that neither it, nor any of its related persons, is (1) A ''member'' or ''member organization'' of the Exchange; (2) a ''member'' of NYSE Amex; (3) an ETP Holder; (4) an OTP Holder or an OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person.

At a meeting duly convened on September 15, 2011, the board of directors of NYSE Euronext adopted the NYSE Euronext Resolutions to permit Holdco, either alone or with its related persons, to exceed the NYSE Euronext Ownership Restriction and the NYSE Euronext Voting Restriction. In adopting such resolutions, the board of directors of NYSE Euronext made the necessary determinations set forth above and approved the submission of this Proposed Rule Change to the Commission. The NYSE U.S. Regulated Subsidiaries will continue to operate and regulate their markets and members exactly as they have done prior to the Combination. Except as set forth in this Proposed Rule Change, Holdco is not proposing any amendments to their trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the NYSE U.S. Regulated Subsidiaries after the Combination, the NYSE U.S. Regulated Subsidiaries will operate in the same manner following the Combination as they operate today.[26] Thus, the Commission will continue to have plenary regulatory authority over the NYSE U.S. Regulated Subsidiaries, as is the case currently with these entities. As described in the following sections of this filing, NYSE Arca is proposing a series of amendments to the NYSE Euronext Certificate, the NYSE Euronext Bylaws, the NYSE Group Certificate and the NYSE Group Bylaws, as well as certain provisions of the Holdco Articles, that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

[26] NYSE Arca has been informed by Deutsche Börse that the DB U.S. Regulated Subsidiaries are also expected to operate in the same manner following the Combination as they operate today. This is addressed in the separate proposed rule change filed by each of the DB Exchanges.

The NYSE Euronext board of directors also determined that ownership of NYSE Euronext by Holdco is in the best interests of NYSE Euronext, its shareholders and the NYSE U.S. Regulated Subsidiaries. With respect to the interests of the NYSE U.S. Regulated Subsidiaries, the board of directors of NYSE Euronext has noted, among other things, its expectation that the Combination would over time create substantial incremental efficiency and growth opportunities and that the Holdco Group is expected to be a leader in a diverse set of large and growing businesses, including derivatives, listings, cash equities, post-trade settlement and asset servicing, market data and technology servicing.

In addition, neither Holdco, nor any of its related persons, is (1) A NYSE Member; (2) an Amex Member; (3) an ETP Holder, an OTP Holder or an OTP Firm; or (4) a U.S. Disqualified Person or a European Disqualified Person.

An extract with the relevant provisions of the NYSE Euronext Resolutions is attached as Exhibit 5A to the Proposed Rule Change and can be found on NYSE Euronext's Web site and the Commission's Web site.

NYSE Arca hereby requests that the Commission approve the NYSE Euronext Resolutions and allow Holdco, either alone or with its related persons, to own and vote all of the outstanding common stock of NYSE Euronext upon and following the consummation of the Combination.

4. Proposed Amendments to Ownership and Voting Restrictions After the Combination

Overview

NYSE Arca is proposing that, effective as of the completion of the Combination, the Holdco Articles would contain voting and ownership restrictions that restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the votes entitled to be cast on any matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes that may be cast on any matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member).

In addition, NYSE Arca is proposing that, effective as of the Combination, the voting and ownership restrictions currently in the NYSE Euronext Certificate and NYSE Euronext Bylaws, as well as the related waiver provisions set forth therein, would remain in effect, except that they would be modified in certain respects as described herein.[27]

Voting and Ownership Restrictions in Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that no person, either alone or together with its related persons, will be entitled to vote or cause the voting of a number of shares of Holdco, in person or by proxy or through any voting agreement or other arrangement, which represent in the aggregate (1) More than 20% of the then outstanding votes entitled to be cast on such matter; or (2) more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of Holdco (the ''Holdco Voting Restriction'').[28] The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the Holdco Voting Restriction.

In addition, the Holdco Articles would provide that any person who, either alone or together with its related persons, beneficially owns Holdco shares which represent in the aggregate more than 40% of the outstanding votes entitled to be cast on any matter (except that a 20% restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member) (the ''Holdco Ownership Restriction''), will be obligated to offer for sale and to transfer a number of Holdco shares necessary so that such person, together with its related persons, beneficially owns a number of Holdco shares that complies with the Holdco Ownership Restriction (the ''Holdco Transfer Obligation'').[29] If such person(s) fails to comply with the Holdco Transfer Obligation within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to

[27] As described in the proposed rule change filed by each of the DB Exchanges, the current voting and ownership restrictions contained in the certificate of incorporation of ISE Holdings, as well as the related provisions contained in the amended and restated bylaws of U.S. Exchange Holdings and the board resolutions of Deutsche Börse, Eurex Frankfurt AG and other indirect parent entities of ISE, would remain in effect. The DB Trust would also remain unaltered and would continue to have rights to enforce these restrictions.

[28] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.1.

[29] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 35.1 and 35.4.

ensure compliance with the Holdco Transfer Obligation.[30]

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco Ownership Restriction (any such person(s), a ''Non-Compliant Owner''), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco Ownership Restriction. Specifically, the Non-Compliant Owner's rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco Ownership Restriction would be suspended for so long as the Holdco Ownership Restriction is exceeded.[31]

Pursuant to Section 2:87a of the Dutch Civil Code, the Non-Compliant Owner may request that an independent expert be appointed to determine the value of the Holdco shares, but such expert will have discretion to determine that the value of the shares is equal to the price received for the shares by the Non-Compliant Owner on any stock exchange where the Holdco shares are listed.[32]

The voting and ownership restrictions will apply to each person unless it (1) Delivers to the Holdco board of directors a written notice of its intention to acquire voting power or ownership in excess of the relevant limitation, and such notice is delivered at least 45 days (or such shorter period as the Holdco board of directors expressly consents to) prior to acquiring Holdco shares in excess of the Holdco Voting Restriction or Holdco Ownership Restriction; (2) obtains a written confirmation from the Holdco board of directors that the board has expressly resolved to permit such voting or ownership; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European regulators having appropriate jurisdiction and authority.[33] The Holdco board of directors may waive the Holdco Voting Restriction and Holdco Ownership Restriction if it makes certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate and the ISE Holdings Certificate, respectively.[34]

Amendments to NYSE Group Voting and Ownership Restrictions

The voting restrictions contained in the current NYSE Group Certificate provide that, if such restrictions apply, (1) No person, either alone or together with its related persons (as defined in the NYSE Group Certificate), may be entitled to vote or cause the voting of shares of stock of NYSE Group beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Group (the ''NYSE Group Voting Restriction'').[35] NYSE Group must disregard any votes purported to be cast in excess of the NYSE Group Voting Restriction.

In addition, the ownership restrictions contained in the current NYSE Group Certificate provide that, if such restrictions apply, no person, either alone or together with its related persons, may at any time own beneficially shares of NYSE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the ''NYSE Group Ownership Restriction''). If any person, either alone or together with its related persons, owns shares of NYSE Group in excess of the NYSE Group Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Group necessary so that such person, together with its related persons, will beneficially own shares of NYSE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.

The NYSE Group Voting Restriction and the NYSE Group Ownership Restriction apply to each person unless and until (1) Such person has delivered a notice in writing to the board of directors of NYSE Group, not less than 45 days (or such shorter period as the board of directors of NYSE Group expressly permits) prior to any vote or, in the case of the NYSE Group Ownership Restriction, prior to the acquisition of any shares of NYSE Group that would cause such person, either alone or together with its related persons, to exceed the NYSE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Group stock beneficially owned by such person or its related persons in excess of the NYSE Group Voting Restriction or, in the case of the NYSE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Group has resolved to expressly permit such voting or ownership, as applicable; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act[36] and has become effective thereunder. Subject to its fiduciary duties under applicable law, the NYSE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations which are substantially similar to the determinations required to be made by the NYSE Euronext board of directors in connection with a waiver of the NYSE Euronext Voting Limitation and/or the NYSE Euronext Ownership Limitation (as described above).

Under the Proposed Rule Change, the NYSE Group Certificate would be amended, effective as of the Combination, to (1) Change the 10% threshold for the NYSE Group Voting Restriction to a 20% threshold; and (2) change the 20% threshold for the NYSE Group Ownership Restriction to a 40% restriction (except that a 20% restriction would continue to apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or an OTP Firm). These percentage thresholds are consistent with those applicable to ISE Holdings and other regulated exchanges and have been approved on several occasions by the

[30] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.7.

[31] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.6.

[32] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.5.

[33] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.2 and 35.2.

[34] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.3 and 35.3.

[35] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Section 4(b).

[36] 15 U.S.C. 78s(b).

Commission.[37] The NYSE Group Certificate would also be updated to provide that the NYSE Group Voting Restriction and the NYSE Group Ownership Restriction would apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate).

Under the Proposed Rule Change, the definition of ''Related Persons'' would be expanded to provide that (1) In the case of a person that is a ''member'' (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE Amex, such person's ''Related Persons'' would include the ''member'' (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and 3(a)(3)(A)(iii) of the Exchange Act which are currently referenced in this provision of the NYSE Group Certificate) with which such person is associated; and (2) in the case of any person that is a ''member'' (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and 3(a)(3)(A)(iii) of the Exchange Act which are currently referenced in this provision of the NYSE Group Certificate) of NYSE Amex, such person's ''Related Persons'' would include any ''member'' (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person. These provisions are substantively consistent with language in the NYSE Rules, which language would be deleted under the Proposed Rule Change.

Amendments to NYSE Euronext Voting and Ownership Restrictions

Under the Proposed Rule Change, the NYSE Euronext Certificate would be amended, effective as of the Combination, to be consistent with the NYSE Group Certificate in the following respects: (1) First, the NYSE Euronext Certificate would be amended to provide that all of the issued and outstanding shares of NYSE Euronext will be held by Holdco, and that Holdco may not transfer or assign any shares without approval by the Commission under the Exchange Act and the relevant European Regulators (as defined in the NYSE Euronext Certificate) under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate);[38] and (2) the NYSE Euronext Certificate would be amended to provide that the NYSE Euronext Voting Restriction and NYSE Euronext Ownership Restriction contained therein would only apply in the event that Holdco does not own all of the issued and outstanding shares of NYSE Euronext.[39] In addition, the NYSE Euronext Certificate would be amended to (a) change the 10% threshold for the NYSE Euronext Voting Restriction to a 20% threshold; (b) change the 20% threshold for the NYSE Euronext Ownership Restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or an OTP Firm); (c) provide that the NYSE Euronext Voting Restriction and NYSE Euronext Ownership Restriction contained therein would only apply only for so long as NYSE Euronext directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYSE Euronext Certificate); (d) add the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE Amex in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate, and delete this provision from the NYSE Euronext Bylaws; (e) update the names of certain European regulatory entities in the definition of ''European Regulator''; and (f) expand the definition of ''Related Persons'' to address Amex Members in a manner that is substantively consistent with language currently located in the NYSE Rules, as described above.

5. Additional Matters To Be Addressed in the Holdco Articles[40]

Jurisdiction Over Individuals

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco and its directors, and to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries.[41] The Holdco Articles would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, Holdco and its directors, officers and employees would (1) Be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceeding relating to NYSE Group or any of its subsidiaries, and ISE Holdings may serve as the U.S. agent for proceedings relating to ISE Holdings or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts or the Commission.[42]

In addition, the Holdco Articles would provide that, so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of Holdco will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[43]

The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.[44] The Holdco Articles would also provide that no person may be a director of Holdco

[37] *See, e.g.,* SEC Release No. 34–49718 (May 17, 2004) (File No. SR–PCX–2004–08), 69 FR 29611 (approval of rule change proposed by the Pacific Exchange, Inc.); SEC Release No. 34–49098 (January 16, 2004) (File No. SR–PHLX–2003–73), 69 FR 3974 (approval of rule change proposed by the Philadelphia Stock Exchange, Inc.); and SEC Release No. 34–50170 (August 9, 2004) (File No. SR–PCX–2004–56), 69 FR 50419 (approval of rule change proposed by the Pacific Exchange, Inc. relating to initial public offering of parent of Archipelago Exchange, L.L.C.).

[38] The analogous provision in the NYSE Group Certificate is Section 4(a) of Article IV.

[39] The analogous provision in the NYSE Group Certificate is Section 4(b) of Article IV.

[40] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[41] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(c).

[42] *See id.*

[43] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[44] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[45] Furthermore, Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [46] that it will comply with these provisions in the Holdco Articles.

NYSE Arca anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, each of whom the Commission has direct authority over pursuant to Section 19(h)(4) of the Exchange Act.[47]

Access to Books and Records

Under the Proposed Rule Change, the Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[48] In addition, the Holdco Articles would provide that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.[49] In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.[50]

Additional Matters

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.[51] In addition, Holdco would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.[52] The Holdco Articles would also provide that, in discharging his or her responsibilities as a member of the Holdco board of directors or as an officer or employee of Holdco, each such director, officer or employee will (a) Comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration to such matters).[53]

The Holdco Articles would also provide that all confidential information that comes into the possession of Holdco pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) not be made available to any persons other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof; (b) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco; and (c) not be used for any commercial purposes.[54] In addition, the Holdco Articles would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) The rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of Holdco to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.[55]

Additionally, the Holdco Articles would provide that, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.[56]

Finally, the Holdco Articles would provide that each director of Holdco would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to (1) Engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.[57] This requirement would not, however, create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters.[58]

In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these

[45] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[46] The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

[47] 15 U.S.C. 78s(h)(4).

[48] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[49] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(e).

[50] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(g).

[51] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(a).

[52] *See id.*

[53] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(l).

[54] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(h).

[55] *See id.*

[56] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(i).

[57] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[58] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary.[59] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[60]

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (1) Cooperation with the Commission and such U.S. Regulated Subsidiaries; (2) compliance with U.S. federal securities laws; (3) inspection and copying of Holdco's books, records and premises; (4) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (5) maintenance of books and records in the United States; (6) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (7) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (8) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles. The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

Amendments to the Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that, before any amendment to or repeal of any provision of the Holdco Articles may become effectuated by means of a notarial deed of amendment, the same will be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. These requirements would also apply to any action by Holdco that would have the effect of amending or repealing any provision of the Holdco Articles.

Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy in the form attached hereto as Exhibit 5N, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that (1) A majority (as opposed to 75%) of the board of Holdco would be required to be independent; (2) executive officers of listed companies would no longer be prohibited from being considered independent for purposes of the Holdco board; (3) the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provide that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated; (4) references to certain European regulatory authorities would be updated, because their names have changed; (5) references to NYSE Alternext, Inc. would refer instead to NYSE Amex, because of this entity's name change; (6) footnote 2 of the current Independence Policy of NYSE Euronext would be deleted because the Holdco Independence Policy would not be applicable to NYSE Regulation, Inc., the Exchange, NYSE Amex or NYSE Market, which would have their own director independence policy in the form attached to this Proposed Rule Change as Exhibit 5K; and (7) references to the independence standards and criteria in the Dutch Corporate Governance Code would be added, because such standards and criteria will apply to Holdco, a Dutch company, and will supplement (rather than supersede or limit) the other independence standards and criteria set forth in the Holdco Independence Policy.

NYSE Arca believes that a majority independence standard is appropriate to ensure that Holdco's board as a whole consists of individuals with independent, objective perspectives, while at the same time affording Holdco sufficient flexibility to include persons with expertise and qualifications that will contribute meaningfully to the board's performance of its oversight function. The importance of allowing highly qualified individuals to serve on the board is underscored by the fact that Holdco will serve as the holding company for a complex, global business with highly specialized operations and regulatory functions. Although Holdco has unique responsibilities and functions as the holding company for the NYSE U.S. Regulated Subsidiaries, it will be subject to various corporate governance and regulatory obligations that will be addressed by means of ownership and voting limitations on its shareholders, commitments to provide access to its books and records and to submit to the jurisdiction of the Commission, director qualification requirements and other undertakings that are addressed in the Proposed Rule Change and will be formalized in the Holdco Articles and undertakings of Holdco to its U.S. Regulated Subsidiaries. NYSE Arca submits that some of these undertakings call for in-depth industry knowledge and expertise on the Holdco board, such as the requirement that Holdco's directors take into consideration the effect that Holdco's actions would have on the ability of its U.S. Regulated Subsidiaries to (i) Foster cooperation and coordination with persons engaging in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, and (ii) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system.

In addition, NYSE Arca believes that the per se disqualification of listed company executives from being deemed independent should not be applicable to Holdco. The per se disqualification was initially adopted by the New York Stock Exchange, Inc. in early 2005 in the context of its unique circumstances and history and its management structure and board composition at that time.[61] NYSE Arca submits that those circumstances are no longer applicable and, following the proposed combination of NYSE Euronext and Deutsche Börse, the disqualification of listed company executives would impede rather than facilitate Holdco's efforts to ensure a qualified and balanced board composition and promote various other important corporate governance objectives, such as ensuring appropriate expertise and experience on its board, as well as representation of the interests of a diverse range of market constituencies and local European and U.S. interests. A per se disqualification would narrow the pool of potential Holdco director candidates and arbitrarily eliminate from consideration a large number of highly qualified, experienced individuals who have proven track records as business leaders. In addition, because the listed companies of the U.S.

[59] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[60] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[61] *See* Securities Exchange Act Release No. 34–51217 (February 16, 2005) (File No. SR–NYSE–2004–54), 70 FR 9688.

Regulated Subsidiaries tend to be U.S. domestic companies, this requirement could disproportionately restrict the eligibility of persons affiliated with U.S. companies as compared to non-U.S. companies to serve on the board of Holdco. Under the Holdco Independence Policy, the Holdco board would still need to assess whether a listed company executive meets the various independence criteria, including whether he or she has any ''material relationship'' with Holdco and its subsidiaries.

Furthermore, NYSE Euronext believes that the objectivity of board members is adequately protected by the various other independence criteria in the proposed Holdco Independence Policy, such as the requirement that independent directors may not be or have been within the last year, and may not have an immediate family member who is or within the last year was, a member of the Exchange, NYSE Arca or NYSE Amex. In addition, if and to the extent that a matter concerning a listed company whose executive is a Holdco director were ever to come before the Holdco board for consideration, such director would be required to be recused from acting on such matter pursuant to the Holdco board's conflicts of interest policy.

Finally, the current Independence Policy of NYSE Euronext provides that the sum of (a) executive officers of foreign private issuers, (b) executive officers of NYSE Euronext and (c) directors of affiliates of ''members'' (as defined in Sections 3(a)(A)(3)(ii), 3(a)(A)(3)(iii) and 3(a)(A)(3)(iv) of the Exchange Act) of NYSE, NYSE Arca or NYSE Amex, may not constitute more than a minority of the total number of directors of NYSE Euronext. The purpose of this requirement is to ensure that, although executives of listed companies who are foreign private issuers are not disqualified from serving on the board, such executives may not, together with NYSE Euronext executives and directors of affiliates of members, constitute more than a minority of the board. In light of NYSE Arca's proposal to eliminate the disqualification of listed company executives from the Holdco Independence Policy, this requirement would serve no purpose because the exception to such disqualification for foreign private issuer executives would also be eliminated. NYSE Arca further notes that under the proposed Holdco Independence Policy, executives of Holdco and directors of affiliates of exchange members would not be deemed independent and, accordingly, could not in any event constitute more than a minority of the Holdco board.

6. Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents

Pursuant to the Combination, NYSE Euronext will merge with Merger Sub, a wholly owned subsidiary of Holdco. NYSE Euronext, as the surviving corporation in the Merger, will become a wholly owned subsidiary of Holdco. Following the Merger, the current organizational documents of NYSE Euronext will remain in effect, except that NYSE Arca is proposing that, in addition to the aforementioned revisions relating to voting and ownership limitations, certain provisions will be amended to reflect the fact that, after the Combination, NYSE Euronext will be an intermediate holding company and will no longer be a public company traded on the Exchange, and the registration of its capital stock under Section 12 of the Exchange Act will be terminated upon application to the Commission. As a result, NYSE Euronext will no longer be subject to the Exchange's listing standards or to the corporate governance requirements applicable to publicly traded companies. As summarized below, the following revisions to the NYSE Euronext Certificate and NYSE Euronext Bylaws are proposed in order to (1) Simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly owned subsidiary of Holdco following completion of the Combination; and (3) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions, and to update cross-references to sections, to reflect the other amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth in this Proposed Rule Change):

- The NYSE Euronext Certificate would be revised to provide that the registered office and agent of NYSE Euronext in Delaware will be the Corporation Trust Company, which is the registered agent of other subsidiaries of NYSE Euronext;
- The number of authorized shares of NYSE Euronext common stock and preferred stock will be reduced to 1,000 and 100, respectively, because it would no longer be necessary for NYSE Euronext to have a large number of widely held and actively traded shares;[62]
- The restrictions on transfers of NYSE Euronext shares contained in Section 4 of Article IV of the NYSE Euronext Certificate have now expired in accordance with their terms and would accordingly be deleted;
- Sections 2(A) and 2(B) of Article VI of the NYSE Euronext Certificate, and Section 2.2 of the NYSE Euronext Bylaws, would be amended to allow shareholders to call special meetings of shareholders and to postpone such meetings, in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination;
- Section 6 of Article VI of the NYSE Euronext Certificate, and Section 3.6 of the NYSE Euronext Bylaws (which would be renumbered as Section 3.5), would be amended to allow shareholders to fill board vacancies in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination;
- Section 1 of Article VIII of the NYSE Euronext Certificate, and Section 2.11 of the NYSE Euronext Bylaws (which would be renumbered as Section 2.9), would be amended to allow shareholders to take actions without a meeting and without prior notice if written consents are signed by the minimum number of votes that would be required to approve the action at a meeting, in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination, and the reference at the end of Section 3.5 of the NYSE Euronext Bylaws to a special meeting of shareholders would be deleted because the NYSE Euronext shareholder may act by written consent to fill board vacancies;
- The supermajority shareholder vote requirements pursuant to Article X to

[62] Effective as of the time that NYSE Euronext merges with Pomme Merger Corporation, the Second Amended and Restated Certificate of Incorporation of NYSE Euronext (as the surviving corporation in the merger) will provide that 800,000,000 shares of common stock will be authorized and 100 shares of preferred stock will be authorized. All of the outstanding shares of NYSE Euronext will be held by Alpha Beta Netherlands Holding N.V. Promptly thereafter, (1) NYSE Euronext will conduct a reverse stock split so that Alpha Beta Netherlands Holding N.V. will hold a substantially reduced number of NYSE Euronext shares (*e.g.,* 1,000 common shares), and (2) the Second Amended and Restated Certificate of Incorporation of NYSE Euronext will accordingly be amended to reduce the total number of authorized shares of common stock to 1,000.

amend or repeal certain provisions of the NYSE Euronext Certificate would be eliminated and replaced with a majority vote requirement, because a supermajority vote requirement would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a majority voting standard is consistent with the standard generally applicable for actions by shareholders under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;

• Section 2.3 of the NYSE Euronext Bylaws would be amended to clarify that notice of shareholder meetings is not required if waived in accordance with Section 10.3 of the NYSE Euronext Bylaws;

• The requirement in Section 2.6 of the NYSE Euronext Bylaws for the appointment of an inspector of elections for shareholders meetings would be deleted, because the requirement for an inspector of elections pursuant to Section 231 of the Delaware General Corporation Law would no longer apply to NYSE Euronext after completion of the Combination;[63]

• The requirement in Section 2.7 (which would be renumbered as Section 2.6) of the NYSE Euronext Bylaws that directors be elected by a majority of the votes cast (and that they must tender their resignation if such a majority vote is not received), except in the case of contested elections, and that the NYSE Euronext board of directors may fill any resulting vacancy or may decrease the size of the board, would be deleted and a plurality voting standard would be adopted for all director elections, because these requirements would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a plurality voting standard is consistent with the standard generally applicable for elections of directors under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;

• The requirements in Section 2.10 of the NYSE Euronext Bylaws requiring certain advance notice from shareholders of director nominations and shareholder proposals, and the requirement that only business brought before a special meeting of stockholders pursuant to NYSE Euronext's notice of the meeting may be brought before the meeting, would be eliminated, because these requirements would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder;

• Section 3.1 of the NYSE Euronext Bylaws would be amended to clarify that the right of the NYSE Euronext board of directors to fix and change the number of directors on such board is subject to any rights of holders of any preferred stock to elect additional directors, in order to make this provision consistent with Section 2 of Article IV of the NYSE Euronext Certificate, which provides that preferred stock may be issued which may have voting rights;

• Sections 3.2(B) and 4.4 of the NYSE Euronext Bylaws would be amended to add ''if any'' after the references therein to the Nominating and Governance Committee, because NYSE Euronext would become a wholly owned subsidiary of Holdco and, as such, may not have a Nominating and Governance Committee;

• The requirement in Section 3.4 of the NYSE Euronext Bylaws that at least 75% of the board must be independent would be deleted, because NYSE Euronext would be a wholly owned subsidiary of Holdco after completion of the Combination and, therefore, it may be appropriate for executives of Holdco and its subsidiaries to serve on this board, and the reference to Section 3.4 in Section 3.2(A) would accordingly be deleted;

• Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws would be amended to clarify that notice of board meetings is not required if waived in accordance with Section 10.3 of the NYSE Euronext Bylaws;

• The advance notice period in Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws for electronic or telephonic notices of board meetings would be reduced from 24 hours to 12 hours, in order to simplify the requirements for board meetings and to be consistent with the analogous 12-hour time period currently required for notices pursuant to Section 3.7 of the NYSE Group Bylaws;

• Section 3.12 of the NYSE Euronext Bylaws (which would be renumbered as Section 3.11) would be amended to delete the requirement that, if the chairman or deputy chairman of the board of directors is also the chief executive officer or deputy chief executive officer, he or she may not participate in executive sessions of the board of directors, and if the chairman is not the chief executive officer or deputy chief executive officer, he or she will act as a liaison between the board of directors and the chief executive officer or the deputy chief executive officer, in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Euronext and in order to simplify the governance requirements for NYSE Euronext as a wholly owned subsidiary of Holdco;

• Certain aspects of the indemnification and expense advancement provisions in Section 10.6 of the NYSE Euronext Bylaws, including the terms of any insurance policy maintained by NYSE Euronext, would be simplified in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Euronext, and, therefore, a more streamlined process for indemnification claims is appropriate;

• The supermajority shareholder vote requirements in Section 10.10(B) of the NYSE Euronext Bylaws would be changed to a majority vote requirement, because a supermajority vote requirement would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a majority voting standard is consistent with the standard generally applicable for actions by shareholders under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;

• In light of the fact that NYSE Alternext US LLC formally changed its name to NYSE Amex LLC, references to NYSE Alternext US LLC in the NYSE Euronext Bylaws would be amended to refer instead to NYSE Amex LLC;

• Section 10.13 of the NYSE Euronext Bylaws—which requires that, for so long as NYSE Euronext directly or indirectly controls NYSE Amex, any amendments to the NYSE Euronext Certificate must be approved by the Commission—would be deleted and Article X of the NYSE Euronext Certificate would be amended to incorporate this requirement; and

• Certain clarifying, conforming or other technical edits would be made to Sections 1(B), 1(C), 1(L), 2(C) and 2(E) of Article V, Article X and Article XIII of the NYSE Euronext Certificate and to Sections 3.7 (which would be renumbered as Section 3.6) and 3.15(A)(2) and 3.15(B) (which would be renumbered as Section 3.14(A)(2) and 3.14(B), respectively) of the NYSE Euronext Bylaws. In addition, the numbering of certain sections of the NYSE Euronext Certificate and NYSE Euronext Bylaws, and cross-references to such sections, would be deleted or updated to reflect the amendments to

[63] *See* Section 231(e) of the Delaware General Corporation Law.

the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth above.

In addition, the current Independence Policy of the NYSE Euronext board of directors would, effective as of the Combination, cease to apply.

7. Proposed Amendments to the NYSE Group Certificate and NYSE Group Bylaws

Under the Proposed Rule Change, the revisions summarized below to the NYSE Group Certificate and the NYSE Group Bylaws are proposed in order to: (1) Conform certain provisions to the analogous provisions of the organizational documents of NYSE Euronext, which would likewise be a wholly owned subsidiary of Holdco following completion of the Combination; and (2) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions to reflect the other amendments set forth in this Proposed Rule Change):

- Section 2 of Article IV of the NYSE Group Certificate would be amended to clarify that (1) Preferred stock may be issued ''from time to time,'' and (2) the certificate of designations for such stock would fix, among other things, the ''relative, participating, optional and other'' rights of such shares including the qualifications and restrictions of any series of preferred stock, which is consistent with the analogous provisions in Section 2 of Article IV of the NYSE Euronext Certificate;
- Section 3 of Article V of the NYSE Group Certificate would be revised to clarify that the number of directors will be fixed ''from time to time,'' which is consistent with the analogous provision in Section 3 of Article VI of the NYSE Euronext Certificate;
- Section 5 of Article V of the NYSE Group Certificate would be amended to clarify that the right of the NYSE Group board of directors to remove directors is subject to any rights of holders of any preferred stock, in order to make this provision consistent with Section 2 of Article IV of the NYSE Group Certificate, which provides that preferred stock may be issued that may have voting rights, and also to make it consistent with the analogous provision in Section 5 of Article VI of the NYSE Euronext Certificate;
- Section 2.3 of the NYSE Group Bylaws would be amended to clarify that notice of shareholder meetings is not required if waived in accordance with Section 7.3 of the NYSE Group Bylaws;
- A new Section 2.8 would be added to the NYSE Group Bylaws to clarify that a list of shareholders entitled to vote will be open to examination by shareholders, because this is required by Section 219 of the Delaware General Corporation Law and is consistent with the analogous provision in Section 2.9 (which would be renumbered as Section 2.8) of the NYSE Euronext Bylaws;
- The reference at the end of Section 3.4 of the NYSE Group Bylaws to a special meeting of shareholders would be deleted because the shareholder of NYSE Group may act by written consent to fill board vacancies pursuant to Section 2.9 of the NYSE Group Bylaws;
- Section 3.7 of the NYSE Group Bylaws would be amended to clarify that notice of any special meeting of directors is not required if waived in accordance with Section 7.3 of the NYSE Group Bylaws, and the methods of delivery of notices would be updated to delete references to telegrams, provide certain requirements for notices sent to non-U.S. addresses and add a reference to email or other electronic transmission of notices, in each case to be consistent with the analogous provisions in Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws;
- The reference in Section 3.8 of the NYSE Group Bylaws to restrictions on telephonic participation in meetings would be deleted, because the NYSE Group Bylaws and the NYSE Group Certificate do not contain any such restrictions, and the wording of this provision would be amended to be consistent with the analogous language in Section 3.10 (renumbered as Section 3.9) of the NYSE Euronext Bylaws;
- Section 7.4 would be revised to provide that the persons who are authorized to execute contracts and other instruments on behalf of NYSE Group would include the Chief Executive Officer, which is consistent with the analogous provision in Section 10.4 of the NYSE Euronext Bylaws;
- Certain aspects of the indemnification and expense advancement provisions in Section 7.6 of the NYSE Group Bylaws, including the terms of any insurance policy maintained by NYSE Group, would be simplified in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Group and, therefore, a more streamlined process for indemnification claims is appropriate, and these revisions would be consistent with the revisions to the analogous provisions of the NYSE Euronext Bylaws set forth in this Proposed Rule Change;
- Section 7.9 of the NYSE Group Bylaws would be amended to clarify that they may be amended or repealed, and new bylaws may be adopted, by either (1) The NYSE Group board of directors or (2) subject to any vote of holders of any class or series of NYSE Group stock required by law or the NYSE Group Certificate, the affirmative vote of holders of a majority of the votes entitled to be cast by holders of outstanding shares of NYSE Group entitled to vote generally in the election of directors, voting together as a single class;
- In light of the fact that NYSE Alternext US LLC formally changed its name to NYSE Amex LLC, references to NYSE Alternext US LLC in the NYSE Group Bylaws would be amended to refer instead to NYSE Amex LLC, and the definition of ''Regulated Subsidiary'' in the NYSE Group Certificate would be amended to include NYSE Amex; and
- Certain other clarifying, conforming or other technical edits would be made to Sections 4(a), 4(b)(1)(A)(w), 4(b)(1)(A)(y), 4(b)(1)(A)(z), 4(b)(1)(E)(iv), 4(b)(1)(E)(vi), 4(b)(1)(E)(x), 4(b)(1)(E)(xii), 4(b)(2)(C) and 4(b)(2)(E) of Article IV, Sections 6 and 8 of Article V, Article X, Article XII and Article XIV of the NYSE Group Certificate and to Sections 2.3, 2.9, 5.1 and 7.9 of the NYSE Group Bylaws. In addition, the numbering of certain sections of the NYSE Group Certificate and NYSE Group Bylaws would be updated to reflect the amendments set forth above.

8. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE Amex, NYSE Market and NYSE Regulation

The Third Amended and Restated Operating Agreement, dated as of April 1, 2009, of the Exchange (the ''Exchange Operating Agreement''), currently provides that (1) A majority of the members of the Exchange's board of directors must be U.S. persons and members of the board of directors of NYSE Euronext who satisfy the independence requirements of the NYSE Euronext board, and (2) at least 20% of the Exchange's board members must be persons who are not board members of NYSE Euronext but who qualify as independent under the independence policy of the NYSE Euronext board of directors (the ''Non-Affiliated Exchange Directors'').[64] The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and

[64] *See* Third Amended and Restated Operating Agreement of New York Stock Exchange LLC, Section 2.03(a).

NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.[65]

Under the Proposed Rule Change, these provisions would be amended (1) To provide that the independent members of the Exchange's board of directors, rather than the nominating and governance committee of the NYSE Euronext board of directors, will designate the Non-Affiliated Exchange Directors and make the other related determinations that were previously to be made by the nominating and governance committee of the NYSE Euronext board of directors; (2) to provide that instead of using the independence policy of the NYSE Euronext board of directors to assess the independence of the Exchange's board members, the Exchange will have its own independence policy in the form attached to this Proposed Rule Change as Exhibit 5K (the ''SRO Director Independence Policy''); (3) in light of the fact that the board of directors of NYSE Euronext will be decreased in size once it becomes a wholly owned subsidiary of Holdco, the requirement that a majority of the members of the Exchange's board of directors must be members of the board of directors of NYSE Euronext would be eliminated; and (4) to provide that at least 20% of the Exchange's directors must be persons who are not members of the board of directors of Holdco (rather than referring to the board of directors of NYSE Euronext). Substantially the same revisions would be made to the analogous provisions of the Amended and Restated Operating Agreement of NYSE Amex,[66] the Amended and Restated Bylaws of NYSE Market[67] and the Third Amended and Restated Bylaws of NYSE Regulation.[68]

The Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation would also be amended to change the registered office of these entities from National Registered Agents to The Corporation Trust Company and CT Corporation, respectively. In addition, references to NYSE Alternext US LLC in the Third Amended and Restated Bylaws of NYSE Regulation would be changed to refer instead to NYSE Amex.

The SRO Director Independence Policy to be adopted by each of the Exchange, NYSE Market, NYSE Regulation and NYSE Amex under the Proposed Rule Change would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that certain conforming changes would be made, including the deletion of provisions that currently apply only to NYSE Euronext directors and expressly do not apply to directors of these NYSE U.S. Regulated Subsidiaries. In particular, (1) References to NYSE Euronext would refer instead to the relevant NYSE U.S. Regulated Subsidiary or Holdco, as applicable; (2) the requirement that at least three-fourths of the directors must be independent would be deleted, since the organizational documents of these NYSE U.S. Regulated Subsidiaries contain the independence and other qualification requirements for directors; (3) the requirement in the Independence Policy of NYSE Euronext that the board consider the special responsibilities of a director in light of NYSE Euronext's ownership of NYSE U.S. Regulated Subsidiaries and European regulated entities would be deleted, because unlike NYSE Euronext, these NYSE U.S. Regulated Subsidiaries are not holding companies; (4) the requirement for directors to inform the Chairman of the Nominating and Governance Committee of certain relationships and interests would be deleted, since the boards of these NYSE U.S. Regulated Subsidiaries do not have a Nominating and Governance Committee, except that in the SRO Director Independence Policy to be adopted by NYSE Regulation, this provision would reference the Nominating and Governance Committee of NYSE Regulation, Inc.; (5) references to NYSE Alternext, Inc. would refer instead to NYSE Amex, because of this entity's name change; (6) because the current Independence Policy of NYSE Euronext provides that a director of an affiliate of a Member Organization cannot qualify as an independent director of these NYSE U.S Regulated Subsidiaries, the conflicting language stating that a director of an affiliate of a Member Organization shall not per se fail to be independent would be deleted; and (7) because language in the current Independence Policy of NYSE Euronext provides that an executive officer of an issuer whose securities are listed on a NYSE Exchange cannot qualify as an independent director of these NYSE U.S Regulated Subsidiaries, the conflicting language providing an exception applicable only to NYSE Euronext directors would be deleted. In addition, the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provides that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated. This provision is designed to ensure that although persons who are directors of an affiliate of a Member Organization or who are executive officers of a ''foreign private issuer'' listed on a NYSE Exchange may in some circumstances qualify as independent for purposes of NYSE Euronext board membership, such persons may not, together with executive officers of NYSE Euronext, constitute more than a minority of the total NYSE Euronext directors. Under the proposed SRO Director Independence Policy, such persons could not be deemed to be independent directors of the relevant NYSE U.S. Regulated Subsidiary and, accordingly, this limitation on the number of such persons who may serve on the board is unnecessary.

9. Proposed Amendments to the Exchange Rules, NYSE Amex Rules and NYSE Arca Equities Rules

Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules, as summarized below:

- References therein to ''NYSE Euronext'' would be replaced with references to Holdco, except that references to NYSE Euronext in Rule 22 and Rule 422 would be retained and references to Holdco would be added; and
- Rule 2 would be revised to delete the definitions of ''member'' and ''member organization'' relating to NYSE Amex which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because under the Proposed Rule Change, that section of the NYSE Euronext Certificate will be revised to incorporate this language [sic]

In addition, certain technical amendments would be made to the NYSE Amex Rules and NYSE Arca Equities Rules to replace references therein to ''NYSE Euronext'' with references to Holdco.

10. Proposed Technical Amendment to the NYSE Trust Agreement

Following completion of the Combination, NYSE Euronext will become a wholly owned subsidiary of

[65] *See id.*

[66] *See* Amended and Restated Operating Agreement of NYSE Amex LLC, Section 2.03(a).

[67] *See* Amended and Restated Bylaws of NYSE Market, Inc., Article III Section 1.

[68] *See* Third Amended and Restated Bylaws of NYSE Regulation, Inc., Article III Section 1.

Holdco and, as such, its board of directors will likely be reduced in size and may not include directors who satisfy the independence criteria that are currently applicable. Accordingly, under the Proposed Rule Change, the functions currently performed by the nominating and governance committee of NYSE Euronext in connection with reviewing and appointing trustees pursuant to the Trust Agreement, dated as of April 4, 2007, by and among NYSE Euronext, NYSE Group and the other parties thereto, would be transferred to the Holdco Nominating, Governance and Corporate Responsibility Committee. References in such trust agreement to the nominating and governance committee of NYSE Euronext would be replaced with references to the Holdco Nominating, Governance and Corporate Responsibility Committee, as indicated in Exhibit 5O attached to this Proposed Rule Change.

11. Statutory Basis

NYSE Arca believes that this filing is consistent with Section 6(b) [69] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1) [70] in particular, in that it enables NYSE Arca to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE Arca. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Combination, the U.S. Regulated Subsidiaries will operate in the same manner following the Combination as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

NYSE Arca also believes that this filing furthers the objectives of Section 6(b)(5) [71] of the Exchange Act because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NYSE Arca expects that the Combination will position the Holdco Group to be a leader in a diverse set of large and growing businesses, including derivatives, listings, cash equities, post-trade settlement and asset servicing, market data and technology servicing. NYSE Arca believes this will enable the Holdco Group to leverage technology and a unique collection of markets to create a mutually reinforcing capital markets community driving efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients. As a true pacesetter across the spectrum of capital markets services, the Holdco Group would be positioned to offer clients global scale, product innovation, operational and capital efficiencies and an enhanced range of technology and market information solutions.

In addition, NYSE Arca expects that the Holdco Group would be positioned to serve as a benchmark regulatory model, facilitating transparency and standardization in capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NYSE Arca has neither solicited nor received written comments on the Proposed Rule Change.

[69] 15 U.S.C. 78(f)(b).

[70] 15 U.S.C. 78(f)(b)(1).

[71] 15 U.S.C. 78(f)(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official

business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–72 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27197 Filed 10–19–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65566; File No. SR–ISE–2011–69]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in which Its Indirect Parent, Deutsche Börse AG, Will Become a Wholly Owned Subsidiary of Alpha Beta Netherlands Holding N.V.

October 14, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2011, International Securities Exchange, LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially 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

A. Overview of the Proposed Combination

The Exchange, a Delaware limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the ''Proposed Rule Change'') to the Commission in connection with the proposed business combination (the ''Combination'') of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (''Deutsche Börse'').

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—the New York Stock Exchange, LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE Amex LLC (''NYSE Amex'')—and (2) 100% of the equity interest of NYSE Market, Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. (''NYSE Arca LLC'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the ''NYSE U.S. Regulated Subsidiaries'' and each, a ''NYSE U.S. Regulated Subsidiary''). NYSE, NYSE Arca and NYSE Amex will be separately filing a proposed rule change in connection with the Combination.

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (''ISE Holdings''), which in turn holds 100% of the equity interest of the Exchange. ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings, LLC (''Direct Edge Holdings''), which in turn indirectly holds 100% of the equity interest of two registered national securities exchanges and self-regulatory organizations—EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') (each of the Exchange, EDGA and EDGX, a ''DB Exchange'' and a ''DB U.S. Regulated Subsidiary'' and together, the ''DB Exchanges'' and the ''DB U.S. Regulated Subsidiaries''). EDGA and EDGX will be separately filing a proposed rule change in connection with the Combination that will be the substantially the same as the Proposed Rule Change.

If the Combination is completed, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''), will be held under a single, publicly traded holding company organized under the laws of the Netherlands (''Holdco'').[3] The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

B. Summary of Proposed Rule Change

The Exchange is proposing that, pursuant to the Combination, its indirect parent, Deutsche Börse, will become a wholly owned subsidiary of Holdco. In addition, the Exchange is proposing that, in connection with the Combination, the Commission approve certain amendments to the organizational and other governance documents of Holdco and ISE Holdings. The Proposed Rule Change is summarized as follows:

• *Proposed Approval of Waiver of Ownership and Voting Restrictions of ISE Holdings.* The Amended and Restated Certificate of Incorporation of ISE Holdings (the ''ISE Holdings Certificate'') currently restricts any person, either alone or together with its related persons, from having voting control over more than 20% of the outstanding capital stock of ISE Holdings and from owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[4] If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to a statutory trust established under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 *et seq.* (''ISE Trust''). The ISE Holdings Certificate and the Amended and Restated Bylaws of ISE Holdings (the ''ISE Holdings Bylaws'') provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if it makes certain findings and the amendment to the ISE Holdings Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act.[5] Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment

[72] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Holdco is currently named ''Alpha Beta Netherlands Holding N.V.,'' but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse.

[4] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

[5] 15 U.S.C. 78s(b).

to the ISE Holdings Bylaws set forth in Exhibit 5A (the ''ISE Holdings Bylaws Amendment'') in order to permit Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after the Combination. The Exchange is requesting approval by the Commission of the ISE Holdings Bylaws Amendment in order to allow the Combination to take place.

Under the Proposed Rule Change, Holdco would take appropriate steps to incorporate voting and ownership restrictions, requirements relating to submission to jurisdiction, access to books and records and other requirements related to its control of the U.S. Regulated Subsidiaries. Specifically, the Articles of Association of Holdco in effect as of the completion of the Combination (the ''Holdco Articles'') would contain provisions [6] to incorporate these concepts with respect to itself, as well as its directors, officers, employees and agents (as applicable):

• *Voting and Ownership Restrictions in the Holdco Articles.* The Holdco Articles would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the then outstanding votes entitled to be cast on a matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes entitled to be cast on a matter (except that a 20% ownership restriction would apply to any person who is a Member of NYSE [7] (a ''NYSE Member''), a Member [8] of NYSE Amex (including any person who is a related person of such member, an ''Amex Member''), an ETP Holder of NYSE Arca Equities [9] (an ''ETP Holder'') an OTP Holder or OTP Firm of NYSE Arca [10] (an ''OTP Holder'' and ''OTP Firm,'' respectively), a Member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an ''ISE Member''), or a member of EDGA or EDGX (as such terms are defined in the rules of EDGA and EDGX, respectively, an ''EDGA Member'' and ''EDGX Member,'' respectively)). The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any such person(s) exceeds the ownership restriction, it will be required to offer for sale and transfer the number of Holdco shares required to comply with the ownership restriction, and the rights to vote, attend general meetings of Holdco shareholders and receive dividends or other distributions attached to shares held in excess of the 40% threshold (or 20% threshold, if applicable) will be suspended for so long as such threshold is exceeded. If such person(s) fails to comply with the transfer obligation within two weeks, then the Holdco Articles would provide that Holdco will be irrevocably authorized to take actions on behalf of such person(s) in order to cause it to comply with such obligations. The Holdco board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements which are currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the current NYSE Euronext Certificate and the ISE Holdings Certificate, as applicable) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators [11] having appropriate jurisdiction and authority.

• *Jurisdiction.* The Holdco Articles will provide that Holdco and its directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the Holdco Articles would provide that so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary. Furthermore, the Holdco Articles would provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [12] that it will comply with these provisions of the Holdco Articles.

• *Books and Records.* The Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

• *Amendments to Holdco Articles.* The Holdco Articles would provide that before any amendment to the Holdco Articles may be effectuated by execution of a notarial deed of amendment, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective.

• *Additional Matters.* The Holdco Articles would include provisions regarding cooperation with the Commission and the U.S. Regulated

[6] The text of the proposed Holdco Articles is attached to the Proposed Rule Change as Exhibit 5B.

[7] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.3(c).

[8] *See id.*

[9] *See id.*

[10] *See id.*

[11] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 1.1.

[12] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of Holdco's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act. In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary. The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco will sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [13] that it will comply with these provisions of the Holdco Articles.[14]

In addition, Holdco would adopt a Director Independence Policy in the form attached hereto as Exhibit 5D (the ''Holdco Independence Policy''), which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.[15]

The text of the Proposed Rule Change is available at the Exchange, the Commission's Public Reference Room, and on the Web site of the Exchange (*http://www.ise.com*). The text of Exhibits 5A through 5D of the Proposed Rule Change are also available on the Exchange's Web site and on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

[13] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

[14] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[15] *See* File No. SR–NYSE–2011–51.

Other than as described herein and set forth in the attached Exhibits 5A through 5D, the Exchange will continue to conduct its regulated activities in the manner currently conducted and will not make any changes to its regulated activities in connection with the Combination. If the Exchange determines to make any such changes, it will seek approval of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Purpose [sic]

The purpose of this rule filing is to adopt the rules necessary to permit Deutsche Börse to effect the Combination and to amend the ISE Holdings Bylaws and certain provisions of the Holdco Articles.

1. Overview of the Combination

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the Combination of NYSE Euronext and Deutsche Börse. The Combination will create a holding company, Holdco, which will hold the businesses of NYSE Euronext and Deutsche Börse. Following the Combination, each of NYSE Euronext and Deutsche Börse will be a separate subsidiary of Holdco. Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide.

Other than as described herein, Holdco and the Exchange will not make any changes to the regulated activities of the DB Exchanges in connection with the Combination, and, other than as described in the separate proposed rule changes filed by each of the NYSE Exchanges in connection with the Combination, Holdco and the NYSE Exchanges will not make any changes to the regulated activities of the NYSE U.S. Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Combination will occur pursuant to the terms of the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011 (as it may be further amended from time to time, the ''Combination Agreement''), by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco (''Merger Sub''). Subject to the terms and conditions set forth in the Combination Agreement and in compliance with applicable law, Holdco has conducted a public exchange offer (the ''Exchange Offer''), in which shareholders of Deutsche Börse have been afforded the opportunity to tender each share of Deutsche Börse for one ordinary share of Holdco (each, a ''Holdco Share'').

Immediately after the time that Holdco accepts for exchange, and exchanges, the Deutsche Börse shares that are validly tendered and not withdrawn in the Exchange Offer, Merger Sub will merge with and into NYSE Euronext, as a result of which NYSE Euronext will become a wholly owned subsidiary of Holdco (the ''Merger''). In the Merger, each outstanding share of NYSE Euronext common stock will be converted into the right to receive 0.47 of a fully paid and non-assessable Holdco Share. NYSE Euronext's obligation to complete the Merger is subject to the completion of the Exchange Offer and the acquisition by Holdco of all of the Deutsche Börse shares validly tendered and not withdrawn in the Exchange Offer. The completion of the Exchange Offer (and, therefore, the completion of the Merger) is subject to the satisfaction of a number of conditions, including that Deutsche Börse shares representing at least 75% of the Deutsche Börse shares outstanding, on a fully diluted basis, must be validly tendered and not withdrawn in the Exchange Offer, and that holders of a majority of the outstanding shares of NYSE Euronext shall have adopted the Combination Agreement. Both of these conditions have been satisfied.

Following the completion of the Exchange Offer, and depending on the percentage of Deutsche Börse shares acquired by Holdco in the Exchange Offer, Deutsche Börse and Holdco intend to complete a post-completion reorganization pursuant to which Holdco will enter into a domination agreement or a combination of a domination agreement and a profit and loss transfer agreement, pursuant to which the remaining shareholders of Deutsche Börse will have limited rights, including a limited ability to participate in the profits of Deutsche Börse.

Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide. Following the Combination, Holdco and its subsidiaries (together, the ''Holdco Group'') expect to serve as a benchmark regulatory model, facilitating transparency and harmonization of capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks and their respective brand names.

2. Overview of the Holdco Group Following the Combination

Following the Combination, Holdco will be a for-profit, publicly traded corporation formed under the laws of The Netherlands and will act as the holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold all of the equity interests in NYSE Euronext, which holds (1) 100% of the equity interest of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom). Holdco will also hold a majority of the equity interests in Deutsche Börse, which indirectly holds 50% of the equity interest of ISE Holdings (which, in turn, holds (1) 100% of the equity interest of the Exchange and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings indirectly holds 100% of the equity interest of EDGA and EDGX. Holdco intends to list its ordinary shares on the New York Stock Exchange, the Frankfurt Stock Exchange and Euronext Paris. The Holdco Group will have dual headquarters in Frankfurt and New York.

After the Combination, NYSE Group will continue to be directly wholly owned by NYSE Euronext and will continue to directly or indirectly own the three NYSE Exchanges—NYSE, NYSE Arca and NYSE Amex—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYSE Group, oversees FINRA's performance of certain market surveillance and enforcement functions for NYSE Euronext's U.S. securities exchanges, enforces listed company compliance with applicable standards, and oversees regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, The Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten), the Belgian Financial Services and Markets Authority (Autorité des Services et Marchés Financiers), the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários—CMVM) and the U.K. Financial Services Authority (FSA).

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of the Exchange will be preserved. Specifically, after the Combination, ISE Holdings' businesses and assets will continue to be structured as follows:

- The Exchange will remain a direct wholly owned subsidiary of ISE Holdings and an indirect 50% owned subsidiary of Deutsche Börse.
- The Combination will have no effect on the ability of any party to trade securities on the Exchange, EDGX or EDGA.

Similarly, Deutsche Börse and its subsidiaries, and NYSE Euronext and its subsidiaries, will continue to conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

Holdco acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, it will be responsible for referring such possible violations to the Exchange. In addition, Holdco will become a party to the agreement among Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX (formerly SWX), SIX Group (formerly SWX Group), Verein SIX Swiss Exchange (formerly SWX Swiss Exchange), U.S. Exchange Holdings, Inc., ISE Holdings and the Exchange to provide for adequate funding for the Exchange's regulatory responsibilities.

3. Proposed Approval of Waiver of Voting and Ownership Restrictions of ISE Holdings

Article FOURTH, Section III of the current ISE Holdings Certificate provides that (1) No person, either alone or together with its ''related persons'' (as defined in the ISE Holdings Certificate), may be entitled to vote or cause the voting of shares of ISE Holdings at any time, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, to the extent that such shares represent more than 20% of the voting power of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, at any time, directly, indirectly or pursuant to any voting trust, may enter into any agreement, plan or other arrangement with any other person, either alone or together with its related persons, under circumstances which would result in the voting shares that shall be subject to such agreement, plan or other arrangement not being voted on any matter or matters or the withholding of any proxy relating thereto, where the effect of such agreement, plan or arrangement would be to enable any person, either alone or together with its related persons, to possess more than 20% of the voting power of the then

outstanding votes entitled to be cast on any such matter (the ''ISE Holdings Voting Restriction'').[16] If any person, either alone or together with its related persons, acquires voting power in excess of the ISE Holdings Voting Restriction, the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Voting Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding *pro rata* from the holders thereof.

In addition, the ISE Holdings Certificate provides that no person, either alone or together with its related persons, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing more than 40% of the then outstanding votes entitled to be cast on any matter and no person who is a member of the Exchange, either alone or together with its related person, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing in the more than 20% of the then outstanding votes entitled to be cast on any matter (the ''ISE Holdings Ownership Restriction'').[17] If any person, either alone or together with its related persons, owns shares of ISE Holdings in excess of the ISE Holdings Ownership Restriction, then the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Ownership Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding *pro rata* from the holders thereof.[18]

The ISE Holdings board of directors may waive the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction pursuant to an amendment to the ISE Holdings Bylaws adopted by the ISE Holdings board of directors, if in connection with the adoption of such amendment, the board of directors in its sole discretion adopts a resolution stating that it is the determination of the board of directors that such amendment:

- Will not impair the ability of ISE Holdings and any of the DB U.S. Regulated Subsidiaries, or facility thereof, to carry out their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- is otherwise in the best interest of ISE Holdings, its stockholders and the DB U.S. Regulated Subsidiaries;
- will not impair the Commission's ability to enforce the Exchange Act;
- for so long as ISE Holdings directly or indirectly controls the Exchange, neither such person nor any of its related persons is an ISE Member, EDGA Member or EDGX Member; and
- neither such person nor any of its related persons is subject to any ''statutory disqualification'' (as such term is defined in Section 3(a)(39) of the Exchange Act).[19]

Such amendment shall not be effective unless it has been filed with and approved by the Commission under Section 19(b) of the Exchange Act[20] and has become effective thereunder.

In order to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings upon consummation of the Combination, Holdco has delivered written notice to the board of directors of ISE Holdings pursuant to the procedures set forth in the ISE Holdings Certificate requesting approval of its voting and ownership of ISE Holdings shares in excess of the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of ISE Holdings that neither it, nor any of its related persons, is (1) An ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any ''statutory disqualification.''

At a meeting duly convened on September 16, 2011, the board of directors of ISE Holdings adopted the ISE Holdings Bylaws Amendment to permit Holdco, either alone or together with its related persons, to exceed the ISE Holdings Ownership Restriction and the ISE Holdings Voting Restriction. In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations set forth above and approved the submission of this Proposed Rule Change to the Commission. The Exchange will continue to operate and regulate its market and members exactly as it has done prior to the Combination. Except as set forth in this Proposed Rule Change, the Exchange is not proposing any amendments to its trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today.[21] Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. As described in the following sections of this filing, the Exchange is proposing certain provisions of the Holdco Articles that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The ISE Holdings board of directors also determined that ownership of ISE Holdings by Holdco is in the best interests of ISE Holdings, its shareholders and the DB U.S. Regulated Subsidiaries. With respect to the interests of the DB U.S. Regulated Subsidiaries, the board of directors of ISE Holdings has noted, among other things, its expectation that the Combination would over time create substantial incremental efficiency and growth opportunities and that the Holdco Group is expected to be a leader in a diverse set of large and growing businesses, including derivatives, listings, cash equities, post-trade settlement and asset servicing, market data and technology servicing.

In addition, neither Holdco, nor any of its related persons, is (1) An ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any ''statutory disqualification.''

An extract with the relevant provisions of the ISE Holdings Bylaws Amendment is attached as Exhibit 5A to the Proposed Rule Change and can be found on the Exchange's Web site and the Commission's Web site.

The Exchange hereby requests that the Commission approve the ISE Holdings Bylaws Amendment and allow Holdco, either alone or with its related persons, to indirectly own 50% of the outstanding common stock of ISE Holdings upon and following the consummation of the Combination.

[16] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

[17] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

[18] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article Fourth, Section III.

[19] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article Fourth, Section III, and Amended and Restated Bylaws of ISE Holdings, Article XI.

[20] 15 U.S.C. 78s(b).

[21] The Exchange has been informed by NYSE Euronext, EDGA and EDGX that the NYSE U.S. Regulated Subsidiaries, EDGA and EDGX, respectively, are also expected to operate in the same manner following the Combination as they operate today. This is addressed in the separate proposed rule change filed by each of the NYSE Exchanges, EDGA and EDGX.

4. Proposed Amendments to Ownership and Voting Restrictions After the Combination

Overview

The Exchange is proposing that, effective as of the completion of the Combination, the Holdco Articles would contain voting and ownership restrictions that restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the votes entitled to be cast on any matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes that may be cast on any matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member).

In addition, the Exchange is proposing that, effective as of the Combination, the voting and ownership restrictions currently in the ISE Holdings Certificate and the ISE Holdings Bylaws, as well as the related waiver provisions set forth therein, would remain in effect, except that they would be modified in certain respects as described herein.[22]

Voting and Ownership Restrictions in Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that no person, either alone or together with its related persons, will be entitled to vote or cause the voting of a number of shares of Holdco, in person or by proxy or through any voting agreement or other arrangement, which represent in the aggregate (1) More than 20% of the then outstanding votes entitled to be cast on such matter; or (2) more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of Holdco (the ''Holdco Voting Restriction'').[23] The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the Holdco Voting Restriction.

In addition, the Holdco Articles would provide that any person who, either alone or together with its related persons, beneficially owns Holdco shares which represent in the aggregate more than 40% of the outstanding votes entitled to be cast on any matter (except that a 20% restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member) (the ''Holdco Ownership Restriction''), will be obligated to offer for sale and to transfer a number of Holdco shares necessary so that such person, together with its related persons, beneficially owns a number of Holdco shares that complies with the Holdco Ownership Restriction (the ''Holdco Transfer Obligation'').[24] If such person(s) fails to comply with the Holdco Transfer Obligation within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco Transfer Obligation.[25]

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco Ownership Restriction (any such person(s), a ''Non-Compliant Owner''), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco Ownership Restriction. Specifically, the Non-Compliant Owner's rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco Ownership Restriction would be suspended for so long as the Holdco Ownership Restriction is exceeded.[26]

Pursuant to Section 2:87a of the Dutch Civil Code, the Non-Compliant Owner may request that an independent expert be appointed to determine the value of the Holdco shares, but such expert will have discretion to determine that the value of the shares is equal to the price received for the shares by the Non-Compliant Owner on any stock exchange where the Holdco shares are listed.[27]

The voting and ownership restrictions will apply to each person unless it (1) Delivers to the Holdco board of directors a written notice of its intention to acquire voting power or ownership in excess of the relevant limitation, and such notice is delivered at least 45 days (or such shorter period as the Holdco board of directors expressly consents to) prior to acquiring Holdco shares in excess of the Holdco Voting Restriction or Holdco Ownership Restriction, and (2) obtains a written confirmation from the Holdco board of directors that the board has expressly resolved to permit such voting or ownership, and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European regulators having appropriate jurisdiction and authority.[28] The Holdco board of directors may waive the Holdco Voting Restriction and Holdco Ownership Restriction if it makes certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate and the ISE Holdings Certificate, respectively.[29]

5. Additional Matters To Be Addressed in the Holdco Articles[30]

Jurisdiction Over Individuals

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco and its directors, and to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries.[31] The Holdco Articles would also provide that, with respect to any such suit,

[22] The current voting and ownership restrictions contained in the certificate of incorporation of ISE Holdings, as well as the related provisions contained in the amended and restated bylaws of U.S. Exchange Holdings and the board resolutions of Deutsche Börse, Eurex Frankfurt AG and other indirect parent entities of the Exchange, would remain in effect. The ISE Trust would also remain unaltered and would continue to have rights to enforce these restrictions.

[23] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.1.

[24] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 35.1 and 35.4.

[25] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.7.

[26] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.6.

[27] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 35.5.

[28] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.2 and 35.2.

[29] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.3 and 35.3.

[30] The Holdco Articles will set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[31] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(c).

action, or proceeding brought by the Commission, Holdco and its directors, officers and employees would (1) Be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceeding relating to NYSE Group or any of its subsidiaries, and ISE Holdings may serve as the U.S. agent for proceedings relating to ISE Holdings or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts or the Commission.[32]

In addition, the Holdco Articles would provide that, so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of Holdco will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[33]

The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.[34] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[35] Furthermore, Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [36] that it will comply with these provisions in the Holdco Articles.

The Exchange anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, each of whom the Commission has direct authority over pursuant to Section 19(h)(4) of the Exchange Act.[37]

Access to Books and Records

Under the Proposed Rule Change, the Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[38] In addition, the Holdco Articles would provide that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.[39] In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.[40]

Additional Matters

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.[41] In addition, Holdco would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.[42] The Holdco Articles would also provide that, in discharging his or her responsibilities as a member of the Holdco board of directors or as an officer or employee of Holdco, each such director, officer or employee will (a) comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration to such matters).[43]

The Holdco Articles would also provide that all confidential information that comes into the possession of Holdco pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) not be made available to any persons other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof; (b) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco; and (c) not be used for any commercial purposes.[44] In addition, the Holdco Articles would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of Holdco to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.[45]

Additionally, the Holdco Articles would provide that, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to

[32] *See id.*

[33] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[34] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[35] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[36] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

[37] 15 U.S.C. 78s(h)(4).

[38] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[39] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(e).

[40] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(g).

[41] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(a).

[42] *See id.*

[43] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(l).

[44] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(h).

[45] *See id.*

carry out its responsibilities under the Exchange Act.[46]

Finally, the Holdco Articles would provide that each director of Holdco would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to (1) Engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.[47] This requirement would not, however, create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters.[48]

In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary.[49] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[50]

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (1) Cooperation with the Commission and such U.S. Regulated Subsidiaries; (2) compliance with U.S. federal securities laws; (3) inspection and copying of Holdco's books, records and premises; (4) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (5) maintenance of books and records in the United States; (6) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (7) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (8) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles. The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

Amendments to the Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that, before any amendment to or repeal of any provision of the Holdco Articles may become effectuated by means of a notarial deed of amendment, the same will be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. These requirements would also apply to any action by Holdco that would have the effect of amending or repealing any provision of the Holdco Articles.

Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy in the form attached hereto as Exhibit 5D, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.[51]

6. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)[52] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1)[53] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)[54]of the Exchange Act because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange expects that the Combination will position the Holdco Group to be a leader in a diverse set of large and growing businesses, including derivatives, listings, cash equities, post-trade settlement and asset servicing, market data and technology servicing. The Exchange believes this will enable the Holdco Group to leverage

[46] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(i).

[47] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[48] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[49] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[50] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[51] *See* File No. SR–NYSE–2011–51.

[52] 15 U.S.C. 78(f)(b).

[53] 15 U.S.C. 78(f)(b)(1).

[54] 15 U.S.C. 78(f)(b)(5).

technology and a unique collection of markets to create a mutually reinforcing capital markets community driving efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients. As a true pacesetter across the spectrum of capital markets services, the Holdco Group would be positioned to offer clients global scale, product innovation, operational and capital efficiencies and an enhanced range of technology and market information solutions.

In addition, the Exchange expects that the Holdco Group would be positioned to serve as a benchmark regulatory model, facilitating transparency and standardization in capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You shouldsubmit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–69 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27195 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65565; File No. SR–EDGX–2011–33]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, Deutsche Börse AG, Will Become a Wholly Owned Subsidiary of Alpha Beta Netherlands Holding N.V.

October 14, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2011, EDGX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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

A. Overview of the Proposed Combination

The Exchange, a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the ''Proposed Rule Change'') to the Commission in connection with the proposed business combination (the ''Combination'') of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (''Deutsche Börse'').

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—the New York Stock Exchange, LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE Amex LLC (''NYSE Amex'')—and (2) 100% of the equity interest of NYSE Market, Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. (''NYSE Arca LLC'') and NYSE Arca Equities, Inc. (''NYSE Arca

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Equities'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the ''NYSE U.S. Regulated Subsidiaries'' and each, a ''NYSE U.S. Regulated Subsidiary''). NYSE, NYSE Arca and NYSE Amex will be separately filing a proposed rule change in connection with the Combination.

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (''ISE Holdings''), which in turn holds 100% of the equity interest of International Securities Exchange, LLC (''ISE''). ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings, LLC (''Direct Edge Holdings''), which in turn indirectly holds 100% of the equity interest of two registered national securities exchanges and self-regulatory organizations—the Exchange and EDGA Exchange, Inc. (''EDGA'') (each of the Exchange, ISE and EDGA, a ''DB Exchange'' and a ''DB U.S. Regulated Subsidiary'' and together, the ''DB Exchanges'' and the ''DB U.S. Regulated Subsidiaries''). ISE and EDGA will be separately filing a proposed rule change in connection with the Combination that will be the substantially the same as the Proposed Rule Change.

If the Combination is completed, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''), will be held under a single, publicly traded holding company organized under the laws of the Netherlands (''Holdco'').[3] The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

B. Summary of Proposed Rule Change

The Exchange is proposing that, pursuant to the Combination, its indirect parent, Deutsche Börse, will become a wholly owned subsidiary of Holdco. In addition, the Exchange is proposing that, in connection with the Combination, the Commission approve certain amendments to the organizational and other governance documents of Holdco and ISE Holdings. The Proposed Rule Change is summarized as follows:

• *Proposed Approval of Waiver of Ownership and Voting Restrictions of ISE Holdings.* The Amended and Restated Certificate of Incorporation of ISE Holdings (the ''ISE Holdings Certificate'') currently restricts any person, either alone or together with its related persons, from having voting control over more than 20% of the outstanding capital stock of ISE Holdings and from owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings). If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to a statutory trust established under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 *et seq.* (''ISE Trust''). The ISE Holdings Certificate and the Amended and Restated Bylaws of ISE Holdings (the ''ISE Holdings Bylaws'') provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if it makes certain findings and the amendment to the ISE Holdings Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act. Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws set forth in Exhibit 5A (the ''ISE Holdings Bylaws Amendment'') in order to permit Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after the Combination. The Exchange is requesting approval by the Commission of the ISE Holdings Bylaws Amendment in order to allow the Combination to take place.

Under the Proposed Rule Change, Holdco would take appropriate steps to incorporate voting and ownership restrictions, requirements relating to submission to jurisdiction, access to books and records and other requirements related to its control of the U.S. Regulated Subsidiaries. Specifically, the Articles of Association of Holdco in effect as of the completion of the Combination (the ''Holdco Articles'') would contain provisions[4] to incorporate these concepts with respect to itself, as well as its directors, officers, employees and agents (as applicable):

• *Voting and Ownership Restrictions in the Holdco Articles.* The Holdco Articles would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the then outstanding votes entitled to be cast on a matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes entitled to be cast on a matter (except that a 20% ownership restriction would apply to any person who is a Member of NYSE[5] (a ''NYSE Member''), a Member[6] of NYSE Amex (including any person who is a related person of such member, an ''Amex Member''), an ETP Holder of NYSE Arca Equities[7] (an ''ETP Holder'') an OTP Holder or OTP Firm of NYSE Arca[8] (an ''OTP Holder'' and ''OTP Firm,'' respectively), a Member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an ''ISE Member''), or a member of EDGA or EDGX (as such terms are defined in the rules of EDGA and EDGX, respectively, an ''EDGA Member'' and ''EDGX Member,'' respectively)). The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any such person(s) exceeds the ownership restriction, it will be required to offer for sale and transfer the number of Holdco shares required to comply with the ownership restriction, and the rights to vote, attend general meetings of Holdco shareholders and receive dividends or other distributions attached to shares held in excess of the 40% threshold (or 20% threshold, if applicable) will be suspended for so long as such threshold is exceeded. If such person(s) fails to comply with the transfer obligation within two weeks, then the Holdco Articles would provide that Holdco will be irrevocably authorized to take actions on behalf of such person(s) in order to cause it to comply with such obligations. The Holdco board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements which are currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the current NYSE Euronext Certificate and the ISE Holdings Certificate, as

[3] Holdco is currently named ''Alpha Beta Netherlands Holding N.V.,'' but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse.

[4] The text of the proposed Holdco Articles is attached to the Proposed Rule Change as Exhibit 5B.

[5] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.3(c).

[6] *See id.*

[7] *See id.*

[8] *See id.*

applicable) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators [9] having appropriate jurisdiction and authority.

• *Jurisdiction.* The Holdco Articles will provide that Holdco and its directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the Holdco Articles would provide that so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary. Furthermore, the Holdco Articles would provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary[10] that it will comply with these provisions of the Holdco Articles.

• *Books and Records.* The Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

• *Amendments to Holdco Articles.* The Holdco Articles would provide that before any amendment to the Holdco Articles may be effectuated by execution of a notarial deed of amendment, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective.

• *Additional Matters.* The Holdco Articles would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of Holdco's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act. In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary. The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco will sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary[11] that it will comply with these provisions of the Holdco Articles.[12]

In addition, Holdco would adopt a Director Independence Policy in the form attached hereto as Exhibit 5D (the ''Holdco Independence Policy''), which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.[13]

The text of the Proposed Rule Change is available at the Exchange, the Commission's Public Reference Room, and on the Web site of the Exchange (*http://www.directedge.com*). The text of Exhibits 5A through 5D of the Proposed Rule Change are also available on the Exchange's Web site and on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

Other than as described herein and set forth in the attached Exhibits 5A through 5D, the Exchange will continue to conduct its regulated activities in the manner currently conducted and will not make any changes to its regulated activities in connection with the Combination. If the Exchange determines to make any such changes, it will seek approval of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[9] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 1.1.

[10] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

[11] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

[12] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[13] *See* File No. SR–NYSE–2011–51.

A. Purpose [sic]

The purpose of this rule filing is to adopt the rules necessary to permit Deutsche Börse to effect the Combination and to amend certain provisions of the organizational and other governance documents of Holdco.

1. Overview of the Combination

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the Combination of NYSE Euronext and Deutsche Börse. The Combination will create a holding company, Holdco, which will hold the businesses of NYSE Euronext and Deutsche Börse. Following the Combination, each of NYSE Euronext and Deutsche Börse will be a separate subsidiary of Holdco. Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide.

Other than as described herein, Holdco and the Exchange will not make any changes to the regulated activities of the DB Exchanges in connection with the Combination, and, other than as described in the separate proposed rule changes filed by each of the NYSE Exchanges in connection with the Combination, Holdco and the NYSE Exchanges will not make any changes to the regulated activities of the NYSE U.S. Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Combination will occur pursuant to the terms of the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011 (as it may be further amended from time to time, the ''Combination Agreement''), by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco (''Merger Sub''). Subject to the terms and conditions set forth in the Combination Agreement and in compliance with applicable law, Holdco has conducted a public exchange offer (the ''Exchange Offer''), in which shareholders of Deutsche Börse have been afforded the opportunity to tender each share of Deutsche Börse for one ordinary share of Holdco (each, a ''Holdco Share'').

Immediately after the time that Holdco accepts for exchange, and exchanges, the Deutsche Börse shares that are validly tendered and not withdrawn in the Exchange Offer, Merger Sub will merge with and into NYSE Euronext, as a result of which NYSE Euronext will become a wholly owned subsidiary of Holdco (the ''Merger''). In the Merger, each outstanding share of NYSE Euronext common stock will be converted into the right to receive 0.47 of a fully paid and non-assessable Holdco Share. NYSE Euronext's obligation to complete the Merger is subject to the completion of the Exchange Offer and the acquisition by Holdco of all of the Deutsche Börse shares validly tendered and not withdrawn in the Exchange Offer. The completion of the Exchange Offer (and, therefore, the completion of the Merger) is subject to the satisfaction of a number of conditions, including that Deutsche Börse shares representing at least 75% of the Deutsche Börse shares outstanding, on a fully diluted basis, must be validly tendered and not withdrawn in the Exchange Offer, and that holders of a majority of the outstanding shares of NYSE Euronext shall have adopted the Combination Agreement. Both of these conditions have been satisfied.

Following the completion of the Exchange Offer, and depending on the percentage of Deutsche Börse shares acquired by Holdco in the Exchange Offer, Deutsche Börse and Holdco intend to complete a post-completion reorganization pursuant to which Holdco will enter into a domination agreement or a combination of a domination agreement and a profit and loss transfer agreement, pursuant to which the remaining shareholders of Deutsche Börse will have limited rights, including a limited ability to participate in the profits of Deutsche Börse.

Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide. Following the Combination, Holdco and its subsidiaries (together, the ''Holdco Group'') expect to serve as a benchmark regulatory model, facilitating transparency and harmonization of capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks and their respective brand names.

2. Overview of the Holdco Group Following the Combination

Following the Combination, Holdco will be a for-profit, publicly traded corporation formed under the laws of The Netherlands and will act as the holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold all of the equity interests in NYSE Euronext, which holds (1) 100% of the equity interest of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom). Holdco will also hold a majority of the equity interests in Deutsche Börse, which indirectly holds 50% of the equity interest of ISE Holdings (which, in turn, holds (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings indirectly holds 100% of the equity interest of the Exchange and EDGA. Holdco intends to list its ordinary shares on the New York Stock Exchange, the Frankfurt Stock Exchange and Euronext Paris. The Holdco Group will have dual headquarters in Frankfurt and New York.

After the Combination, NYSE Group will continue to be directly wholly owned by NYSE Euronext and will continue to directly or indirectly own the three NYSE Exchanges—NYSE, NYSE Arca and NYSE Amex—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYSE Group, oversees FINRA's performance of certain market surveillance and enforcement functions for NYSE Euronext's U.S. securities exchanges, enforces listed company compliance with applicable standards, and oversees regulatory policy determinations, rule

interpretation and regulation related rule development.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, The Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des Services et Marchés Financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*—CMVM) and the U.K. Financial Services Authority (FSA).

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of the Exchange will be preserved. Specifically, after the Combination, Direct Edge Holdings' businesses and assets will continue to be structured as follows:

- The Exchange will remain an indirect wholly owned subsidiary of Direct Edge Holdings, with ISE Holdings and Deutsche Börse holding equity interests of 31.54% and 15.77%, respectively.
- The Combination will have no effect on the ability of any party to trade securities on the Exchange, ISE or EDGA.

Similarly, Deutsche Börse and its subsidiaries, and NYSE Euronext and its subsidiaries, will continue to conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

Holdco acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, it will be responsible for referring such possible violations to the Exchange.

3. Proposed Approval of Waiver of Voting and Ownership Restrictions of ISE Holdings

Article FOURTH, Section III of the current ISE Holdings Certificate provides that (1) no person, either alone or together with its ''related persons'' (as defined in the ISE Holdings Certificate), may be entitled to vote or cause the voting of shares of ISE Holdings at any time, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, to the extent that such shares represent more than 20% of the voting power of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, at any time, directly, indirectly or pursuant to any voting trust, may enter into any agreement, plan or other arrangement with any other person, either alone or together with its related persons, under circumstances which would result in the voting shares that shall be subject to such agreement, plan or other arrangement not being voted on any matter or matters or the withholding of any proxy relating thereto, where the effect of such agreement, plan or arrangement would be to enable any person, either alone or together with its related persons, to possess more than 20% of the voting power of the then outstanding votes entitled to be cast on any such matter (the ''ISE Holdings Voting Restriction'').[14] If any person, either alone or together with its related persons, acquires voting power in excess of the ISE Holdings Voting Restriction, the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Voting Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding *pro rata* from the holders thereof.

In addition, the ISE Holdings Certificate provides that no person, either alone or together with its related persons, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing more than 40% of the then outstanding votes entitled to be cast on any matter and no person who is a member of the Exchange, either alone or together with its related person, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing in the more than 20% of the then outstanding votes entitled to be cast on any matter (the ''ISE Holdings Ownership Restriction'').[15] If any person, either alone or together with its related persons, owns shares of ISE Holdings in excess of the ISE Holdings Ownership Restriction, then the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Ownership Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding *pro rata* from the holders thereof.[16]

The ISE Holdings board of directors may waive the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction pursuant to an amendment to the ISE Holdings Bylaws adopted by the ISE Holdings board of directors, if in connection with the adoption of such amendment, the board of directors in its sole discretion adopts a resolution stating that it is the determination of the board of directors that such amendment:

- Will not impair the ability of ISE Holdings and any of the DB U.S. Regulated Subsidiaries, or facility thereof, to carry out their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- Is otherwise in the best interest of ISE Holdings, its stockholders and the DB U.S. Regulated Subsidiaries;
- Will not impair the Commission's ability to enforce the Exchange Act;
- For so long as ISE Holdings directly or indirectly controls the Exchange, neither such person nor any of its related persons is an ISE Member, EDGA Member or EDGX Member; and
- Neither such person nor any of its related persons is subject to any ''statutory disqualification'' (as such term is defined in Section 3(a)(39) of the Exchange Act).[17]

Such amendment shall not be effective unless it has been filed with and approved by the Commission under Section 19(b) of the Exchange Act[18] and has become effective thereunder.

In order to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings upon consummation of the Combination, Holdco has delivered written notice to the board of directors of ISE Holdings

[14] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

[15] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

[16] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

[17] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III, and Amended and Restated Bylaws of ISE Holdings, Article XI.

[18] 15 U.S.C. 78s(b).

pursuant to the procedures set forth in the ISE Holdings Certificate requesting approval of its voting and ownership of ISE Holdings shares in excess of the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of ISE Holdings that neither it, nor any of its related persons, is (1) an ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any ''statutory disqualification.''

At a meeting duly convened on September 16, 2011, the board of directors of ISE Holdings adopted the ISE Holdings Bylaws Amendment to permit Holdco, either alone or together with its related persons, to exceed the ISE Holdings Ownership Restriction and the ISE Holdings Voting Restriction. In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations set forth above and approved the submission of this Proposed Rule Change to the Commission. The Exchange will continue to operate and regulate its market and members exactly as it has done prior to the Combination. Except as set forth in this Proposed Rule Change, the Exchange is not proposing any amendments to its trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today.[19] Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. As described in the following sections of this filing, the Exchange is proposing certain provisions of the Holdco Articles that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary. The ISE Holdings board of directors also determined that ownership of ISE Holdings by Holdco is in the best interests of ISE Holdings, its shareholders and the DB U.S. Regulated Subsidiaries.

In addition, neither Holdco, nor any of its related persons, is (1) an ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any ''statutory disqualification.''

An extract with the relevant provisions of the ISE Holdings Bylaws Amendment is attached as Exhibit 5A to the Proposed Rule Change and can be found on the Exchange's Web site and the Commission's Web site.

The Exchange hereby requests that the Commission approve the ISE Holdings Bylaws Amendment and allow Holdco, either alone or with its related persons, to indirectly own 50% of the outstanding common stock of ISE Holdings upon and following the consummation of the Combination.

4. Proposed Amendments to Ownership and Voting Restrictions After the Combination

Overview

The Exchange is proposing that, effective as of the completion of the Combination, the Holdco Articles would contain voting and ownership restrictions that restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the votes entitled to be cast on any matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes that may be cast on any matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member).

In addition, the Exchange is proposing that, effective as of the Combination, the voting and ownership restrictions currently in the Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings (''Direct Edge Holdings Operating Agreement'') would remain in effect.[20]

Voting and Ownership Restrictions in Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that no person, either alone or together with its related persons, will be entitled to vote or cause the voting of a number of shares of Holdco, in person or by proxy or through any voting agreement or other arrangement, which represent in the aggregate (1) more than 20% of the then outstanding votes entitled to be cast on such matter; or (2) more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of Holdco (the ''Holdco Voting Restriction'').[21] The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the Holdco Voting Restriction.

In addition, the Holdco Articles would provide that any person who, either alone or together with its related persons, beneficially owns Holdco shares which represent in the aggregate more than 40% of the outstanding votes entitled to be cast on any matter (except that a 20% restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member) (the ''Holdco Ownership Restriction''), will be obligated to offer for sale and to transfer a number of Holdco shares necessary so that such person, together with its related persons, beneficially owns a number of Holdco shares that complies with the Holdco Ownership Restriction (the ''Holdco Transfer Obligation'').[22] If such person(s) fails to comply with the Holdco Transfer Obligation within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco Transfer Obligation.[23]

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco Ownership Restriction (any such person(s), a ''Non-Compliant Owner''), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco Ownership Restriction. Specifically, the Non-Compliant Owner's rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco Ownership Restriction would be

[19] The Exchange has been informed by NYSE Euronext, EDGA and EDGX [sic] that the NYSE U.S. Regulated Subsidiaries, EDGA and EDGX [sic], respectively, are also expected to operate in the same manner following the Combination as they operate today. This is addressed in the separate proposed rule change filed by each of the NYSE Exchanges, EDGA and EDGX [sic].

[20] The current voting and ownership restrictions contained in the Direct Edge Holdings Operating Agreement and the ISE Holdings Certificate, as well as the related provisions contained in the amended and restated bylaws of U.S. Exchange Holdings and the board resolutions of Deutsche Börse, Eurex Frankfurt AG and other indirect parent entities of the Exchange, would remain in effect. The ISE Trust would also remain unaltered and would continue to have rights to enforce these restrictions.

[21] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.1.

[22] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 35.1 and 35.4.

[23] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.7.

suspended for so long as the Holdco Ownership Restriction is exceeded.[24]

Pursuant to Section 2:87a of the Dutch Civil Code, the Non-Compliant Owner may request that an independent expert be appointed to determine the value of the Holdco shares, but such expert will have discretion to determine that the value of the shares is equal to the price received for the shares by the Non-Compliant Owner on any stock exchange where the Holdco shares are listed.[25]

The voting and ownership restrictions will apply to each person unless it (1) delivers to the Holdco board of directors a written notice of its intention to acquire voting power or ownership in excess of the relevant limitation, and such notice is delivered at least 45 days (or such shorter period as the Holdco board or directors expressly consents to) prior to acquiring Holdco shares in excess of the Holdco Voting Restriction or Holdco Ownership Restriction, and (2) obtains a written confirmation from the Holdco board of directors that the board has expressly resolved to permit such voting or ownership, and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European regulators having appropriate jurisdiction and authority.[26] The Holdco board of directors may waive the Holdco Voting Restriction and Holdco Ownership Restriction if it makes certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate and the ISE Holdings Certificate, respectively.[27]

5. Additional Matters To Be Addressed in the Holdco Articles [28]

Jurisdiction Over Individuals

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco and its directors, and to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries.[29] The Holdco Articles would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, Holdco and its directors, officers and employees would (1) be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceeding relating to NYSE Group or any of its subsidiaries, and ISE Holdings may serve as the U.S. agent for proceedings relating to ISE Holdings or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts or the Commission.[30]

In addition, the Holdco Articles would provide that, so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of Holdco will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[31]

The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.[32] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[33] Furthermore, Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [34] that it will comply with these provisions in the Holdco Articles.

The Exchange anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, each of whom the Commission has direct authority over pursuant Section 19(h)(4) of the Exchange Act.[35]

Access to Books and Records

Under the Proposed Rule Change, the Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[36] In addition, the Holdco Articles would provide that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.[37] In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.[38]

Additional Matters

Under the Proposed Rule Change, the Holdco Articles would provide that

[24] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.6.

[25] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 35.5.

[26] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.2 and 35.2.

[27] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.3 and 35.3.

[28] The Holdco Articles will set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[29] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(c).

[30] *See id.*

[31] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[32] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[33] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[34] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

[35] 15 U.S.C. 78s(h)(4).

[36] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[37] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(e).

[38] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(g).

Holdco will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.[39] In addition, Holdco would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.[40] The Holdco Articles would also provide that, in discharging his or her responsibilities as a member of the Holdco board of directors or as an officer or employee of Holdco, each such director, officer or employee will (a) comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration to such matters).[41]

The Holdco Articles would also provide that all confidential information that comes into the possession of Holdco pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) not be made available to any persons other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof; (b) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco; and (c) not be used for any commercial purposes.[42] In addition, the Holdco Articles would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of Holdco to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.[43]

Additionally, the Holdco Articles would provide that, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.[44]

Finally, the Holdco Articles would provide that each director of Holdco would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to (1) engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.[45] This requirement would not, however, create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters.[46]

In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary.[47] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[48]

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (1) cooperation with the Commission and such U.S. Regulated Subsidiaries; (2) compliance with U.S. federal securities laws; (3) inspection and copying of Holdco's books, records and premises; (4) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (5) maintenance of books and records in the United States; (6) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (7) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (8) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles. The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

Amendments to the Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that, before any amendment to or repeal of any provision of the Holdco Articles may become effectuated by means of a notarial deed of amendment, the same will be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. These requirements would also apply to any action by Holdco that would have the

[39] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(a).

[40] *See id.*

[41] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(l).

[42] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(h).

[43] *See id.*

[44] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(i).

[45] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[46] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[47] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[48] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

effect of amending or repealing any provision of the Holdco Articles.

Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy in the form attached hereto as Exhibit 5D, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.[49]

6. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)[50] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1)[51] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)[52] of the Exchange Act because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not expect that the Combination will impact the current operations of the Exchange. However, the Exchange believes that by incorporating Holdco's governance documents as part of the proposed rule filing, investors will be better apprised of Holdco's proposed indirect ownership interest in the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2011–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–33. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–33 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27194 Filed 10–19–11; 8:45 am]

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[49] *See* File No. SR–NYSE–2011–51.

[50] 15 U.S.C. 78(f)(b).

[51] 15 U.S.C. 78(f)(b)(1).

[52] 15 U.S.C. 78(f)(b)(5).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65564; File No. SR–EDGA–2011–34]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, Deutsche Börse AG, Will Become a Wholly Owned Subsidiary of Alpha Beta Netherlands Holding N.V.

October 14, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b-4 thereunder,[2] notice is hereby given that on October 12, 2011, EDGA Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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

A. Overview of the Proposed Combination

The Exchange, a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the ''Proposed Rule Change'') to the Commission in connection with the proposed business combination (the ''Combination'') of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (''Deutsche Börse'').

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—the New York Stock Exchange, LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE Amex LLC (''NYSE Amex'')—and (2) 100% of the equity interest of NYSE Market, Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. (''NYSE Arca LLC'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the ''NYSE U.S. Regulated Subsidiaries'' and each, a ''NYSE U.S. Regulated Subsidiary''). NYSE, NYSE Arca and NYSE Amex will be separately filing a proposed rule change in connection with the Combination.

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (''ISE Holdings''), which in turn holds 100% of the equity interest of International Securities Exchange, LLC (''ISE''). ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings, LLC (''Direct Edge Holdings''), which in turn indirectly holds 100% of the equity interest of two registered national securities exchanges and self-regulatory organizations—the Exchange and EDGX Exchange, Inc. (''EDGX'') (each of the Exchange, ISE and EDGX, a ''DB Exchange'' and a ''DB U.S. Regulated Subsidiary'' and together, the ''DB Exchanges'' and the ''DB U.S. Regulated Subsidiaries''). ISE and EDGX will be separately filing a proposed rule change in connection with the Combination that will be the substantially the same as the Proposed Rule Change.

If the Combination is completed, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''), will be held under a single, publicly traded holding company organized under the laws of the Netherlands (''Holdco'').[3] The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

B. Summary of Proposed Rule Change

The Exchange is proposing that, pursuant to the Combination, its indirect parent, Deutsche Börse, will become a wholly owned subsidiary of Holdco. In addition, the Exchange is proposing that, in connection with the Combination, the Commission approve certain amendments to the organizational and other governance documents of Holdco and ISE Holdings. The Proposed Rule Change is summarized as follows:

• *Proposed Approval of Waiver of Ownership and Voting Restrictions of ISE Holdings.* The Amended and Restated Certificate of Incorporation of ISE Holdings (the ''ISE Holdings Certificate'') currently restricts any person, either alone or together with its related persons, from having voting control over more than 20% of the outstanding capital stock of ISE Holdings and from owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings). If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to a statutory trust established under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 *et seq.* (''ISE Trust''). The ISE Holdings Certificate and the Amended and Restated Bylaws of ISE Holdings (the ''ISE Holdings Bylaws'') provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if it makes certain findings and the amendment to the ISE Holdings Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act. Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws set forth in Exhibit 5A (the ''ISE Holdings Bylaws Amendment'') in order to permit Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after the Combination. The Exchange is requesting approval by the Commission of the ISE Holdings Bylaws Amendment in order to allow the Combination to take place.

Under the Proposed Rule Change, Holdco would take appropriate steps to incorporate voting and ownership restrictions, requirements relating to submission to jurisdiction, access to books and records and other requirements related to its control of the U.S. Regulated Subsidiaries. Specifically, the Articles of Association of Holdco in effect as of the completion of the Combination (the ''Holdco Articles'') would contain provisions [4] to incorporate these concepts with respect to itself, as well as its directors, officers, employees and agents (as applicable):

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Holdco is currently named ''Alpha Beta Netherlands Holding N.V.,'' but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse.

[4] The text of the proposed Holdco Articles is attached to the Proposed Rule Change as Exhibit 5B.

• *Voting and Ownership Restrictions in the Holdco Articles.* The Holdco Articles would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the then outstanding votes entitled to be cast on a matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes entitled to be cast on a matter (except that a 20% ownership restriction would apply to any person who is a Member of NYSE [5] (a ''NYSE Member''), a Member [6] of NYSE Amex (including any person who is a related person of such member, an ''Amex Member''), an ETP Holder of NYSE Arca Equities [7] (an ''ETP Holder'') an OTP Holder or OTP Firm of NYSE Arca [8] (an ''OTP Holder'' and ''OTP Firm,'' respectively), a Member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an ''ISE Member''), or a member of EDGA or EDGX (as such terms are defined in the rules of EDGA and EDGX, respectively, an ''EDGA Member'' and ''EDGX Member,'' respectively)). The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any such person(s) exceeds the ownership restriction, it will be required to offer for sale and transfer the number of Holdco shares required to comply with the ownership restriction, and the rights to vote, attend general meetings of Holdco shareholders and receive dividends or other distributions attached to shares held in excess of the 40% threshold (or 20% threshold, if applicable) will be suspended for so long as such threshold is exceeded. If such person(s) fails to comply with the transfer obligation within two weeks, then the Holdco Articles would provide that Holdco will be irrevocably authorized to take actions on behalf of such person(s) in order to cause it to comply with such obligations. The Holdco board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements which are currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the current NYSE Euronext Certificate and the ISE Holdings Certificate, as applicable) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators [9] having appropriate jurisdiction and authority.

• *Jurisdiction.* The Holdco Articles will provide that Holdco and its directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, will be deemed to irrevocably submit to the jurisdiction of the U.S. Federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. Federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the Holdco Articles would provide that so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary. Furthermore, the Holdco Articles would provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [10] that it will comply with these provisions of the Holdco Articles.

• *Books and Records.* The Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

• *Amendments to Holdco Articles.* The Holdco Articles would provide that before any amendment to the Holdco Articles may be effectuated by execution of a notarial deed of amendment, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective.

• *Additional Matters.* The Holdco Articles would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of Holdco's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act. In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary. The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with

[5] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.3(c).

[6] *See id.*

[7] *See id.*

[8] *See id.*

[9] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 1.1.

[10] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco will sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [11] that it will comply with these provisions of the Holdco Articles.[12]

In addition, Holdco would adopt a Director Independence Policy in the form attached hereto as Exhibit 5D (the ''Holdco Independence Policy''), which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.[13]

The text of the Proposed Rule Change is available at the Exchange, the Commission's Public Reference Room, and on the Web site of the Exchange (*http://www.directedge.com*). The text of Exhibits 5A through 5D of the Proposed Rule Change are also available on the Exchange's Web site and on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

Other than as described herein and set forth in the attached Exhibits 5A through 5D, the Exchange will continue to conduct its regulated activities in the manner currently conducted and will not make any changes to its regulated activities in connection with the Combination. If the Exchange determines to make any such changes, it will seek approval of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Purpose [sic]

The purpose of this rule filing is to adopt the rules necessary to permit Deutsche Börse to effect the Combination and to amend certain provisions of the organizational and other governance documents of Holdco.

1. Overview of the Combination

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the Combination of NYSE Euronext and Deutsche Börse. The Combination will create a holding company, Holdco, which will hold the businesses of NYSE Euronext and Deutsche Börse. Following the Combination, each of NYSE Euronext and Deutsche Börse will be a separate subsidiary of Holdco. Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide.

Other than as described herein, Holdco and the Exchange will not make any changes to the regulated activities of the DB Exchanges in connection with the Combination, and, other than as described in the separate proposed rule changes filed by each of the NYSE Exchanges in connection with the Combination, Holdco and the NYSE Exchanges will not make any changes to the regulated activities of the NYSE U.S. Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Combination will occur pursuant to the terms of the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011 (as it may be further amended from time to time, the ''Combination Agreement''), by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco (''Merger Sub''). Subject to the terms and conditions set forth in the Combination Agreement and in compliance with applicable law, Holdco has conducted a public exchange offer (the ''Exchange Offer''), in which shareholders of Deutsche Börse have been afforded the opportunity to tender each share of Deutsche Börse for one ordinary share of Holdco (each, a ''Holdco Share'').

Immediately after the time that Holdco accepts for exchange, and exchanges, the Deutsche Börse shares that are validly tendered and not withdrawn in the Exchange Offer, Merger Sub will merge with and into NYSE Euronext, as a result of which NYSE Euronext will become a wholly owned subsidiary of Holdco (the ''Merger''). In the Merger, each outstanding share of NYSE Euronext common stock will be converted into the right to receive 0.47 of a fully paid and non-assessable Holdco Share. NYSE Euronext's obligation to complete the Merger is subject to the completion of the Exchange Offer and the acquisition by Holdco of all of the Deutsche Börse shares validly tendered and not withdrawn in the Exchange Offer. The completion of the Exchange Offer (and, therefore, the completion of the Merger) is subject to the satisfaction of a number of conditions, including that Deutsche Börse shares representing at least 75% of the Deutsche Börse shares outstanding, on a fully diluted basis, must be validly tendered and not withdrawn in the Exchange Offer, and that holders of a majority of the outstanding shares of NYSE Euronext shall have adopted the Combination Agreement. Both of these conditions have been satisfied.

Following the completion of the Exchange Offer, and depending on the percentage of Deutsche Börse shares acquired by Holdco in the Exchange Offer, Deutsche Börse and Holdco intend to complete a post-completion reorganization pursuant to which Holdco will enter into a domination agreement or a combination of a domination agreement and a profit and loss transfer agreement, pursuant to which the remaining shareholders of Deutsche Börse will have limited rights, including a limited ability to participate in the profits of Deutsche Börse.

Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local

[11] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

[12] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[13] *See* File No. SR–NYSE–2011–51.

customers worldwide. Following the Combination, Holdco and its subsidiaries (together, the ''Holdco Group'') expect to serve as a benchmark regulatory model, facilitating transparency and harmonization of capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks and their respective brand names.

2. Overview of the Holdco Group Following the Combination

Following the Combination, Holdco will be a for-profit, publicly traded corporation formed under the laws of The Netherlands and will act as the holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold all of the equity interests in NYSE Euronext, which holds (1) 100% of the equity interest of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom). Holdco will also hold a majority of the equity interests in Deutsche Börse, which indirectly holds 50% of the equity interest of ISE Holdings (which, in turn, holds (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings indirectly holds 100% of the equity interest of the Exchange and EDGX. Holdco intends to list its ordinary shares on the New York Stock Exchange, the Frankfurt Stock Exchange and Euronext Paris. The Holdco Group will have dual headquarters in Frankfurt and New York.

After the Combination, NYSE Group will continue to be directly wholly owned by NYSE Euronext and will continue to directly or indirectly own the three NYSE Exchanges—NYSE, NYSE Arca and NYSE Amex—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYSE Group, oversees FINRA's performance of certain market surveillance and enforcement functions for NYSE Euronext's U.S. securities exchanges, enforces listed company compliance with applicable standards, and oversees regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, The Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten), the Belgian Financial Services and Markets Authority (Autorité des Services et Marchés Financiers), the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários—CMVM) and the U.K. Financial Services Authority (FSA).

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of the Exchange will be preserved. Specifically, after the Combination, Direct Edge Holdings' businesses and assets will continue to be structured as follows:

- The Exchange will remain an indirect wholly owned subsidiary of Direct Edge Holdings, with ISE Holdings and Deutsche Börse holding equity interests of 31.54% and 15.77%, respectively.
- The Combination will have no effect on the ability of any party to trade securities on the Exchange, ISE or EDGX.

Similarly, Deutsche Börse and its subsidiaries, and NYSE Euronext and its subsidiaries, will continue to conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

Holdco acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, it will be responsible for referring such possible violations to the Exchange.

3. Proposed Approval of Waiver of Voting and Ownership Restrictions of ISE Holdings

Article FOURTH, Section III of the current ISE Holdings Certificate provides that (1) No person, either alone or together with its ''related persons'' (as defined in the ISE Holdings Certificate), may be entitled to vote or cause the voting of shares of ISE Holdings at any time, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, to the extent that such shares represent more than 20% of the voting power of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, at any time, directly, indirectly or pursuant to any voting trust, may enter into any agreement, plan or other arrangement with any other person, either alone or together with its related persons, under circumstances which would result in the voting shares that shall be subject to such agreement, plan or other arrangement not being voted on any matter or matters or the withholding of any proxy relating thereto, where the effect of such agreement, plan or arrangement would be to enable any person, either alone or together with its related persons, to possess more than 20% of the voting power of the then outstanding votes entitled to be cast on any such matter (the ''ISE Holdings Voting Restriction'').[14] If any person, either alone or together with its related persons, acquires voting power in excess of the ISE Holdings Voting Restriction, the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Voting Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding *pro rata* from the holders thereof.

In addition, the ISE Holdings Certificate provides that no person, either alone or together with its related persons, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing more than 40% of the then outstanding votes entitled to be cast on any matter and no person who is a member of the Exchange, either alone or together with its related person, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing in the more than 20% of the then outstanding votes entitled to be

[14] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

cast on any matter (the ''ISE Holdings Ownership Restriction'').[15] If any person, either alone or together with its related persons, owns shares of ISE Holdings in excess of the ISE Holdings Ownership Restriction, then the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Ownership Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding *pro rata* from the holders thereof.[16]

The ISE Holdings board of directors may waive the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction pursuant to an amendment to the ISE Holdings Bylaws adopted by the ISE Holdings board of directors, if in connection with the adoption of such amendment, the board of directors in its sole discretion adopts a resolution stating that it is the determination of the board of directors that such amendment:

- Will not impair the ability of ISE Holdings and any of the DB U.S. Regulated Subsidiaries, or facility thereof, to carry out their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- Is otherwise in the best interest of ISE Holdings, its stockholders and the DB U.S. Regulated Subsidiaries;
- Will not impair the Commission's ability to enforce the Exchange Act;
- For so long as ISE Holdings directly or indirectly controls the Exchange, neither such person nor any of its related persons is an ISE Member, EDGA Member or EDGX Member; and
- Neither such person nor any of its related persons is subject to any ''statutory disqualification'' (as such term is defined in Section 3(a)(39) of the Exchange Act).[17]

Such amendment shall not be effective unless it has been filed with and approved by the Commission under Section 19(b) of the Exchange Act[18] and has become effective thereunder.

In order to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings upon consummation of the Combination, Holdco has delivered written notice to the board of directors of ISE Holdings pursuant to the procedures set forth in the ISE Holdings Certificate requesting approval of its voting and ownership of ISE Holdings shares in excess of the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of ISE Holdings that neither it, nor any of its related persons, is (1) An ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any ''statutory disqualification.''

At a meeting duly convened on September 16, 2011, the board of directors of ISE Holdings adopted the ISE Holdings Bylaws Amendment to permit Holdco, either alone or together with its related persons, to exceed the ISE Holdings Ownership Restriction and the ISE Holdings Voting Restriction. In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations set forth above and approved the submission of this Proposed Rule Change to the Commission. The Exchange will continue to operate and regulate its market and members exactly as it has done prior to the Combination. Except as set forth in this Proposed Rule Change, the Exchange is not proposing any amendments to its trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today.[19] Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. As described in the following sections of this filing, the Exchange is proposing certain provisions of the Holdco Articles that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary. The ISE Holdings board of directors also determined that ownership of ISE Holdings by Holdco is in the best interests of ISE Holdings, its shareholders and the DB U.S. Regulated Subsidiaries.

In addition, neither Holdco, nor any of its related persons, is (1) An ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any ''statutory disqualification.''

An extract with the relevant provisions of the ISE Holdings Bylaws Amendment is attached as Exhibit 5A to the Proposed Rule Change and can be found on the Exchange's Web site and the Commission's Web site.

The Exchange hereby requests that the Commission approve the ISE Holdings Bylaws Amendment and allow Holdco, either alone or with its related persons, to indirectly own 50% of the outstanding common stock of ISE Holdings upon and following the consummation of the Combination.

4. Proposed Amendments to Ownership and Voting Restrictions After the Combination

Overview

The Exchange is proposing that, effective as of the completion of the Combination, the Holdco Articles would contain voting and ownership restrictions that restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the votes entitled to be cast on any matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes that may be cast on any matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member).

In addition, the Exchange is proposing that, effective as of the Combination, the voting and ownership restrictions currently in the Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings (''Direct Edge Holdings Operating Agreement'') would remain in effect.[20]

Voting and Ownership Restrictions in Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that no

[15] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

[16] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

[17] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III, and Amended and Restated Bylaws of ISE Holdings, Article XI.

[18] 15 U.S.C. 78s(b).

[19] The Exchange has been informed by NYSE Euronext, EDGA [sic] and EDGX that the NYSE U.S. Regulated Subsidiaries, EDGA [sic] and EDGX, respectively, are also expected to operate in the same manner following the Combination as they operate today. This is addressed in the separate proposed rule change filed by each of the NYSE Exchanges, EDGA [sic] and EDGX.

[20] The current voting and ownership restrictions contained in the Direct Edge Holdings Operating Agreement and the ISE Holdings Certificate, as well as the related provisions contained in the amended and restated bylaws of U.S. Exchange Holdings and the board resolutions of Deutsche Börse, Eurex Frankfurt AG and other indirect parent entities of the Exchange, would remain in effect. The ISE Trust would also remain unaltered and would continue to have rights to enforce these restrictions.

person, either alone or together with its related persons, will be entitled to vote or cause the voting of a number of shares of Holdco, in person or by proxy or through any voting agreement or other arrangement, which represent in the aggregate (1) More than 20% of the then outstanding votes entitled to be cast on such matter; or (2) more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of Holdco (the ''Holdco Voting Restriction'').[21] The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the Holdco Voting Restriction.

In addition, the Holdco Articles would provide that any person who, either alone or together with its related persons, beneficially owns Holdco shares which represent in the aggregate more than 40% of the outstanding votes entitled to be cast on any matter (except that a 20% restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member) (the ''Holdco Ownership Restriction''), will be obligated to offer for sale and to transfer a number of Holdco shares necessary so that such person, together with its related persons, beneficially owns a number of Holdco shares that complies with the Holdco Ownership Restriction (the ''Holdco Transfer Obligation'').[22] If such person(s) fails to comply with the Holdco Transfer Obligation within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco Transfer Obligation.[23]

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco Ownership Restriction (any such person(s), a ''Non-Compliant Owner''), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco Ownership Restriction. Specifically, the Non-Compliant Owner's rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco Ownership Restriction would be suspended for so long as the Holdco Ownership Restriction is exceeded.[24]

Pursuant to Section 2:87a of the Dutch Civil Code, the Non-Compliant Owner may request that an independent expert be appointed to determine the value of the Holdco shares, but such expert will have discretion to determine that the value of the shares is equal to the price received for the shares by the Non-Compliant Owner on any stock exchange where the Holdco shares are listed.[25]

The voting and ownership restrictions will apply to each person unless it (1) Delivers to the Holdco board of directors a written notice of its intention to acquire voting power or ownership in excess of the relevant limitation, and such notice is delivered at least 45 days (or such shorter period as the Holdco board or directors expressly consents to) prior to acquiring Holdco shares in excess of the Holdco Voting Restriction or Holdco Ownership Restriction, and (2) obtains a written confirmation from the Holdco board of directors that the board has expressly resolved to permit such voting or ownership, and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European regulators having appropriate jurisdiction and authority.[26] The Holdco board of directors may waive the Holdco Voting Restriction and Holdco Ownership Restriction if it makes certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate and the ISE Holdings Certificate, respectively.[27]

5. Additional Matters To Be Addressed in the Holdco Articles[28]

Jurisdiction Over Individuals

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco and its directors, and to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries.[29] The Holdco Articles would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, Holdco and its directors, officers and employees would (1) Be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceeding relating to NYSE Group or any of its subsidiaries, and ISE Holdings may serve as the U.S. agent for proceedings relating to ISE Holdings or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts or the Commission.[30]

In addition, the Holdco Articles would provide that, so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of Holdco will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[31]

The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to

[21] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.1.

[22] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 35.1 and 35.4.

[23] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.7.

[24] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.6.

[25] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.5.

[26] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.2 and 35.2.

[27] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.3 and 35.3.

[28] The Holdco Articles will set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[29] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(c).

[30] *See id.*

[31] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

any U.S. Regulated Subsidiary.[32] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[33] Furthermore, Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [34] that it will comply with these provisions in the Holdco Articles.

The Exchange anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, each of whom the Commission has direct authority over pursuant Section 19(h)(4) of the Exchange Act.[35]

Access to Books and Records

Under the Proposed Rule Change, the Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[36] In addition, the Holdco Articles would provide that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.[37] In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.[38]

Additional Matters

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.[39] In addition, Holdco would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.[40] The Holdco Articles would also provide that, in discharging his or her responsibilities as a member of the Holdco board of directors or as an officer or employee of Holdco, each such director, officer or employee will (a) Comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration to such matters).[41]

The Holdco Articles would also provide that all confidential information that comes into the possession of Holdco pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) Not be made available to any persons other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof; (b) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco; and (c) not be used for any commercial purposes.[42] In addition, the Holdco Articles would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) The rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of Holdco to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.[43]

Additionally, the Holdco Articles would provide that, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.[44]

Finally, the Holdco Articles would provide that each director of Holdco would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of (a) The U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to (1) Engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.[45] This requirement would not, however, create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters.[46]

In addition, the Holdco Articles would provide that Holdco will take

[32] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[33] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[34] The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

[35] 15 U.S.C. 78s(h)(4).

[36] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[37] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(e).

[38] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(g).

[39] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(a).

[40] *See id.*

[41] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(l).

[42] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(h).

[43] *See id.*

[44] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(i).

[45] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[46] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary.[47] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[48]

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (1) Cooperation with the Commission and such U.S. Regulated Subsidiaries; (2) compliance with U.S. federal securities laws; (3) inspection and copying of Holdco's books, records and premises; (4) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (5) maintenance of books and records in the United States; (6) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (7) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (8) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles. The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

Amendments to the Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that, before any amendment to or repeal of any provision of the Holdco Articles may become effectuated by means of a notarial deed of amendment, the same will be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. These requirements would also apply to any action by Holdco that would have the effect of amending or repealing any provision of the Holdco Articles.

Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy in the form attached hereto as Exhibit 5D, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the Combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.[49]

6. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)[50] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1)[51] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)[52] of the Exchange Act because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not expect that the Combination will impact the current operations of the Exchange. However, the Exchange believes that by incorporating Holdco's governance documents as part of the proposed rule filing, investors will be better apprised of Holdco's proposed indirect ownership interest in the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[47] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[48] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[49] *See* File No. SR–NYSE–2011–51.

[50] 15 U.S.C. 78(f)(b).

[51] 15 U.S.C. 78(f)(b)(1).

[52] 15 U.S.C. 78(f)(b)(5).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–34 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2011–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–34 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27193 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65563; File No. SR–NYSEAMEX–2011–78]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of Alpha Beta Netherlands Holding N.V.

October 14, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2011, NYSE Amex LLC (the ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by NYSE Amex. 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

A. Overview of the Proposed Combination

NYSE Amex, a Delaware limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the ''Proposed Rule Change'') to the Commission in connection with the proposed business combination (the ''Combination'') of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (''Deutsche Börse'').

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—NYSE Amex, NYSE Arca, Inc. (''NYSE Arca'') and New York Stock Exchange LLC (''Exchange'')—and (2) 100% of the equity interest of NYSE Market, Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. (''NYSE Arca LLC'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the ''NYSE U.S. Regulated Subsidiaries'' and each, an ''NYSE U.S. Regulated Subsidiary''). The Exchange and NYSE Arca will be separately filing a proposed rule change in connection with the Combination that will be substantially the same as the Proposed Rule Change.

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (''ISE Holdings''), which in turn holds 100% of the equity interest of International Securities Exchange, LLC (''ISE''), a registered national securities exchange and self-regulatory organization. ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings, LLC (''Direct Edge Holdings''), which in turn indirectly holds 100% of the equity interest of two registered national securities exchanges and self-regulatory organizations—EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') (each of ISE, EDGA and EDGX, a ''DB Exchange'' and a ''DB U.S. Regulated Subsidiary'' and together, the ''DB Exchanges'' and the ''DB U.S. Regulated Subsidiaries''). The DB Exchanges will be separately filing a proposed rule change in connection with the Combination.

If the Combination is completed, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''), will be held under a single, publicly traded holding company organized under the laws of the Netherlands (''Holdco'').[3] The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

B. Summary of Proposed Rule Change

NYSE Amex is proposing that, pursuant to the Combination, its indirect parent, NYSE Euronext, will become a wholly owned subsidiary of Holdco. In addition, NYSE Amex is proposing that, in connection with the Combination, the Commission approve certain amendments to the organizational and other governance documents of Holdco, NYSE Euronext, NYSE Group and certain of the NYSE U.S. Regulated Subsidiaries as well as certain rules of the Exchange, NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Holdco is currently named ''Alpha Beta Netherlands Holding N.V.,'' but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreen between NYSE Euronext and Deutsche Börse.

Amex and NYSE Arca Equities.[4] The Proposed Rule Change is summarized as follows:

• *Proposed Approval of Waiver of Ownership and Voting Restrictions of NYSE Euronext.* The Amended and Restated Certificate of Incorporation of NYSE Euronext (the ''NYSE Euronext Certificate'') currently restricts any person, either alone or together with its related persons, from being entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially owning shares of stock of NYSE Euronext representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.[5] NYSE Euronext is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Euronext shares that are held in excess of the ownership restriction. The NYSE Euronext Certificate and the Amended and Restated Bylaws of NYSE Euronext (the ''NYSE Euronext Bylaws'') provide that the board of directors of NYSE Euronext may waive these voting and ownership restrictions if it makes certain determinations and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act[6] and filed with, and approved by, each European Regulator (as defined in the NYSE Euronext Certificate) having appropriate jurisdiction and authority.[7] Acting pursuant to this waiver provision, the board of directors of NYSE Euronext has adopted the resolutions set forth in Exhibit 5A (the ''NYSE Euronext Resolutions'') in order to permit Holdco to own and vote 100% of the outstanding common stock of NYSE Euronext as of and after the Combination. NYSE Amex is requesting approval by the Commission of the NYSE Euronext Resolutions in order to allow the Combination to take place.

• *Proposed Amendments to Voting and Ownership Restrictions of NYSE Euronext.* Because NYSE Euronext would become a wholly owned subsidiary of Holdco as a result of the Combination, NYSE Amex is proposing to amend the voting and ownership restrictions in the NYSE Euronext Certificate to be consistent with the analogous provisions in the Second Amended and Restated Certificate of Incorporation of NYSE Group (the ''NYSE Group Certificate''): (1) first, the NYSE Euronext Certificate would be amended to provide that all of the issued and outstanding shares of NYSE Euronext will be held by Holdco, and that Holdco may not transfer or assign any shares without approval by the Commission under the Exchange Act and the relevant European Regulators under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate);[8] and (2) second, the NYSE Euronext Certificate would be amended to provide that the voting and ownership restrictions contained therein would only apply in the event that Holdco does not own all of the issued and outstanding shares of NYSE Euronext and only for so long as NYSE Euronext directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYSE Euronext Certificate).[9] In addition, the voting and ownership restrictions in the NYSE Euronext Certificate would be amended to (a) Change the 10% threshold for the voting restriction to a 20% threshold; (b) change the 20% threshold for the ownership restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is, or with respect to whom a related person is, (A) A Member of the Exchange, as defined in the NYSE Euronext Certificate (a ''NYSE Member''), (B) a Member of NYSE Amex as defined in the current NYSE Euronext Bylaws (including any person who is a related person of such member, an ''Amex Member''), (C) an ETP Holder of NYSE Arca Equities, as defined in the NYSE Euronext Certificate (an ''ETP Holder''), or (D) an OTP Holder or OTP Firm of NYSE Arca, as defined in the NYSE Euronext Certificate (an ''OTP Holder'' and ''OTP Firm,'' respectively)); (c) add the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE Amex in order to waive the voting and ownership restrictions to the NYSE Euronext Certificate, and delete this provision from the NYSE Euronext Bylaws; (d) update the names of certain European regulatory entities in the definition of ''European Regulator'' (as currently defined in the NYSE Euronext Certificate and the NYSE Euronext Bylaws); and (e) expand the definition of ''Related Persons'' to address Amex Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

• *Proposed Amendments to Voting and Ownership Restrictions of NYSE Group.* The NYSE Group Certificate currently provides that, if NYSE Euronext and the trust[10] established pursuant to the Trust Agreement, dated as of April 4, 2007, by and among NYSE Euronext, NYSE Group and the other parties thereto, do not hold 100% of the outstanding stock of NYSE Group, no person, either alone or together with its related persons, may be entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.[11] NYSE Group is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Group shares which are held in excess of the ownership restriction.[12] Under the Proposed Rule Change, the voting and ownership restrictions in the NYSE Group Certificate would be amended to (1) Change the 10% threshold for the voting restriction to a 20% threshold; (2) change the 20% threshold for the ownership restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is, or with respect to whom a related person is, a NYSE Member, an Amex Member, an ETP Holder or an OTP Holder or OTP Firm); (3) provide that the ownership and voting limitations would apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE

[4] Proposed amendments to the governance documents and/or rules of NYSE Amex and NYSE Arca Equities are included in this Proposed Rule Change, and the text of those proposed amendments are attached as exhibits to this Proposed Rule Change, because they are part of the overall set of changes proposed by the NYSE Exchanges to be made in connection with the Combination.

[5] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2.

[6] 15 U.S.C. 78s(b).

[7] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2, and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

[8] The analogous provision in the NYSE Group Certificate is Section 4(a) of Article IV.

[9] The analogous provision in the NYSE Group Certificate is Section 4(b) of Article IV.

[10] No changes are being proposed to the current Delaware trust and stichting for ''regulatory overspill'' matters, except that references to the Nominating and Governance Committee of NYSE Euronext would be replaced with references to the Holdco Nominating, Governance and Corporate Responsibility Committee.

[11] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Section 4(b)(1) & (2).

[12] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Sections 4(b)(1)(A) & 4(b)(2)(D).

Group Certificate); and (4) expand the definition of ''Related Persons'' regarding Amex Members so that it is consistent with the language in the NYSE Rules, which language will be incorporated in the NYSE Euronext Certificate pursuant to this Proposed Rule Change.

• *Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents.* Under the Proposed Rule Change, in light of the fact that NYSE Euronext would become a wholly owned subsidiary of Holdco following completion of the Combination, the NYSE Euronext Certificate and the NYSE Euronext Bylaws would be amended to (1) Simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly owned subsidiary of Holdco following completion of the Combination; and (3) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions, and to update cross-references to sections, consistent with the other amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth in this Proposed Rule Change). In addition, the current Independence Policy of the NYSE Euronext board of directors would cease to be in effect.

• *Proposed Amendments to Board Composition Requirements for the Exchange, NYSE Amex, NYSE Market and NYSE Regulation.* Under the Proposed Rule Change, certain provisions of the Third Amended and Restated Operating Agreement, dated as of April 1, 2009, of the Exchange (the ''Exchange Operating Agreement'') relating to the composition of the Exchange's board of directors would be amended, including to provide that the independent directors of the Exchange would perform certain functions currently allocated to the NYSE Euronext nominating and governance committee and that the Exchange's board of directors would have its own director independence policy, instead of referring to the director independence policy of NYSE Euronext. Substantially the same revisions would be made to the analogous provisions of the Amended and Restated Operating Agreement of NYSE Amex,[13] the Amended and Restated Bylaws of NYSE Market[14] and the Third Amended and Restated Bylaws of NYSE Regulation.[15]

• *Proposed Amendments to the NYSE Group Certificate and NYSE Group Bylaws.* Under the Proposed Rule Change, the NYSE Group Certificate and the NYSE Group Bylaws would be amended in order to (1) conform certain provisions to analogous provisions of the organizational documents of NYSE Euronext, which will likewise be a wholly owned subsidiary of Holdco following completion of the Combination; and (2) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions to be consistent with the other amendments to the NYSE Group Certificate and the NYSE Group Bylaws set forth in this Proposed Rule Change).

• *Proposed Amendments to the Exchange Rules, NYSE Amex Rules and NYSE Arca Equities Rules.* Under the Proposed Rule Change, certain technical amendments would be made to the rules of the Exchange (the ''Exchange Rules'') to (1) replace references therein to ''NYSE Euronext'' with references to Holdco; and (2) delete the definitions of ''member'' and ''member organization'' relating to NYSE Amex which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because the Proposed Rule Change will revise the NYSE Euronext Certificate to include analogous language relating to NYSE Amex Members. In addition, certain technical amendments would be made to the rules of NYSE Amex (the ''NYSE Amex Rules'') and to the rules of NYSE Arca Equities (the ''NYSE Arca Equities Rules'') to replace references therein to ''NYSE Euronext'' with references to Holdco.

The text of the proposed amended NYSE Euronext Certificate, NYSE Euronext Bylaws, NYSE Group Certificate, NYSE Group Bylaws, Exchange Operating Agreement, Amended and Restated Operating Agreement of NYSE Amex, Amended and Restated Bylaws of NYSE Market, Third Amended and Restated Bylaws of NYSE Regulation, Exchange Rules, form of Director Independence Policy for certain NYSE U.S. Regulated Subsidiaries, NYSE Amex Rules and NYSE Arca Equities Rules are attached to the Proposed Rule Change as Exhibits 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5P and 5Q, respectively.

Under the Proposed Rule Change, Holdco would take appropriate steps to incorporate voting and ownership restrictions, requirements relating to submission to jurisdiction, access to books and records and other requirements related to its control of the U.S. Regulated Subsidiaries. Specifically, the Articles of Association of Holdco in effect as of the completion of the Combination (the ''Holdco Articles'') would contain provisions[16] to incorporate these concepts with respect to itself, as well as its directors, officers, employees and agents (as applicable):

• *Voting and Ownership Restrictions in the Holdco Articles.* The Holdco Articles would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the then outstanding votes entitled to be cast on a matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes entitled to be cast on a matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or OTP Firm, a Member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an ''ISE Member''), or a member of EDGA or EDGX (as such terms are defined in the rules of EDGA and EDGX, respectively, an ''EDGA Member'' and ''EDGX Member,'' respectively)). The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any such person(s) exceeds the ownership restriction, it will be required to offer for sale and transfer the number of Holdco shares required to comply with the ownership restriction, and the rights to vote, attend general meetings of Holdco shareholders and receive dividends or other distributions attached to shares held in excess of the 40% threshold (or 20% threshold, if applicable) will be suspended for so long as such threshold is exceeded. If such person(s) fails to comply with the transfer obligation within two weeks, then the Holdco Articles would provide that Holdco will be irrevocably authorized to take actions on behalf of such person(s) in order to cause it to comply with such obligations. Consistent with the current NYSE Euronext Certificate, the Holdco board of directors may waive the voting and ownership restrictions if it makes

[13] *See* Amended and Restated Operating Agreement of NYSE Amex LLC, Section 2.03(a).

[14] *See* Amended and Restated Bylaws of NYSE Market, Inc., Article III Section 1.

[15] *See* Third Amended and Restated Bylaws of NYSE Regulation, Inc., Article III Section. 1.

[16] The text of the proposed Holdco Articles is attached to the Proposed Rule Change as Exhibit 5L.

certain determinations (which will be subject to the same requirements which are currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the current NYSE Euronext Certificate and the Certificate of Incorporation of ISE Holdings (the ''ISE Certificate''), as applicable) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.

• *Jurisdiction.* The Holdco Articles will provide that Holdco and its directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the Holdco Articles would provide that so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary. Furthermore, the Holdco Articles would provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with these provisions of the Holdco Articles.

• *Books and Records.* The Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

• *Amendments to Holdco Articles.* The Holdco Articles would provide that before any amendment to the Holdco Articles may be effectuated by execution of a notarial deed of amendment, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective.

• *Additional Matters.* The Holdco Articles would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of Holdco's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act. In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary. The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco will sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [17] that it will comply with these provisions of the Holdco Articles.[18]

In addition, Holdco would adopt a Director Independence Policy in the form attached hereto as Exhibit 5N (the ''Holdco Independence Policy''), which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except for certain changes described in this Proposed Rule Change.

The text of the Proposed Rule Change is available at NYSE Amex, the Commission's Public Reference Room, and on the website of NYSE Euronext (*http://www.nyse.com*). The text of Exhibits 5A through 5Q of the Proposed Rule Change are also available on the NYSE Euronext website and on the Commission's website (*http://www.sec.gov/rules/sro.shtml*).

Other than as described herein and set forth in the attached Exhibits 5A through 5Q, NYSE Amex will continue to conduct its regulated activities in the manner currently conducted and will not make any changes to its regulated activities in connection with the Combination. If NYSE Amex determines to make any such changes, it will seek approval of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Amex has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. NYSE Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Purpose [sic]

The purpose of this rule filing is to adopt the rules necessary to permit NYSE Euronext to effect the

[17] The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

[18] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

Combination and to amend certain provisions of the organizational and other governance documents of NYSE Euronext, NYSE Group and certain of the NYSE U.S. Regulated Subsidiaries, including certain Exchange Rules, NYSE Amex Rules and NYSE Arca Equities Rules.

1. Overview of the Combination

NYSE Amex is submitting this Proposed Rule Change to the Commission in connection with the Combination of NYSE Euronext and Deutsche Börse. The Combination will create a holding company, Holdco, which will hold the businesses of NYSE Euronext and Deutsche Börse. Following the Combination, each of NYSE Euronext and Deutsche Börse will be a separate subsidiary of Holdco. Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide.

Other than as described herein, Holdco and the NYSE Exchanges will not make any changes to the regulated activities of the NYSE U.S. Regulated Subsidiaries in connection with the Combination, and, other than as described in the separate proposed rule changes filed by each of the DB Exchanges in connection with the Combination, Holdco and the DB Exchanges will not make any changes to the regulated activities of the DB U.S. Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Combination will occur pursuant to the terms of the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011 (as it may be further amended from time to time, the ''Combination Agreement''), by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco (''Merger Sub''). Subject to the terms and conditions set forth in the Combination Agreement and in compliance with applicable law, Holdco has conducted a public exchange offer (the ''Exchange Offer''), in which shareholders of Deutsche Börse have been afforded the opportunity to tender each share of Deutsche Börse for one ordinary share of Holdco (each, a ''Holdco Share'').

Immediately after the time that Holdco accepts for exchange, and exchanges, the Deutsche Börse shares that are validly tendered and not withdrawn in the Exchange Offer, Merger Sub will merge with and into NYSE Euronext, as a result of which NYSE Euronext will become a wholly owned subsidiary of Holdco (the ''Merger''). In the Merger, each outstanding share of NYSE Euronext common stock will be converted into the right to receive 0.47 of a fully paid and non-assessable Holdco Share. NYSE Euronext's obligation to complete the Merger is subject to the completion of the Exchange Offer and the acquisition by Holdco of all of the Deutsche Börse shares validly tendered and not withdrawn in the Exchange Offer. The completion of the Exchange Offer (and, therefore, the completion of the Merger) is subject to the satisfaction of a number of conditions, including that Deutsche Börse shares representing at least 75% of the Deutsche Börse shares outstanding, on a fully diluted basis, must be validly tendered and not withdrawn in the Exchange Offer, and that holders of a majority of the outstanding shares of NYSE Euronext shall have adopted the Combination Agreement. Both of these conditions have been satisfied.

Following the completion of the Exchange Offer, and depending on the percentage of Deutsche Börse shares acquired by Holdco in the Exchange Offer, Deutsche Börse and Holdco intend to complete a post-completion reorganization pursuant to which Holdco will enter into a domination agreement, or a combination of a domination agreement and a profit and loss transfer agreement, pursuant to which the remaining shareholders of Deutsche Börse will have limited rights, including a limited ability to participate in the profits of Deutsche Börse.

Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide. Following the Combination, Holdco and its subsidiaries (together, the ''Holdco Group'') expect to serve as a benchmark regulatory model, facilitating transparency and harmonization of capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks and their respective brand names.

2. Overview of the Holdco Group Following the Combination

Following the Combination, Holdco will be a for-profit, publicly traded corporation formed under the laws of the Netherlands and will act as the holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold all of the equity interests in NYSE Euronext, which holds (1) 100% of the equity interest of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom). Holdco will also hold a majority of the equity interests in Deutsche Börse, which indirectly holds 50% of the equity interest of ISE Holdings (which, in turn, holds (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings indirectly holds 100% of the equity interest of EDGA and EDGX. Holdco intends to list its ordinary shares on the New York Stock Exchange, the Frankfurt Stock Exchange and Euronext Paris. The Holdco Group will have dual headquarters in Frankfurt and New York.

After the Combination, NYSE Group will continue to be directly wholly owned by NYSE Euronext and will continue to directly or indirectly own the three NYSE Exchanges—the Exchange, NYSE Arca and NYSE Amex—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYSE Group, oversees FINRA's performance of certain market surveillance and enforcement functions for NYSE Euronext's U.S. securities exchanges, enforces listed company compliance with applicable standards, and oversees regulatory policy

determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, the Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des Services et Marchés Financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários—CMVM*) and the U.K. Financial Services Authority (*FSA*).

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of each NYSE U.S. Regulated Subsidiary will be preserved. Specifically, after the Combination, NYSE Group's businesses and assets will continue to be structured as follows:

- The Exchange will remain a direct wholly owned subsidiary of NYSE Group and an indirectly wholly owned subsidiary of NYSE Euronext.
- NYSE Market will remain a wholly owned subsidiary of the Exchange and will continue to conduct the Exchange's business.
- NYSE Regulation will remain a wholly owned subsidiary of the Exchange and continue to perform, and/or oversee the performance of, regulatory responsibilities of the Exchange pursuant to a delegation agreement with the Exchange and regulatory functions of NYSE Arca and NYSE Amex pursuant to services agreements with them.[19]
- Archipelago Holdings, Inc., a Delaware corporation (''Arca Holdings''), will remain a wholly owned subsidiary of NYSE Group and indirect wholly owned subsidiary of NYSE Euronext.
- NYSE Arca Holdings, Inc., a Delaware corporation (''NYSE Arca Holdings''), and NYSE Arca, L.L.C., a Delaware limited liability company (''NYSE Arca LLC''), will remain wholly owned subsidiaries of Arca Holdings.
- NYSE Arca will remain a wholly owned subsidiary of NYSE Arca Holdings.
- NYSE Arca Equities, a Delaware corporation, will remain a wholly owned subsidiary of NYSE Arca.
- NYSE Amex will remain a direct wholly owned subsidiary of NYSE Group and an indirectly wholly owned subsidiary of NYSE Euronext.
- The Combination will have no effect on the ability of any party to trade securities on the Exchange, NYSE Arca or NYSE Amex.

Similarly, Deutsche Börse and its subsidiaries, and NYSE Euronext and its subsidiaries, will continue to conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

Holdco acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, NYSE Arca or NYSE Amex, it will be responsible for referring such possible violations to each such exchange, respectively. In addition, Holdco will become a party to the agreement among NYSE Euronext, NYSE Group, the Exchange, NYSE Market and NYSE Regulation to provide for adequate funding for NYSE Regulation.

3. Proposed Approval of Waiver of Voting and Ownership Restrictions of NYSE Euronext

Article V of the current NYSE Euronext Certificate provides that (1) no person, either alone or together with its ''related persons'' (as defined in the NYSE Euronext Certificate), may be entitled to vote or cause the voting of shares of NYSE Euronext beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Euronext (the ''NYSE Euronext Voting Restriction'').[20] NYSE Euronext must disregard any votes purposed to be cast in excess of the NYSE Euronext Voting Restriction.[21]

In addition, the NYSE Euronext Certificate provides that no person, either alone or together with its related persons, may at any time beneficially own shares of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the ''NYSE Euronext Ownership Restriction'').[22] If any person, either alone or together with its related persons, owns shares of NYSE Euronext in excess of the NYSE Euronext Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Euronext is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Euronext necessary so that such person, together with its related persons, will beneficially own shares of NYSE Euronext representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.[23]

The NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction are applicable to each person unless and until (1) such person has delivered a notice in writing to the board of directors of NYSE Euronext, not less than 45 days (or such shorter period as the board of directors of NYSE Euronext expressly permits) prior to any vote or, in the case of the NYSE Euronext Ownership Restriction, prior to the acquisition of any shares of NYSE Euronext that would cause such person, either alone or together with its related persons, to exceed the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote

[19] Certain regulatory functions have been allocated to, and/or are otherwise performed by, FINRA.

[20] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1.

[21] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1(A).

[22] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2.

[23] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2(D).

or cause the voting of shares of NYSE Euronext stock beneficially owned by such person or its related persons in excess of the NYSE Euronext Voting Restriction or, in the case of the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Euronext has resolved to expressly permit such voting or ownership, as applicable; (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act [24] and has become effective thereunder; and (4) such resolution has been filed with, and approved by, each European Regulator having appropriate jurisdiction and authority. Subject to its fiduciary duties under applicable law, the NYSE Euronext board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless it has determined that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- Will not impair the ability of any NYSE U.S. Regulated Subsidiary, NYSE Euronext or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- Will not impair the ability of any of the European Market Subsidiaries (as defined in the NYSE Euronext Bylaws) of NYSE Euronext or Euronext (to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations (as defined in the NYSE Euronext Bylaws);
- Is otherwise in the best interest of NYSE Euronext, its stockholders, the NYSE U.S. Regulated Subsidiaries and the European Market Subsidiaries, and will not impair the Commission's ability to enforce the Exchange Act or the European Regulators' ability to enforce the European Exchange Regulations;
- For so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, neither such person nor any of its related persons is a NYSE Member;
- For so long as NYSE Euronext directly or indirectly controls NYSE Amex, neither such person nor any of its related persons is an Amex Member;
- For so long as NYSE Euronext directly or indirectly controls NYSE Arca, NYSE Arca Equities or any facility of NYSE Arca, neither such person nor any of its related persons is an ETP Holder, an OTP Holder or an OTP Firm; and
- Neither such person nor any of its related persons is a U.S. Disqualified Person or a European Disqualified Person (as such terms are defined in the NYSE Euronext Certificate).[25]

In order to allow Holdco to wholly own and vote all of the outstanding common stock of NYSE Euronext upon consummation of the Combination, Holdco has delivered written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the NYSE Euronext Certificate requesting approval of its voting and ownership of NYSE Euronext shares in excess of the NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of NYSE Euronext that neither it, nor any of its related persons, is (1) A ''member'' or ''member organization'' of the Exchange; (2) a ''member'' of NYSE Amex; (3) an ETP Holder; (4) an OTP Holder or an OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person.

At a meeting duly convened on September 15, 2011, the board of directors of NYSE Euronext adopted the NYSE Euronext Resolutions to permit Holdco, either alone or with its related persons, to exceed the NYSE Euronext Ownership Restriction and the NYSE Euronext Voting Restriction. In adopting such resolutions, the board of directors of NYSE Euronext made the necessary determinations set forth above and approved the submission of this Proposed Rule Change to the Commission. The NYSE U.S. Regulated Subsidiaries will continue to operate and regulate their markets and members exactly as they have done prior to the Combination. Except as set forth in this Proposed Rule Change, Holdco is not proposing any amendments to their trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the NYSE U.S. Regulated Subsidiaries after the Combination, the NYSE U.S. Regulated Subsidiaries will operate in the same manner following the Combination as they operate today.[26] Thus, the Commission will continue to have plenary regulatory authority over the NYSE U.S. Regulated Subsidiaries, as is the case currently with these entities. As described in the following sections of this filing, NYSE Amex is proposing a series of amendments to the NYSE Euronext Certificate, the NYSE Euronext Bylaws, the NYSE Group Certificate and the NYSE Group Bylaws, as well as certain provisions of the Holdco Articles, that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The NYSE Euronext board of directors also determined that ownership of NYSE Euronext by Holdco is in the best interests of NYSE Euronext, its shareholders and the NYSE U.S. Regulated Subsidiaries. With respect to the interests of the NYSE U.S. Regulated Subsidiaries, the board of directors of NYSE Euronext has noted, among other things, its expectation that the Combination would over time create substantial incremental efficiency and growth opportunities and that the Holdco Group is expected to be a leader in a diverse set of large and growing businesses, including derivatives, listings, cash equities, post-trade settlement and asset servicing, market data and technology servicing.

In addition, neither Holdco, nor any of its related persons, is (1) a NYSE Member; (2) an Amex Member; (3) an ETP Holder, an OTP Holder or an OTP Firm; or (4) a U.S. Disqualified Person or a European Disqualified Person.

An extract with the relevant provisions of the NYSE Euronext Resolutions is attached as Exhibit 5A to the Proposed Rule Change and can be found on the NYSE Euronext website and the Commission's website.

NYSE Amex hereby requests that the Commission approve the NYSE Euronext Resolutions and allow Holdco, either alone or with its related persons, to own and vote all of the outstanding common stock of NYSE Euronext upon and following the consummation of the Combination.

4. Proposed Amendments to Ownership and Voting Restrictions After the Combination

Overview

NYSE Amex is proposing that, effective as of the completion of the Combination, the Holdco Articles would

[24] 15 U.S.C. 78S(b).

[25] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1(B), 1(C), 2(B) and 2(C), and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

[26] NYSE Amex has been informed by Deutsche Börse that the DB U.S. Regulated Subsidiaries are also expected to operate in the same manner following the Combination as they operate today. This is addressed in the separate proposed rule change filed by each of the DB Exchanges.

contain voting and ownership restrictions that restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the votes entitled to be cast on any matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes that may be cast on any matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member).

In addition, NYSE Amex is proposing that, effective as of the Combination, the voting and ownership restrictions currently in the NYSE Euronext Certificate and NYSE Euronext Bylaws, as well as the related waiver provisions set forth therein, would remain in effect, except that they would be modified in certain respects as described herein.[27]

Voting and Ownership Restrictions in Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that no person, either alone or together with its related persons, will be entitled to vote or cause the voting of a number of shares of Holdco, in person or by proxy or through any voting agreement or other arrangement, which represent in the aggregate (1) more than 20% of the then outstanding votes entitled to be cast on such matter; or (2) more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of Holdco (the ''Holdco Voting Restriction'').[28] The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the Holdco Voting Restriction.

In addition, the Holdco Articles would provide that any person who, either alone or together with its related persons, beneficially owns Holdco shares which represent in the aggregate more than 40% of the outstanding votes entitled to be cast on any matter (except that a 20% restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member) (the ''Holdco Ownership Restriction''), will be obligated to offer for sale and to transfer a number of Holdco shares necessary so that such person, together with its related persons, beneficially owns a number of Holdco shares that complies with the Holdco Ownership Restriction (the ''Holdco Transfer Obligation'').[29] If such person(s) fails to comply with the Holdco Transfer Obligation within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco Transfer Obligation.[30]

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco Ownership Restriction (any such person(s), a ''Non-Compliant Owner''), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco Ownership Restriction. Specifically, the Non-Compliant Owner's rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco Ownership Restriction would be suspended for so long as the Holdco Ownership Restriction is exceeded.[31]

Pursuant to Section 2:87a of the Dutch Civil Code, the Non-Compliant Owner may request that an independent expert be appointed to determine the value of the Holdco shares, but such expert will have discretion to determine that the value of the shares is equal to the price received for the shares by the Non-Compliant Owner on any stock exchange where the Holdco shares are listed.[32]

The voting and ownership restrictions will apply to each person unless it (1) delivers to the Holdco board of directors a written notice of its intention to acquire voting power or ownership in excess of the relevant limitation, and such notice is delivered at least 45 days (or such shorter period as the Holdco board of directors expressly consents to) prior to acquiring Holdco shares in excess of the Holdco Voting Restriction or Holdco Ownership Restriction; (2) obtains a written confirmation from the Holdco board of directors that the board has expressly resolved to permit such voting or ownership; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European regulators having appropriate jurisdiction and authority.[33] The Holdco board of directors may waive the Holdco Voting Restriction and Holdco Ownership Restriction if it makes certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate and the ISE Holdings Certificate, respectively.[34]

Amendments to NYSE Group Voting and Ownership Restrictions

The voting restrictions contained in the current NYSE Group Certificate provide that, if such restrictions apply, (1) no person, either alone or together with its related persons (as defined in the NYSE Group Certificate), may be entitled to vote or cause the voting of shares of stock of NYSE Group beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Group (the ''NYSE Group Voting Restriction'').[35] NYSE Group must disregard any votes purported to be cast in excess of the NYSE Group Voting Restriction.

In addition, the ownership restrictions contained in the current NYSE Group Certificate provide that, if such restrictions apply, no person, either alone or together with its related persons, may at any time own beneficially shares of NYSE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the

[27] As described in the proposed rule change filed by each of the DB Exchanges, the current voting and ownership restrictions contained in the certificate of incorporation of ISE Holdings, as well as the related provisions contained in the amended and restated bylaws of U.S. Exchange Holdings and the board resolutions of Deutsche Börse, Eurex Frankfurt AG and other indirect parent entities of ISE, would remain in effect. The DB Trust would also remain unaltered and would continue to have rights to enforce these restrictions.

[28] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.1.

[29] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 35.1 and 35.4.

[30] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.7.

[31] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.6.

[32] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.5.

[33] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.2 and 35.2.

[34] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.3 and 35.3.

[35] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Section 4(b).

''NYSE Group Ownership Restriction''). If any person, either alone or together with its related persons, owns shares of NYSE Group in excess of the NYSE Group Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Group necessary so that such person, together with its related persons, will beneficially own shares of NYSE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.

The NYSE Group Voting Restriction and the NYSE Group Ownership Restriction apply to each person unless and until (1) such person has delivered a notice in writing to the board of directors of NYSE Group, not less than 45 days (or such shorter period as the board of directors of NYSE Group expressly permits) prior to any vote or, in the case of the NYSE Group Ownership Restriction, prior to the acquisition of any shares of NYSE Group that would cause such person, either alone or together with its related persons, to exceed the NYSE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Group stock beneficially owned by such person or its related persons in excess of the NYSE Group Voting Restriction or, in the case of the NYSE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Group has resolved to expressly permit such voting or ownership, as applicable; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act [36] and has become effective thereunder. Subject to its fiduciary duties under applicable law, the NYSE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations which are substantially similar to the determinations required to be made by the NYSE Euronext board of directors in connection with a waiver of the NYSE Euronext Voting Limitation and/or the NYSE Euronext Ownership Limitation (as described above).

Under the Proposed Rule Change, the NYSE Group Certificate would be amended, effective as of the Combination, to (1) change the 10% threshold for the NYSE Group Voting Restriction to a 20% threshold; and (2) change the 20% threshold for the NYSE Group Ownership Restriction to a 40% restriction (except that a 20% restriction would continue to apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or an OTP Firm). These percentage thresholds are consistent with those applicable to ISE Holdings and other regulated exchanges and have been approved on several occasions by the Commission.[37] The NYSE Group Certificate would also be updated to provide that the NYSE Group Voting Restriction and the NYSE Group Ownership Restriction would apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate).

Under the Proposed Rule Change, the definition of ''Related Persons'' would be expanded to provide that (1) in the case of a person that is a ''member'' (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE Amex, such person's ''Related Persons'' would include the ''member'' (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and 3(a)(3)(A)(iii) of the Exchange Act which are currently referenced in this provision of the NYSE Group Certificate) with which such person is associated; and (2) in the case of any person that is a ''member'' (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and 3(a)(3)(A)(iii) of the Exchange Act which are currently referenced in this provision of the NYSE Group Certificate) of NYSE Amex, such person's ''Related Persons'' would include any ''member'' (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person. These provisions are substantively consistent with language in the NYSE Rules, which language would be deleted under the Proposed Rule Change.

Amendments to NYSE Euronext Voting and Ownership Restrictions

Under the Proposed Rule Change, the NYSE Euronext Certificate would be amended, effective as of the Combination, to be consistent with the NYSE Group Certificate in the following respects: (1) First, the NYSE Euronext Certificate would be amended to provide that all of the issued and outstanding shares of NYSE Euronext will be held by Holdco, and that Holdco may not transfer or assign any shares without approval by the Commission under the Exchange Act and the relevant European Regulators (as defined in the NYSE Euronext Certificate) under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate); [38] and (2) the NYSE Euronext Certificate would be amended to provide that the NYSE Euronext Voting Restriction and NYSE Euronext Ownership Restriction contained therein would only apply in the event that Holdco does not own all of the issued and outstanding shares of NYSE Euronext.[39] In addition, the NYSE Euronext Certificate would be amended to (a) change the 10% threshold for the NYSE Euronext Voting Restriction to a 20% threshold; (b) change the 20% threshold for the NYSE Euronext Ownership Restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or an OTP Firm); (c) provide that the NYSE Euronext Voting Restriction and NYSE Euronext Ownership Restriction contained therein would only apply only for so long as NYSE Euronext directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYSE Euronext Certificate); (d) add the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE Amex in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate, and delete this provision from the NYSE Euronext Bylaws; (e) update the names of certain European regulatory entities in the definition of ''European Regulator''; and (f) expand the definition of ''Related Persons'' to address Amex Members in a manner that is substantively consistent with language currently

[36] 15 U.S.C. 78s(b).

[37] *See e.g.,* SEC Release No. 34–49718 (May 17, 2004) (File No. SR–PCX–2004–08), 69 FR 29611 (approval of rule change proposed by the Pacific Exchange, Inc.); SEC Release No. 34–49098 (January 16, 2004) (File No. SR–PHLX–2003–73), 69 FR 3974 (approval of rule change proposed by the Philadelphia Stock Exchange, Inc.); and SEC Release No. 34–50170 (August 9, 2004) (File No. SR–PCX–2004–56), 69 FR 50419 (approval of rule change proposed by the Pacific Exchange, Inc. relating to initial public offering of parent of Archipelago Exchange, L.L.C.).

[38] The analogous provision in the NYSE Group Certificate is Section 4(a) of Article IV.

[39] The analogous provision in the NYSE Group Certificate is Section 4(b) of Article IV.

located in the NYSE Rules, as described above.

5. Additional Matters To Be Addressed in the Holdco Articles [40]

Jurisdiction Over Individuals

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco and its directors, and to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries.[41] The Holdco Articles would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, Holdco and its directors, officers and employees would (1) be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceeding relating to NYSE Group or any of its subsidiaries, and ISE Holdings may serve as the U.S. agent for proceedings relating to ISE Holdings or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts or the Commission.[42]

In addition, the Holdco Articles would provide that, so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of Holdco will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[43]

The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.[44] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[45] Furthermore, Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [46] that it will comply with these provisions in the Holdco Articles.

NYSE Amex anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, each of whom the Commission has direct authority over pursuant Section 19(h)(4) of the Exchange Act.[47]

Access to Books and Records

Under the Proposed Rule Change, the Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[48] In addition, the Holdco Articles would provide that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.[49] In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.[50]

Additional Matters

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.[51] In addition, Holdco would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.[52] The Holdco Articles would also provide that, in discharging his or her responsibilities as a member of the Holdco board of directors or as an officer or employee of Holdco, each such director, officer or employee will (a) comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration to such matters).[53]

The Holdco Articles would also provide that all confidential information that comes into the possession of Holdco pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) Not be made available to any persons other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof; (b) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco; and (c) not be used for

[40] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[41] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(c).

[42] *See* id.

[43] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[44] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[45] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[46] The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

[47] 15 U.S.C. 78s(h)(4).

[48] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[49] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(e).

[50] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(g).

[51] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(a).

[52] *See* id.

[53] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(l).

any commercial purposes.[54] In addition, the Holdco Articles would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of Holdco to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.[55]

Additionally, the Holdco Articles would provide that, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.[56]

Finally, the Holdco Articles would provide that each director of Holdco would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to (1) Engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.[57] This requirement would not, however, create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters.[58]

In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary.[59] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[60]

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (1) Cooperation with the Commission and such U.S. Regulated Subsidiaries; (2) compliance with U.S. federal securities laws; (3) inspection and copying of Holdco's books, records and premises; (4) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (5) maintenance of books and records in the United States; (6) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (7) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (8) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles. The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

Amendments to the Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that, before any amendment to or repeal of any provision of the Holdco Articles may become effectuated by means of a notarial deed of amendment, the same will be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. These requirements would also apply to any action by Holdco that would have the effect of amending or repealing any provision of the Holdco Articles.

Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy in the form attached hereto as Exhibit 5N, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that (1) A majority (as opposed to 75%) of the board of Holdco would be required to be independent; (2) executive officers of listed companies would no longer be prohibited from being considered independent for purposes of the Holdco board; (3) the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provide that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated; (4) references to certain European regulatory authorities would be updated, because their names have changed; (5) references to NYSE Alternext, Inc. would refer instead to NYSE Amex, because of this entity's name change; (6) footnote 2 of the current Independence Policy of NYSE Euronext would be deleted because the Holdco Independence Policy would not be applicable to NYSE Regulation, Inc., the Exchange, NYSE Amex or NYSE Market, which would have their own director independence policy in the form attached to this Proposed Rule Change as Exhibit 5K; and (7) references to the independence standards and criteria in the Dutch Corporate Governance Code would be added, because such standards and criteria will apply to Holdco, a Dutch company, and will supplement (rather than supersede or limit) the other independence

[54] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(h).

[55] *See* id.

[56] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(i).

[57] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[58] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[59] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[60] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

standards and criteria set forth in the Holdco Independence Policy.

NYSE Amex believes that a majority independence standard is appropriate to ensure that Holdco's board as a whole consists of individuals with independent, objective perspectives, while at the same time affording Holdco sufficient flexibility to include persons with expertise and qualifications that will contribute meaningfully to the board's performance of its oversight function. The importance of allowing highly qualified individuals to serve on the board is underscored by the fact that Holdco will serve as the holding company for a complex, global business with highly specialized operations and regulatory functions. Although Holdco has unique responsibilities and functions as the holding company for the NYSE U.S. Regulated Subsidiaries, it will be subject to various corporate governance and regulatory obligations that will be addressed by means of ownership and voting limitations on its shareholders, commitments to provide access to its books and records and to submit to the jurisdiction of the Commission, director qualification requirements and other undertakings that are addressed in the Proposed Rule Change and will be formalized in the Holdco Articles and undertakings of Holdco to its U.S. Regulated Subsidiaries. NYSE Amex submits that some of these undertakings call for in-depth industry knowledge and expertise on the Holdco board, such as the requirement that Holdco's directors take into consideration the effect that Holdco's actions would have on the ability of its U.S. Regulated Subsidiaries to (i) foster cooperation and coordination with persons engaging in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, and (ii) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system.

In addition, NYSE Amex believes that the per se disqualification of listed company executives from being deemed independent should not be applicable to Holdco. The per se disqualification was initially adopted by the New York Stock Exchange, Inc. in early 2005 in the context of its unique circumstances and history and its management structure and board composition at that time.[61] NYSE Amex submits that those circumstances are no longer applicable and, following the proposed combination of NYSE Euronext and Deutsche Börse, the disqualification of listed company executives would impede rather than facilitate Holdco's efforts to ensure a qualified and balanced board composition and promote various other important corporate governance objectives, such as ensuring appropriate expertise and experience on its board, as well as representation of the interests of a diverse range of market constituencies and local European and U.S. interests. A per se disqualification would narrow the pool of potential Holdco director candidates and arbitrarily eliminate from consideration a large number of highly qualified, experienced individuals who have proven track records as business leaders. In addition, because the listed companies of the U.S. Regulated Subsidiaries tend to be U.S. domestic companies, this requirement could disproportionately restrict the eligibility of persons affiliated with U.S. companies as compared to non-U.S. companies to serve on the board of Holdco. Under the Holdco Independence Policy, the Holdco board would still need to assess whether a listed company executive meets the various independence criteria, including whether he or she has any ''material relationship'' with Holdco and it subsidiaries.

Furthermore, NYSE Euronext believes that the objectivity of board members is adequately protected by the various other independence criteria in the proposed Holdco Independence Policy, such as the requirement that independent directors may not be or have been within the last year, and may not have an immediate family member who is or within the last year was, a member of the Exchange, NYSE Arca or NYSE Amex. In addition, if and to the extent that a matter concerning a listed company whose executive is a Holdco director were ever to come before the Holdco board for consideration, such director would be required to be recused from acting on such matter pursuant to the Holdco board's conflicts of interest policy.

Finally, the current Independence Policy of NYSE Euronext provides that the sum of (a) executive officers of foreign private issuers, (b) executive officers of NYSE Euronext and (c) directors of affiliates of ''members'' (as defined in Sections 3(a)(A)(3)(ii), 3(a)(A)(3)(iii) and 3(a)(A)(3)(iv) of the Exchange Act) of NYSE, NYSE Arca or NYSE Amex, may not constitute more than a minority of the total number of directors of NYSE Euronext. The purpose of this requirement is to ensure that, although executives of listed companies who are foreign private issuers are not disqualified from serving on the board, such executives may not, together with NYSE Euronext executives and directors of affiliates of members, constitute more than a minority of the board. In light of NYSE Amex's proposal to eliminate the disqualification of listed company executives from the Holdco Independence Policy, this requirement would serve no purpose because the exception to such disqualification for foreign private issuer executives would also be eliminated. NYSE Amex further notes that under the proposed Holdco Independence Policy, executives of Holdco and directors of affiliates of exchange members would not be deemed independent and, accordingly, could not in any event constitute more than a minority of the Holdco board.

6. Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents

Pursuant to the Combination, NYSE Euronext will merge with Merger Sub, a wholly owned subsidiary of Holdco. NYSE Euronext, as the surviving corporation in the Merger, will become a wholly owned subsidiary of Holdco. Following the Merger, the current organizational documents of NYSE Euronext will remain in effect, except that NYSE Amex is proposing that, in addition to the aforementioned revisions relating to voting and ownership limitations, certain provisions will be amended to reflect the fact that, after the Combination, NYSE Euronext will be an intermediate holding company and will no longer be a public company traded on the Exchange, and the registration of its capital stock under Section 12 of the Exchange Act will be terminated upon application to the Commission. As a result, NYSE Euronext will no longer be subject to the Exchange's listing standards or to the corporate governance requirements applicable to publicly traded companies. As summarized below, the following revisions to the NYSE Euronext Certificate and NYSE Euronext Bylaws are proposed in order to (1) Simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly owned subsidiary of Holdco following completion of the Combination; and (3) make certain clarification and technical edits (for

[61] *See* Securities Exchange Act Release No. 34–51217 (February 16, 2005) (File No. SR–NYSE–2004–54), 70 FR 9688.

example, to conform the use of defined terms and other provisions, and to update cross-references to sections, to reflect the other amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth in this Proposed Rule Change):

• The NYSE Euronext Certificate would be revised to provide that the registered office and agent of NYSE Euronext in Delaware will be the Corporation Trust Company, which is the registered agent of other subsidiaries of NYSE Euronext;

• The number of authorized shares of NYSE Euronext common stock and preferred stock will be reduced to 1,000 and 100, respectively, because it would no longer be necessary for NYSE Euronext to have a large number of widely held and actively traded shares; [62]

• The restrictions on transfers of NYSE Euronext shares contained in Section 4 of Article IV of the NYSE Euronext Certificate have now expired in accordance with their terms and would accordingly be deleted;

• Sections 2(A) and 2(B) of Article VI of the NYSE Euronext Certificate, and Section 2.2 of the NYSE Euronext Bylaws, would be amended to allow shareholders to call special meetings of shareholders and to postpone such meetings, in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination;

• Section 6 of Article VI of the NYSE Euronext Certificate, and Section 3.6 of the NYSE Euronext Bylaws (which would be renumbered as Section 3.5), would be amended to allow shareholders to fill board vacancies in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination;

• Section 1 of Article VIII of the NYSE Euronext Certificate, and Section 2.11 of the NYSE Euronext Bylaws (which would be renumbered as Section 2.9), would be amended to allow shareholders to take actions without a meeting and without prior notice if written consents are signed by the minimum number of votes that would be required to approve the action at a meeting, in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination, and the reference at the end of Section 3.5 of the NYSE Euronext Bylaws to a special meeting of shareholders would be deleted because the NYSE Euronext shareholder may act by written consent to fill board vacancies;

• The supermajority shareholder vote requirements pursuant to Article X to amend or repeal certain provisions of the NYSE Euronext Certificate would be eliminated and replaced with a majority vote requirement, because a supermajority vote requirement would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a majority voting standard is consistent with the standard generally applicable for actions by shareholders under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;

• Section 2.3 of the NYSE Euronext Bylaws would be amended to clarify that notice of shareholder meetings is not required if waived in accordance with Section 10.3 of the NYSE Euronext Bylaws;

• The requirement in Section 2.6 of the NYSE Euronext Bylaws for the appointment of an inspector of elections for shareholders meetings would be deleted, because the requirement for an inspector of elections pursuant to Section 231 of the Delaware General Corporation Law would no longer apply to NYSE Euronext after completion of the Combination; [63]

• The requirement in Section 2.7 (which would be renumbered as Section 2.6) of the NYSE Euronext Bylaws that directors be elected by a majority of the votes cast (and that they must tender their resignation if such a majority vote is not received), except in the case of contested elections, and that the NYSE Euronext board of directors may fill any resulting vacancy or may decrease the size of the board, would be deleted and a plurality voting standard would be adopted for all director elections, because these requirements would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a plurality voting standard is consistent with the standard generally applicable for elections of directors under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;

• The requirements in Section 2.10 of the NYSE Euronext Bylaws requiring certain advance notice from shareholders of director nominations and shareholder proposals, and the requirement that only business brought before a special meeting of stockholders pursuant to NYSE Euronext's notice of the meeting may be brought before the meeting, would be eliminated, because these requirements would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder;

• Section 3.1 of the NYSE Euronext Bylaws would be amended to clarify that the right of the NYSE Euronext board of directors to fix and change the number of directors on such board is subject to any rights of holders of any preferred stock to elect additional directors, in order to make this provision consistent with Section 2 of Article IV of the NYSE Euronext Certificate, which provides that preferred stock may be issued which may have voting rights;

• Sections 3.2(B) and 4.4 of the NYSE Euronext Bylaws would be amended to add ''if any'' after the references therein to the Nominating and Governance Committee, because NYSE Euronext would become a wholly owned subsidiary of Holdco and, as such, may not have a Nominating and Governance Committee;

• The requirement in Section 3.4 of the NYSE Euronext Bylaws that at least 75% of the board must be independent would be deleted, because NYSE Euronext would be a wholly owned subsidiary of Holdco after completion of the Combination and, therefore, it may be appropriate for executives of Holdco and its subsidiaries to serve on this board, and the reference to Section 3.4 in Section 3.2(A) would accordingly be deleted;

• Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws would be amended to clarify that notice of board meetings is not required if waived in accordance with Section 10.3 of the NYSE Euronext Bylaws;

• The advance notice period in Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws for electronic or telephonic notices of board meetings

[62] Effective as of the time that NYSE Euronext merges with Pomme Merger Corporation, the Second Amended and Restated Certificate of Incorporation of NYSE Euronext (as the surviving corporation in the merger) will provide that 800,000,000 shares of common stock will be authorized and 100 shares of preferred stock will be authorized. All of the outstanding shares of NYSE Euronext will be held by Alpha Beta Netherlands Holding N.V. Promptly thereafter, (1) NYSE Euronext will conduct a reverse stock split so that Alpha Beta Netherlands Holding N.V. will hold a substantially reduced number of NYSE Euronext shares (e.g., 1,000 common shares), and (2) the Second Amended and Restated Certificate of Incorporation of NYSE Euronext will accordingly be amended to reduce the total number of authorized shares of common stock to 1,000.

[63] *See* Section 231(e) of the Delaware General Corporation Law.

would be reduced from 24 hours to 12 hours, in order to simplify the requirements for board meetings and to be consistent with the analogous 12-hour time period currently required for notices pursuant to Section 3.7 of the NYSE Group Bylaws;

• Section 3.12 of the NYSE Euronext Bylaws (which would be renumbered as Section 3.11) would be amended to delete the requirement that, if the chairman or deputy chairman of the board of directors is also the chief executive officer or deputy chief executive officer, he or she may not participate in executive sessions of the board of directors, and if the chairman is not the chief executive officer or deputy chief executive officer, he or she will act as a liaison between the board of directors and the chief executive officer or the deputy chief executive officer, in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Euronext and in order to simplify the governance requirements for NYSE Euronext as a wholly owned subsidiary of Holdco;

• Certain aspects of the indemnification and expense advancement provisions in Section 10.6 of the NYSE Euronext Bylaws, including the terms of any insurance policy maintained by NYSE Euronext, would be simplified in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Euronext, and, therefore, a more streamlined process for indemnification claims is appropriate;

• The supermajority shareholder vote requirements in Section 10.10(B) of the NYSE Euronext Bylaws would be changed to a majority vote requirement, because a supermajority vote requirement would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a majority voting standard is consistent with the standard generally applicable for actions by shareholders under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;

• In light of the fact that NYSE Alternext US LLC formally changed its name to NYSE Amex LLC, references to NYSE Alternext US LLC in the NYSE Euronext Bylaws would be amended to refer instead to NYSE Amex LLC;

• Section 10.13 of the NYSE Euronext Bylaws—which requires that, for so long as NYSE Euronext directly or indirectly controls NYSE Amex, any amendments to the NYSE Euronext Certificate must be approved by the Commission—would be deleted and Article X of the NYSE Euronext Certificate would be amended to incorporate this requirement; and

• Certain clarifying, conforming or other technical edits would be made to Sections 1(B), 1(C), 1(L), 2(C) and 2(E) of Article V, Article X and Article XIII of the NYSE Euronext Certificate and to Sections 3.7 (which would be renumbered as Section 3.6) and 3.15(A)(2) and 3.15(B) (which would be renumbered as Section 3.14(A)(2) and 3.14(B), respectively) of the NYSE Euronext Bylaws. In addition, the numbering of certain sections of the NYSE Euronext Certificate and NYSE Euronext Bylaws, and cross-references to such sections, would be deleted or updated to reflect the amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth above.

In addition, the current Independence Policy of the NYSE Euronext board of directors would, effective as of the Combination, cease to apply.

7. Proposed Amendments to the NYSE Group Certificate and NYSE Group Bylaws

Under the Proposed Rule Change, the revisions summarized below to the NYSE Group Certificate and the NYSE Group Bylaws are proposed in order to: (1) Conform certain provisions to the analogous provisions of the organizational documents of NYSE Euronext, which would likewise be a wholly owned subsidiary of Holdco following completion of the Combination; and (2) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions to reflect the other amendments set forth in this Proposed Rule Change):

• Section 2 of Article IV of the NYSE Group Certificate would be amended to clarify that (1) preferred stock may be issued ''from time to time,'' and (2) the certificate of designations for such stock would fix, among other things, the ''relative, participating, optional and other'' rights of such shares including the qualifications and restrictions of any series of preferred stock, which is consistent with the analogous provisions in Section 2 of Article IV of the NYSE Euronext Certificate;

• Section 3 of Article V of the NYSE Group Certificate would be revised to clarify that the number of directors will be fixed ''from time to time,'' which is consistent with the analogous provision in Section 3 of Article VI of the NYSE Euronext Certificate;

• Section 5 of Article V of the NYSE Group Certificate would be amended to clarify that the right of the NYSE Group board of directors to remove directors is subject to any rights of holders of any preferred stock, in order to make this provision consistent with Section 2 of Article IV of the NYSE Group Certificate, which provides that preferred stock may be issued that may have voting rights, and also to make it consistent with the analogous provision in Section 5 of Article VI of the NYSE Euronext Certificate;

• Section 2.3 of the NYSE Group Bylaws would be amended to clarify that notice of shareholder meetings is not required if waived in accordance with Section 7.3 of the NYSE Group Bylaws;

• A new Section 2.8 would be added to the NYSE Group Bylaws to clarify that a list of shareholders entitled to vote will be open to examination by shareholders, because this is required by Section 219 of the Delaware General Corporation Law and is consistent with the analogous provision in Section 2.9 (which would be renumbered as Section 2.8) of the NYSE Euronext Bylaws;

• The reference at the end of Section 3.4 of the NYSE Group Bylaws to a special meeting of shareholders would be deleted because the shareholder of NYSE Group may act by written consent to fill board vacancies pursuant to Section 2.9 of the NYSE Group Bylaws;

• Section 3.7 of the NYSE Group Bylaws would be amended to clarify that notice of any special meeting of directors is not required if waived in accordance with Section 7.3 of the NYSE Group Bylaws, and the methods of delivery of notices would be updated to delete references to telegrams, provide certain requirements for notices sent to non-U.S. addresses and add a reference to email or other electronic transmission of notices, in each case to be consistent with the analogous provisions in Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws;

• The reference in Section 3.8 of the NYSE Group Bylaws to restrictions on telephonic participation in meetings would be deleted, because the NYSE Group Bylaws and the NYSE Group Certificate do not contain any such restrictions, and the wording of this provision would be amended to be consistent with the analogous language in Section 3.10 (renumbered as Section 3.9) of the NYSE Euronext Bylaws;

• Section 7.4 would be revised to provide that the persons who are authorized to execute contracts and other instruments on behalf of NYSE Group would include the Chief Executive Officer, which is consistent with the analogous provision in Section 10.4 of the NYSE Euronext Bylaws;

• Certain aspects of the indemnification and expense advancement provisions in Section 7.6 of the NYSE Group Bylaws, including the terms of any insurance policy maintained by NYSE Group, would be simplified in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Group and, therefore, a more streamlined process for indemnification claims is appropriate, and these revisions would be consistent with the revisions to the analogous provisions of the NYSE Euronext Bylaws set forth in this Proposed Rule Change;

• Section 7.9 of the NYSE Group Bylaws would be amended to clarify that they may be amended or repealed, and new bylaws may be adopted, by either (1) the NYSE Group board of directors or (2) subject to any vote of holders of any class or series of NYSE Group stock required by law or the NYSE Group Certificate, the affirmative vote of holders of a majority of the votes entitled to be cast by holders of outstanding shares of NYSE Group entitled to vote generally in the election of directors, voting together as a single class;

• In light of the fact that NYSE Alternext US LLC formally changed its name to NYSE Amex LLC, references to NYSE Alternext US LLC in the NYSE Group Bylaws would be amended to refer instead to NYSE Amex LLC, and the definition of ''Regulated Subsidiary'' in the NYSE Group Certificate would be amended to include NYSE Amex; and

• Certain other clarifying, conforming or other technical edits would be made to Sections 4(a), 4(b)(1)(A)(w), 4(b)(1)(A)(y), 4(b)(1)(A)(z), 4(b)(1)(E)(iv), 4(b)(1)(E)(vi), 4(b)(1)(E)(x), 4(b)(1)(E)(xii), 4(b)(2)(C) and 4(b)(2)(E) of Article IV, Sections 6 and 8 of Article V, Article X, Article XII and Article XIV of the NYSE Group Certificate and to Sections 2.3, 2.9, 5.1 and 7.9 of the NYSE Group Bylaws. In addition, the numbering of certain sections of the NYSE Group Certificate and NYSE Group Bylaws would be updated to reflect the amendments set forth above.

8. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE Amex, NYSE Market and NYSE Regulation

The Third Amended and Restated Operating Agreement, dated as of April 1, 2009, of the Exchange (the ''Exchange Operating Agreement''), currently provides that (1) a majority of the members of the Exchange's board of directors must be U.S. persons and members of the board of directors of NYSE Euronext who satisfy the independence requirements of the NYSE Euronext board, and (2) at least 20% of the Exchange's board members must be persons who are not board members of NYSE Euronext but who qualify as independent under the independence policy of the NYSE Euronext board of directors (the ''Non-Affiliated Exchange Directors'').[64] The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.[65]

Under the Proposed Rule Change, these provisions would be amended (1) to provide that the independent members of the Exchange's board of directors, rather than the nominating and governance committee of the NYSE Euronext board of directors, will designate the Non-Affiliated Exchange Directors and make the other related determinations that were previously to be made by the nominating and governance committee of the NYSE Euronext board of directors; (2) to provide that instead of using the independence policy of the NYSE Euronext board of directors to assess the independence of the Exchange's board members, the Exchange will have its own independence policy in the form attached to this Proposed Rule Change as Exhibit 5K (the ''SRO Director Independence Policy''); (3) in light of the fact that the board of directors of NYSE Euronext will be decreased in size once it becomes a wholly owned subsidiary of Holdco, the requirement that a majority of the members of the Exchange's board of directors must be members of the board of directors of NYSE Euronext would be eliminated; and (4) to provide that at least 20% of the Exchange's directors must be persons who are not members of the board of directors of Holdco (rather than referring to the board of directors of NYSE Euronext). Substantially the same revisions would be made to the analogous provisions of the Amended and Restated Operating Agreement of NYSE Amex,[66] the Amended and Restated Bylaws of NYSE Market[67] and the Third Amended and Restated Bylaws of NYSE Regulation.[68]

The Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation would also be amended to change the registered office of these entities from National Registered Agents to The Corporation Trust Company and CT Corporation, respectively. In addition, references to NYSE Alternext US LLC in the Third Amended and Restated Bylaws of NYSE Regulation would be changed to refer instead to NYSE Amex.

The SRO Director Independence Policy to be adopted by each of the Exchange, NYSE Market, NYSE Regulation and NYSE Amex under the Proposed Rule Change would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that certain conforming changes would be made, including the deletion of provisions that currently apply only to NYSE Euronext directors and expressly do not apply to directors of these NYSE U.S. Regulated Subsidiaries. In particular, (1) References to NYSE Euronext would refer instead to the relevant NYSE U.S. Regulated Subsidiary or Holdco, as applicable; (2) the requirement that at least three-fourths of the directors must be independent would be deleted, since the organizational documents of these NYSE U.S. Regulated Subsidiaries contain the independence and other qualification requirements for directors; (3) the requirement in the Independence Policy of NYSE Euronext that the board consider the special responsibilities of a director in light of NYSE Euronext's ownership of NYSE U.S. Regulated Subsidiaries and European regulated entities would be deleted, because unlike NYSE Euronext, these NYSE U.S. Regulated Subsidiaries are not holding companies; (4) the requirement for directors to inform the Chairman of the Nominating and Governance Committee of certain relationships and interests would be deleted, since the boards of these NYSE U.S. Regulated Subsidiaries do not have a Nominating and Governance Committee, except that in the SRO Director Independence Policy to be adopted by NYSE Regulation, this provision would reference the Nominating and Governance Committee

[64] *See* Third Amended and Restated Operating Agreement of New York Stock Exchange LLC, Section 2.03(a).

[65] *See* id.

[66] *See* Amended and Restated Operating Agreement of NYSE Amex LLC, Section 2.03(a).

[67] *See* Amended and Restated Bylaws of NYSE Market, Inc., Article III Section 1.

[68] *See* Third Amended and Restated Bylaws of NYSE Regulation, Inc., Article III Section 1.

of NYSE Regulation, Inc.; (5) references to NYSE Alternext, Inc. would refer instead to NYSE Amex, because of this entity's name change; (6) because the current Independence Policy of NYSE Euronext provides that a director of an affiliate of a Member Organization cannot qualify as an independent director of these NYSE U.S. Regulated Subsidiaries, the conflicting language stating that a director of an affiliate of a Member Organization shall not per se fail to be independent would be deleted; and (7) because language in the current Independence Policy of NYSE Euronext provides that an executive officer of an issuer whose securities are listed on a NYSE Exchange cannot qualify as an independent director of these NYSE U.S. Regulated Subsidiaries, the conflicting language providing an exception applicable only to NYSE Euronext directors would be deleted. In addition, the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provides that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated. This provision is designed to ensure that although persons who are directors of an affiliate of a Member Organization or who are executive officers of a ''foreign private issuer'' listed on a NYSE Exchange may in some circumstances qualify as independent for purposes of NYSE Euronext board membership, such persons may not, together with executive officers of NYSE Euronext, constitute more than a minority of the total NYSE Euronext directors. Under the proposed SRO Director Independence Policy, such persons could not be deemed to be independent directors of the relevant NYSE U.S. Regulated Subsidiary and, accordingly, this limitation on the number of such persons who may serve on the board is unnecessary.

9. Proposed Amendments to the Exchange Rules NYSE Amex Rules and NYSE Arca Equities Rules

Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules, as summarized below:

- References therein to ''NYSE Euronext'' would be replaced with references to Holdco, except that references to NYSE Euronext in Rule 22 and Rule 422 would be retained and references to Holdco would be added; and
- Rule 2 would be revised to delete the definitions of ''member'' and ''member organization'' relating to NYSE Amex which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because under the Proposed Rule Change, that section of the NYSE Euronext Certificate will be revised to incorporate this language.

In addition, certain technical amendments would be made to the NYSE Amex Rules and NYSE Arca Equities Rules to replace references therein to ''NYSE Euronext'' with references to Holdco.

10. Proposed Technical Amendment to the NYSE Trust Agreement

Following completion of the Combination, NYSE Euronext will become a wholly owned subsidiary of Holdco and, as such, its board of directors will likely be reduced in size and may not include directors who satisfy the independence criteria that are currently applicable. Accordingly, under the Proposed Rule Change, the functions currently performed by the nominating and governance committee of NYSE Euronext in connection with reviewing and appointing trustees pursuant to the Trust Agreement, dated as of April 4, 2007, by and among NYSE Euronext, NYSE Group and the other parties thereto, would be transferred to the Holdco Nominating, Governance and Corporate Responsibility Committee. References in such trust agreement to the nominating and governance committee of NYSE Euronext would be replaced with references to the Holdco Nominating, Governance and Corporate Responsibility Committee, as indicated in Exhibit 5O attached to this Proposed Rule Change.

11. Statutory Basis

NYSE Amex believes that this filing is consistent with Section 6(b) [69] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1) [70] in particular, in that it enables NYSE Amex to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE Amex. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Combination, the U.S. Regulated Subsidiaries will operate in the same manner following the Combination as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

NYSE Amex also believes that this filing furthers the objectives of Section 6(b)(5) [71] of the Exchange Act because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NYSE Amex expects that the Combination will position the Holdco Group to be a leader in a diverse set of large and growing businesses, including derivatives, listings, cash equities, post-trade settlement and asset servicing, market data and technology servicing. NYSE Amex believes this will enable the Holdco Group to leverage technology and a unique collection of markets to create a mutually reinforcing capital markets community driving efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients. As a true pacesetter across the spectrum of capital markets services, the Holdco Group would be positioned to offer clients global scale, product innovation, operational and capital efficiencies and an enhanced range of technology and market information solutions.

In addition, NYSE Amex expects that the Holdco Group would be positioned to serve as a benchmark regulatory model, facilitating transparency and standardization in capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks.

[69] 15 U.S.C. 78(f)(b).

[70] 15 U.S.C. 78(f)(b)(1).

[71] 15 U.S.C. 78(f)(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Amex does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NYSE Amex has neither solicited nor received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMEX–2011–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2011–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMEX–2011–78 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27192 Filed 10–19–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65562; File No. SR–NYSE–2011–51]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of Alpha Beta Netherlands Holding N.V.

October 14, 2011.

Pursuant to Section 19(b)(1)[1] of the U.S. Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2011, New York Stock Exchange, LLC (the ''Exchange'') filed with the U.S. Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared substantially 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

A. Overview of the Proposed Combination

The Exchange, a New York limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the ''Proposed Rule Change'') to the Commission in connection with the proposed business combination (the ''Combination'') of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (''Deutsche Börse'').

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges''—the Exchange, NYSE Arca, Inc. (''NYSE Arca'') and NYSE Amex LLC (''NYSE Amex''—and (2) 100% of the equity interest of NYSE Market, Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. (''NYSE Arca LLC'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the ''NYSE U.S. Regulated Subsidiaries'' and each, a ''NYSE U.S. Regulated Subsidiary''). NYSE Arca and NYSE Amex will be separately filing a proposed rule change in connection with the Combination that will be substantially the same as the Proposed Rule Change.

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (''ISE Holdings''), which in turn holds 100% of the equity interest of International Securities Exchange, LLC (''ISE''), a registered national securities exchange and self-regulatory organization. ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings, LLC (''Direct Edge Holdings''), which in turn indirectly holds 100% of the equity interest of two registered national securities exchanges and self-regulatory organizations—EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') (each of ISE, EDGA and EDGX, a ''DB Exchange'' and a ''DB U.S. Regulated Subsidiary'' and together, the

[72] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''DB Exchanges'' and the ''DB U.S. Regulated Subsidiaries''). The DB Exchanges will be separately filing a proposed rule change in connection with the Combination.

If the Combination is completed, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''), will be held under a single, publicly traded holding company organized under the laws of the Netherlands (''Holdco'').[3] The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

B. Summary of Proposed Rule Change

The Exchange is proposing that, pursuant to the Combination, its indirect parent, NYSE Euronext, will become a wholly owned subsidiary of Holdco. In addition, the Exchange is proposing that, in connection with the Combination, the Commission approve certain amendments to the organizational and other governance documents of Holdco, NYSE Euronext, NYSE Group and certain of the NYSE U.S. Regulated Subsidiaries as well as certain rules of the Exchange, NYSE Amex and NYSE Arca Equities.[4] The Proposed Rule Change is summarized as follows:

• *Proposed Approval of Waiver of Ownership and Voting Restrictions of NYSE Euronext.* The Amended and Restated Certificate of Incorporation of NYSE Euronext (the ''NYSE Euronext Certificate'') currently restricts any person, either alone or together with its related persons, from being entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially owning shares of stock of NYSE Euronext representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.[5] NYSE Euronext is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Euronext shares that are held in excess of the ownership restriction. The NYSE Euronext Certificate and the Amended and Restated Bylaws of NYSE Euronext (the ''NYSE Euronext Bylaws'') provide that the board of directors of NYSE Euronext may waive these voting and ownership restrictions if it makes certain determinations and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act[6] and filed with, and approved by, each European Regulator (as defined in the NYSE Euronext Certificate) having appropriate jurisdiction and authority.[7] Acting pursuant to this waiver provision, the board of directors of NYSE Euronext has adopted the resolutions set forth in Exhibit 5A (the ''NYSE Euronext Resolutions'') in order to permit Holdco to own and vote 100% of the outstanding common stock of NYSE Euronext as of and after the Combination. The Exchange is requesting approval by the Commission of the NYSE Euronext Resolutions in order to allow the Combination to take place.

• *Proposed Amendments to Voting and Ownership Restrictions of NYSE Euronext.* Because NYSE Euronext would become a wholly owned subsidiary of Holdco as a result of the Combination, the Exchange is proposing to amend the voting and ownership restrictions in the NYSE Euronext Certificate to be consistent with the analogous provisions in the Second Amended and Restated Certificate of Incorporation of NYSE Group (the ''NYSE Group Certificate''): (1) First, the NYSE Euronext Certificate would be amended to provide that all of the issued and outstanding shares of NYSE Euronext will be held by Holdco, and that Holdco may not transfer or assign any shares without approval by the Commission under the Exchange Act and the relevant European Regulators under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate);[8] and (2) second, the NYSE Euronext Certificate would be amended to provide that the voting and ownership restrictions contained therein would only apply in the event that Holdco does not own all of the issued and outstanding shares of NYSE Euronext and only for so long as NYSE Euronext directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYSE Euronext Certificate).[9] In addition, the voting and ownership restrictions in the NYSE Euronext Certificate would be amended to (a) change the 10% threshold for the voting restriction to a 20% threshold; (b) change the 20% threshold for the ownership restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is, or with respect to whom a related person is, (A) a Member of the Exchange, as defined in the NYSE Euronext Certificate (a ''NYSE Member''), (B) a Member of NYSE Amex as defined in the current NYSE Euronext Bylaws (including any person who is a related person of such member, an ''Amex Member''), (C) an ETP Holder of NYSE Arca Equities, as defined in the NYSE Euronext Certificate (an ''ETP Holder''), or (D) an OTP Holder or OTP Firm of NYSE Arca, as defined in the NYSE Euronext Certificate (an ''OTP Holder'' and ''OTP Firm,'' respectively)); (c) add the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE Amex in order to waive the voting and ownership restrictions to the NYSE Euronext Certificate, and delete this provision from the NYSE Euronext Bylaws; (d) update the names of certain European regulatory entities in the definition of ''European Regulator'' (as currently defined in the NYSE Euronext Certificate and the NYSE Euronext Bylaws); and (e) expand the definition of ''Related Persons'' to address Amex Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

• *Proposed Amendments to Voting and Ownership Restrictions of NYSE Group.* The NYSE Group Certificate currently provides that, if NYSE Euronext and the trust[10] established pursuant to the Trust Agreement, dated as of April 4, 2007, by and among NYSE Euronext, NYSE Group and the other parties thereto, do not hold 100% of the outstanding stock of NYSE Group, no

[3] Holdco is currently named ''Alpha Beta Netherlands Holding N.V.,'' but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse.

[4] Proposed amendments to the governance documents and/or rules of NYSE Amex and NYSE Arca Equities are included in this Proposed Rule Change, and the text of those proposed amendments are attached as exhibits to this Proposed Rule Change, because they are part of the overall set of changes proposed by the NYSE Exchanges to be made in connection with the Combination.

[5] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2.

[6] 15 U.S.C. 78s(b).

[7] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2, and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

[8] The analogous provision in the NYSE Group Certificate is Section 4(a) of Article IV.

[9] The analogous provision in the NYSE Group Certificate is Section 4(b) of Article IV.

[10] No changes are being proposed to the current Delaware trust and stichting for ''regulatory overspill'' matters, except that references to the Nominating and Governance Committee of NYSE Euronext would be replaced with references to the Holdco Nominating, Governance and Corporate Responsibility Committee.

person, either alone or together with its related persons, may be entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.[11] NYSE Group is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Group shares which are held in excess of the ownership restriction.[12] Under the Proposed Rule Change, the voting and ownership restrictions in the NYSE Group Certificate would be amended to (1) change the 10% threshold for the voting restriction to a 20% threshold; (2) change the 20% threshold for the ownership restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is, or with respect to whom a related person is, a NYSE Member, an Amex Member, an ETP Holder or an OTP Holder or OTP Firm); (3) provide that the ownership and voting limitations would apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate); and (4) expand the definition of ''Related Persons'' regarding Amex Members so that it is consistent with the language in the NYSE Rules, which language will be incorporated in the NYSE Euronext Certificate pursuant to this Proposed Rule Change.

• *Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents.* Under the Proposed Rule Change, in light of the fact that NYSE Euronext would become a wholly owned subsidiary of Holdco following completion of the Combination, NYSE Euronext Certificate and the NYSE Euronext Bylaws would be amended to (1) simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly owned subsidiary of Holdco following completion of the Combination; and (3) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions, and to update cross-references to sections, consistent with the other amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth in this Proposed Rule Change). In addition, the current Independence Policy of the NYSE Euronext board of directors would cease to be in effect.

• *Proposed Amendments to Board Composition Requirements for the Exchange, NYSE Amex, NYSE Market and NYSE Regulation.* Under the Proposed Rule Change, certain provisions of the Third Amended and Restated Operating Agreement, dated as of April 1, 2009, of the Exchange (the ''Exchange Operating Agreement'') relating to the composition of the Exchange's board of directors would be amended, including to provide that the independent directors of the Exchange would perform certain functions currently allocated to the NYSE Euronext nominating and governance committee and that the Exchange's board of directors would have its own director independence policy, instead of referring to the director independence policy of NYSE Euronext. Substantially the same revisions would be made to the analogous provisions of the Amended and Restated Operating Agreement of NYSE Amex,[13] the Amended and Restated Bylaws of NYSE Market [14] and the Third Amended and Restated Bylaws of NYSE Regulation.[15]

• *Proposed Amendments to the NYSE Group Certificate and NYSE Group Bylaws.* Under the Proposed Rule Change, the NYSE Group Certificate and the NYSE Group Bylaws would be amended in order to (1) conform certain provisions to analogous provisions of the organizational documents of NYSE Euronext, which will likewise be a wholly owned subsidiary of Holdco following completion of the Combination; and (2) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions to be consistent with the other amendments to the NYSE Group Certificate and the NYSE Group Bylaws set forth in this Proposed Rule Change).

• *Proposed Amendments to the Exchange Rules, NYSE Amex Rules and NYSE Arca Equities Rules.* Under the Proposed Rule Change, certain technical amendments would be made to the rules of the Exchange (the ''Exchange Rules'') to (1) replace references therein to ''NYSE Euronext'' with references to Holdco; and (2) delete the definitions of ''member'' and ''member organization'' relating to NYSE Amex which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because the Proposed Rule Change will revise the NYSE Euronext Certificate to include analogous language relating to NYSE Amex Members. In addition, certain technical amendments would be made to the rules of NYSE Amex (the ''NYSE Amex Rules'') and to the rules of NYSE Arca Equities (the ''NYSE Arca Equities Rules'') to replace references therein to ''NYSE Euronext'' with references to Holdco.

The text of the proposed amended NYSE Euronext Certificate, NYSE Euronext Bylaws, NYSE Group Certificate, NYSE Group Bylaws, Exchange Operating Agreement, Amended and Restated Operating Agreement of NYSE Amex, Amended and Restated Bylaws of NYSE Market, Third Amended and Restated Bylaws of NYSE Regulation, Exchange Rules, form of Director Independence Policy for certain NYSE U.S. Regulated Subsidiaries, NYSE Amex Rules and NYSE Arca Equities Rules are attached to the Proposed Rule Change as Exhibits 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5P and 5Q, respectively.

Under the Proposed Rule Change, Holdco would take appropriate steps to incorporate voting and ownership restrictions, requirements relating to submission to jurisdiction, access to books and records and other requirements related to its control of the U.S. Regulated Subsidiaries. Specifically, the Articles of Association of Holdco in effect as of the completion of the Combination (the ''Holdco Articles'') would contain provisions [16] to incorporate these concepts with respect to itself, as well as its directors, officers, employees and agents (as applicable):

• *Voting and Ownership Restrictions in the Holdco Articles.* The Holdco Articles would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the then outstanding votes entitled to be cast on a matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes entitled to be cast on a matter (except that a 20%

[11] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Section 4(b)(1) & (2).

[12] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Sections 4(b)(1)(A) & 4(b)(2)(D).

[13] *See* Amended and Restated Operating Agreement of NYSE Amex LLC, Section 2.03(a).

[14] *See* Amended and Restated Bylaws of NYSE Market, Inc., Article III Section 1.

[15] *See* Third Amended and Restated Bylaws of NYSE Regulation, Inc., Article III Section 1.

[16] The text of the proposed Holdco Articles is attached to the Proposed Rule Change as Exhibit 5L.

ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or OTP Firm, a Member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an ''ISE Member''), or a member of EDGA or EDGX (as such terms are defined in the rules of EDGA and EDGX, respectively, an ''EDGA Member'' and ''EDGX Member,'' respectively)). The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any such person(s) exceeds the ownership restriction, it will be required to offer for sale and transfer the number of Holdco shares required to comply with the ownership restriction, and the rights to vote, attend general meetings of Holdco shareholders and receive dividends or other distributions attached to shares held in excess of the 40% threshold (or 20% threshold, if applicable) will be suspended for so long as such threshold is exceeded. If such person(s) fails to comply with the transfer obligation within two weeks, then the Holdco Articles would provide that Holdco will be irrevocably authorized to take actions on behalf of such person(s) in order to cause it to comply with such obligations. Consistent with the current NYSE Euronext Certificate, the Holdco board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements which are currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the current NYSE Euronext Certificate and the Certificate of Incorporation of ISE Holdings (the ''ISE Certificate''), as applicable) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.

• *Jurisdiction.* The Holdco Articles will provide that Holdco and its directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the Holdco Articles would provide that so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary. Furthermore, the Holdco Articles would provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with these provisions of the Holdco Articles.

• *Books and Records.* The Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

• *Amendments to Holdco Articles.* The Holdco Articles would provide that before any amendment to the Holdco Articles may be effectuated by execution of a notarial deed of amendment, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective.

• *Additional Matters.* The Holdco Articles would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of Holdco's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act. In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary. The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco will sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary [17] that it will comply with these provisions of the Holdco Articles.[18]

In addition, Holdco would adopt a Director Independence Policy in the form attached hereto as Exhibit 5N (the ''Holdco Independence Policy''), which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except for certain changes described in this Proposed Rule Change.

The text of the Proposed Rule Change is available at the Exchange, the

[17] The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

[18] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

Commission's Public Reference Room, and on the Web site of the Exchange (*http://www.nyse.com*). The text of Exhibits 5A through 5Q of the Proposed Rule Change are also available on the Exchange's Web site and on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

Other than as described herein and set forth in the attached Exhibits 5A through 5Q, the Exchange will continue to conduct its regulated activities in the manner currently conducted and will not make any changes to its regulated activities in connection with the Combination. If the Exchange determines to make any such changes, it will seek approval of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Purpose [sic]

The purpose of this rule filing is to adopt the rules necessary to permit NYSE Euronext to effect the Combination and to amend certain provisions of the organizational and other governance documents of NYSE Euronext, NYSE Group and certain of the NYSE U.S. Regulated Subsidiaries, including certain Exchange Rules, NYSE Amex Rules and NYSE Arca Equities Rules.

1. Overview of the Combination

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the Combination of NYSE Euronext and Deutsche Börse. The Combination will create a holding company, Holdco, which will hold the businesses of NYSE Euronext and Deutsche Börse. Following the Combination, each of NYSE Euronext and Deutsche Börse will be a separate subsidiary of Holdco. Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide.

Other than as described herein, Holdco and the NYSE Exchanges will not make any changes to the regulated activities of the NYSE U.S. Regulated Subsidiaries in connection with the Combination, and, other than as described in the separate proposed rule changes filed by each of the DB Exchanges in connection with the Combination, Holdco and the DB Exchanges will not make any changes to the regulated activities of the DB U.S. Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Combination will occur pursuant to the terms of the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011 (as it may be further amended from time to time, the ''Combination Agreement''), by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco (''Merger Sub''). Subject to the terms and conditions set forth in the Combination Agreement and in compliance with applicable law, Holdco has conducted a public exchange offer (the ''Exchange Offer''), in which shareholders of Deutsche Börse have been afforded the opportunity to tender each share of Deutsche Börse for one ordinary share of Holdco (each, a ''Holdco Share'').

Immediately after the time that Holdco accepts for exchange, and exchanges, the Deutsche Börse shares that are validly tendered and not withdrawn in the Exchange Offer, Merger Sub will merge with and into NYSE Euronext, as a result of which NYSE Euronext will become a wholly owned subsidiary of Holdco (the ''Merger''). In the Merger, each outstanding share of NYSE Euronext common stock will be converted into the right to receive 0.47 of a fully paid and non-assessable Holdco Share. NYSE Euronext's obligation to complete the Merger is subject to the completion of the Exchange Offer and the acquisition by Holdco of all of the Deutsche Börse shares validly tendered and not withdrawn in the Exchange Offer. The completion of the Exchange Offer (and, therefore, the completion of the Merger) is subject to the satisfaction of a number of conditions, including that Deutsche Börse shares representing at least 75% of the Deutsche Börse shares outstanding, on a fully diluted basis, must be validly tendered and not withdrawn in the Exchange Offer, and that holders of a majority of the outstanding shares of NYSE Euronext shall have adopted the Combination Agreement. Both of these conditions have been satisfied.

Following the completion of the Exchange Offer, and depending on the percentage of Deutsche Börse shares acquired by Holdco in the Exchange Offer, Deutsche Börse and Holdco intend to complete a post-completion reorganization pursuant to which Holdco will enter into a domination agreement, or a combination of a domination agreement and a profit and loss transfer agreement, pursuant to which the remaining shareholders of Deutsche Börse will have limited rights, including a limited ability to participate in the profits of Deutsche Börse.

Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide. Following the Combination, Holdco and its subsidiaries (together, the ''Holdco Group'') expect to serve as a benchmark regulatory model, facilitating transparency and harmonization of capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks and their respective brand names.

2. Overview of the Holdco Group Following the Combination

Following the Combination, Holdco will be a for-profit, publicly traded corporation formed under the laws of the Netherlands and will act as the holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold all of the equity interests in NYSE Euronext, which holds (1) 100% of the equity interest of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets

in Belgium, France, the Netherlands, Portugal and the United Kingdom). Holdco will also hold a majority of the equity interests in Deutsche Börse, which indirectly holds 50% of the equity interest of ISE Holdings (which, in turn, holds (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings indirectly holds 100% of the equity interest of EDGA and EDGX. Holdco intends to list its ordinary shares on the New York Stock Exchange, the Frankfurt Stock Exchange and Euronext Paris. The Holdco Group will have dual headquarters in Frankfurt and New York.

After the Combination, NYSE Group will continue to be directly wholly owned by NYSE Euronext and will continue to directly or indirectly own the three NYSE Exchanges—the Exchange, NYSE Arca and NYSE Amex—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYSE Group, oversees FINRA's performance of certain market surveillance and enforcement functions for NYSE Euronext's U.S. securities exchanges, enforces listed company compliance with applicable standards, and oversees regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, the Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des Services et Marchés Financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários—CMVM*) and the U.K. Financial Services Authority (*FSA*).

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of each NYSE U.S. Regulated Subsidiary will be preserved. Specifically, after the Combination, NYSE Group's businesses and assets will continue to be structured as follows:

- The Exchange will remain a direct wholly owned subsidiary of NYSE Group and an indirectly wholly owned subsidiary of NYSE Euronext.
- NYSE Market will remain a wholly owned subsidiary of the Exchange and will continue to conduct the Exchange's business.
- NYSE Regulation will remain a wholly owned subsidiary of the Exchange and continue to perform, and/or oversee the performance of, regulatory responsibilities of the Exchange pursuant to a delegation agreement with the Exchange and regulatory functions of NYSE Arca and NYSE Amex pursuant to services agreements with them.[19]
- Archipelago Holdings, Inc., a Delaware corporation (''Arca Holdings''), will remain a wholly owned subsidiary of NYSE Group and indirect wholly owned subsidiary of NYSE Euronext.
- NYSE Arca Holdings, Inc., a Delaware corporation (''NYSE Arca Holdings''), and NYSE Arca, L.L.C., a Delaware limited liability company (''NYSE Arca LLC''), will remain wholly owned subsidiaries of Arca Holdings.
- NYSE Arca will remain a wholly owned subsidiary of NYSE Arca Holdings.
- NYSE Arca Equities, a Delaware corporation, will remain a wholly owned subsidiary of NYSE Arca.
- NYSE Amex will remain a direct wholly owned subsidiary of NYSE Group and an indirectly wholly owned subsidiary of NYSE Euronext.
- The Combination will have no effect on the ability of any party to trade securities on the Exchange, NYSE Arca or NYSE Amex.

Similarly, Deutsche Börse and its subsidiaries, and NYSE Euronext and its subsidiaries, will continue to conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

Holdco acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, NYSE Arca or NYSE Amex, it will be responsible for referring such possible violations to each such exchange, respectively. In addition, Holdco will become a party to the agreement among NYSE Euronext, NYSE Group, the Exchange, NYSE Market and NYSE Regulation to provide for adequate funding for NYSE Regulation.

3. Proposed Approval of Waiver of Voting and Ownership Restrictions of NYSE Euronext

Article V of the current NYSE Euronext Certificate provides that (1) no person, either alone or together with its ''related persons'' (as defined in the NYSE Euronext Certificate), may be entitled to vote or cause the voting of shares of NYSE Euronext beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Euronext (the ''NYSE Euronext Voting Restriction'').[20] NYSE Euronext must disregard any votes purposed to be cast in excess of the NYSE Euronext Voting Restriction.[21]

In addition, the NYSE Euronext Certificate provides that no person, either alone or together with its related persons, may at any time beneficially own shares of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the ''NYSE Euronext Ownership Restriction'').[22] If any person, either alone or together with its related persons, owns shares of NYSE Euronext in excess of the NYSE Euronext Ownership Restriction, then such

[19] Certain regulatory functions have been allocated to, and/or are otherwise performed by, FINRA.

[20] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1.

[21] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1(A).

[22] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2.

person and its related persons are obligated to sell promptly, and NYSE Euronext is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Euronext necessary so that such person, together with its related persons, will beneficially own shares of NYSE Euronext representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.[23]

The NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction are applicable to each person unless and until (1) such person has delivered a notice in writing to the board of directors of NYSE Euronext, not less than 45 days (or such shorter period as the board of directors of NYSE Euronext expressly permits) prior to any vote or, in the case of the NYSE Euronext Ownership Restriction, prior to the acquisition of any shares of NYSE Euronext that would cause such person, either alone or together with its related persons, to exceed the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Euronext stock beneficially owned by such person or its related persons in excess of the NYSE Euronext Voting Restriction or, in the case of the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Euronext has resolved to expressly permit such voting or ownership, as applicable; (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act[24] and has become effective thereunder; and (4) such resolution has been filed with, and approved by, each European Regulator having appropriate jurisdiction and authority. Subject to its fiduciary duties under applicable law, the NYSE Euronext board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless it has determined that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- Will not impair the ability of any NYSE U.S. Regulated Subsidiary, NYSE Euronext or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- Will not impair the ability of any of the European Market Subsidiaries (as defined in the NYSE Euronext Bylaws) of NYSE Euronext or Euronext (to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations (as defined in the NYSE Euronext Bylaws);
- Is otherwise in the best interest of NYSE Euronext, its stockholders, the NYSE U.S. Regulated Subsidiaries and the European Market Subsidiaries, and will not impair the Commission's ability to enforce the Exchange Act or the European Regulators' ability to enforce the European Exchange Regulations;
- For so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, neither such person nor any of its related persons is a NYSE Member;
- For so long as NYSE Euronext directly or indirectly controls NYSE Amex, neither such person nor any of its related persons is an Amex Member;
- For so long as NYSE Euronext directly or indirectly controls NYSE Arca, NYSE Arca Equities or any facility of NYSE Arca, neither such person nor any of its related persons is an ETP Holder, an OTP Holder or an OTP Firm; and
- Neither such person nor any of its related persons is a U.S. Disqualified Person or a European Disqualified Person (as such terms are defined in the NYSE Euronext Certificate).[25]

In order to allow Holdco to wholly own and vote all of the outstanding common stock of NYSE Euronext upon consummation of the Combination, Holdco has delivered written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the NYSE Euronext Certificate requesting approval of its voting and ownership of NYSE Euronext shares in excess of the NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of NYSE Euronext that neither it, nor any of its related persons, is (1) a ''member'' or ''member organization'' of the Exchange; (2) a ''member'' of NYSE Amex; (3) an ETP Holder; (4) an OTP Holder or an OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person.

At a meeting duly convened on September 15, 2011, the board of directors of NYSE Euronext adopted the NYSE Euronext Resolutions to permit Holdco, either alone or with its related persons, to exceed the NYSE Euronext Ownership Restriction and the NYSE Euronext Voting Restriction. In adopting such resolutions, the board of directors of NYSE Euronext made the necessary determinations set forth above and approved the submission of this Proposed Rule Change to the Commission. The NYSE U.S. Regulated Subsidiaries will continue to operate and regulate their markets and members exactly as they have done prior to the Combination. Except as set forth in this Proposed Rule Change, Holdco is not proposing any amendments to their trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the NYSE U.S. Regulated Subsidiaries after the Combination, the NYSE U.S. Regulated Subsidiaries will operate in the same manner following the Combination as they operate today.[26] Thus, the Commission will continue to have plenary regulatory authority over the NYSE U.S. Regulated Subsidiaries, as is the case currently with these entities. As described in the following sections of this filing, the Exchange is proposing a series of amendments to the NYSE Euronext Certificate, the NYSE Euronext Bylaws, the NYSE Group Certificate and the NYSE Group Bylaws, as well as certain provisions of the Holdco Articles, that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The NYSE Euronext board of directors also determined that ownership of NYSE Euronext by Holdco is in the best interests of NYSE Euronext, its shareholders and the NYSE U.S. Regulated Subsidiaries. With respect to the interests of the NYSE U.S. Regulated

[23] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2(D).

[24] 15 U.S.C. 78s(b).

[25] *See* Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1(B), 1(C), 2(B) and 2(C), and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

[26] The Exchange has been informed by Deutsche Börse that the DB U.S. Regulated Subsidiaries are also expected to operate in the same manner following the Combination as they operate today. This is addressed in the separate proposed rule change filed by each of the DB Exchanges.

Subsidiaries, the board of directors of NYSE Euronext has noted, among other things, its expectation that the Combination would over time create substantial incremental efficiency and growth opportunities and that the Holdco Group is expected to be a leader in a diverse set of large and growing businesses, including derivatives, listings, cash equities, post-trade settlement and asset servicing, market data and technology servicing.

In addition, neither Holdco, nor any of its related persons, is (1) a NYSE Member; (2) an Amex Member; (3) an ETP Holder, an OTP Holder or an OTP Firm; or (4) a U.S. Disqualified Person or a European Disqualified Person.

An extract with the relevant provisions of the NYSE Euronext Resolutions is attached as Exhibit 5A to the Proposed Rule Change and can be found on the Exchange's Web site and the Commission's Web site.

The Exchange hereby requests that the Commission approve the NYSE Euronext Resolutions and allow Holdco, either alone or with its related persons, to own and vote all of the outstanding common stock of NYSE Euronext upon and following the consummation of the Combination.

4. Proposed Amendments to Ownership and Voting Restrictions After the Combination

Overview

The Exchange is proposing that, effective as of the completion of the Combination, the Holdco Articles would contain voting and ownership restrictions that restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the votes entitled to be cast on any matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes that may be cast on any matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member).

In addition, the Exchange is proposing that, effective as of the Combination, the voting and ownership restrictions currently in the NYSE Euronext Certificate and NYSE Euronext Bylaws, as well as the related waiver provisions set forth therein, would remain in effect, except that they would be modified in certain respects as described herein.[27]

Voting and Ownership Restrictions in Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that no person, either alone or together with its related persons, will be entitled to vote or cause the voting of a number of shares of Holdco, in person or by proxy or through any voting agreement or other arrangement, which represent in the aggregate (1) more than 20% of the then outstanding votes entitled to be cast on such matter; or (2) more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of Holdco (the ''Holdco Voting Restriction'').[28] The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the Holdco Voting Restriction.

In addition, the Holdco Articles would provide that any person who, either alone or together with its related persons, beneficially owns Holdco shares which represent in the aggregate more than 40% of the outstanding votes entitled to be cast on any matter (except that a 20% restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member) (the ''Holdco Ownership Restriction''), will be obligated to offer for sale and to transfer a number of Holdco shares necessary so that such person, together with its related persons, beneficially owns a number of Holdco shares that complies with the Holdco Ownership Restriction (the ''Holdco Transfer Obligation'').[29] If such person(s) fails to comply with the Holdco Transfer Obligation within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco Transfer Obligation.[30]

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco Ownership Restriction (any such person(s), a ''Non-Compliant Owner''), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco Ownership Restriction. Specifically, the Non-Compliant Owner's rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco Ownership Restriction would be suspended for so long as the Holdco Ownership Restriction is exceeded.[31]

Pursuant to Section 2:87a of the Dutch Civil Code, the Non-Compliant Owner may request that an independent expert be appointed to determine the value of the Holdco shares, but such expert will have discretion to determine that the value of the shares is equal to the price received for the shares by the Non-Compliant Owner on any stock exchange where the Holdco shares are listed.[32]

The voting and ownership restrictions will apply to each person unless it (1) delivers to the Holdco board of directors a written notice of its intention to acquire voting power or ownership in excess of the relevant limitation, and such notice is delivered at least 45 days (or such shorter period as the Holdco board of directors expressly consents to) prior to acquiring Holdco shares in excess of the Holdco Voting Restriction or Holdco Ownership Restriction; (2) obtains a written confirmation from the Holdco board of directors that the board has expressly resolved to permit such voting or ownership; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European regulators having appropriate jurisdiction and authority.[33] The Holdco board of directors may waive the Holdco Voting Restriction and Holdco Ownership Restriction if it makes certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate and the ISE Holdings Certificate, respectively.[34]

[27] As described in the proposed rule change filed by each of the DB Exchanges, the current voting and ownership restrictions contained in the certificate of incorporation of ISE Holdings, as well as the related provisions contained in the amended and restated bylaws of U.S. Exchange Holdings and the board resolutions of Deutsche Börse, Eurex Frankfurt AG and other indirect parent entities of ISE, would remain in effect. The DB Trust would also remain unaltered and would continue to have rights to enforce these restrictions.

[28] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 34.1.

[29] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 35.1 and 35.4.

[30] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.7.

[31] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.6.

[32] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 35.5.

[33] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.2 and 35.2.

[34] *See* Form of Deed of Amendment to Holdco Articles of Association, Articles 34.3 and 35.3.

Amendments to NYSE Group Voting and Ownership Restrictions

The voting restrictions contained in the current NYSE Group Certificate provide that, if such restrictions apply, (1) no person, either alone or together with its related persons (as defined in the NYSE Group Certificate), may be entitled to vote or cause the voting of shares of stock of NYSE Group beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Group (the ''NYSE Group Voting Restriction'').[35] NYSE Group must disregard any votes purported to be cast in excess of the NYSE Group Voting Restriction.

In addition, the ownership restrictions contained in the current NYSE Group Certificate provide that, if such restrictions apply, no person, either alone or together with its related persons, may at any time own beneficially shares of NYSE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the ''NYSE Group Ownership Restriction''). If any person, either alone or together with its related persons, owns shares of NYSE Group in excess of the NYSE Group Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Group necessary so that such person, together with its related persons, will beneficially own shares of NYSE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.

The NYSE Group Voting Restriction and the NYSE Group Ownership Restriction apply to each person unless and until (1) such person has delivered a notice in writing to the board of directors of NYSE Group, not less than 45 days (or such shorter period as the board of directors of NYSE Group expressly permits) prior to any vote or, in the case of the NYSE Group Ownership Restriction, prior to the acquisition of any shares of NYSE Group that would cause such person, either alone or together with its related persons, to exceed the NYSE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Group stock beneficially owned by such person or its related persons in excess of the NYSE Group Voting Restriction or, in the case of the NYSE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Group has resolved to expressly permit such voting or ownership, as applicable; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act[36] and has become effective thereunder. Subject to its fiduciary duties under applicable law, the NYSE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations which are substantially similar to the determinations required to be made by the NYSE Euronext board of directors in connection with a waiver of the NYSE Euronext Voting Limitation and/or the NYSE Euronext Ownership Limitation (as described above).

Under the Proposed Rule Change, the NYSE Group Certificate would be amended, effective as of the Combination, to (1) change the 10% threshold for the NYSE Group Voting Restriction to a 20% threshold; and (2) change the 20% threshold for the NYSE Group Ownership Restriction to a 40% restriction (except that a 20% restriction would continue to apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or an OTP Firm). These percentage thresholds are consistent with those applicable to ISE Holdings and other regulated exchanges and have been approved on several occasions by the Commission.[37] The NYSE Group Certificate would also be updated to provide that the NYSE Group Voting Restriction and the NYSE Group Ownership Restriction would apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate).

Under the Proposed Rule Change, the definition of ''Related Persons'' would be expanded to provide that (1) in the case of a person that is a ''member'' (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE Amex, such person's ''Related Persons'' would include the ''member'' (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and 3(a)(3)(A)(iii) of the Exchange Act which are currently referenced in this provision of the NYSE Group Certificate) with which such person is associated; and (2) in the case of any person that is a ''member'' (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and 3(a)(3)(A)(iii) of the Exchange Act which are currently referenced in this provision of the NYSE Group Certificate) of NYSE Amex, such person's ''Related Persons'' would include any ''member'' (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person. These provisions are substantively consistent with language in the NYSE Rules, which language would be deleted under the Proposed Rule Change.

Amendments to NYSE Euronext Voting and Ownership Restrictions

Under the Proposed Rule Change, the NYSE Euronext Certificate would be amended, effective as of the Combination, to be consistent with the NYSE Group Certificate in the following respects: (1) First, the NYSE Euronext Certificate would be amended to provide that all of the issued and outstanding shares of NYSE Euronext will be held by Holdco, and that Holdco may not transfer or assign any shares without approval by the Commission under the Exchange Act and the relevant European Regulators (as defined in the NYSE Euronext Certificate) under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate);[38] and (2) the NYSE Euronext Certificate would be amended to provide that the NYSE Euronext

[35] *See* Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc., Article IV Section 4(b).

[36] 15 U.S.C. 78s(b).

[37] *See e.g.,* SEC Release No. 34–49718 (May 17, 2004) (File No. SR–PCX–2004–08), 69 FR 29611 (approval of rule change proposed by the Pacific Exchange, Inc.); SEC Release No. 34–49098 (January 16, 2004) (File No. SR–PHLX–2003–73), 69 FR 3974 (approval of rule change proposed by the Philadelphia Stock Exchange, Inc.); and SEC Release No. 34–50170 (August 9, 2004) (File No. SR–PCX–2004–56), 69 FR 50419 (approval of rule change proposed by the Pacific Exchange, Inc. relating to initial public offering of parent of Archipelago Exchange, L.L.C.).

[38] The analogous provision in the NYSE Group Certificate is Section 4(a) of Article IV.

Voting Restriction and NYSE Euronext Ownership Restriction contained therein would only apply in the event that Holdco does not own all of the issued and outstanding shares of NYSE Euronext.[39] In addition, the NYSE Euronext Certificate would be amended to (a) change the 10% threshold for the NYSE Euronext Voting Restriction to a 20% threshold; (b) change the 20% threshold for the NYSE Euronext Ownership Restriction to a 40% restriction (except that a 20% ownership restriction would continue to apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder or an OTP Firm); (c) provide that the NYSE Euronext Voting Restriction and NYSE Euronext Ownership Restriction contained therein would only apply only for so long as NYSE Euronext directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYSE Euronext Certificate); (d) add the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE Amex in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate, and delete this provision from the NYSE Euronext Bylaws; (e) update the names of certain European regulatory entities in the definition of ''European Regulator''; and (f) expand the definition of ''Related Persons'' to address Amex Members in a manner that is substantively consistent with language currently located in the NYSE Rules, as described above.

5. Additional Matters To Be Addressed in the Holdco Articles[40]

Jurisdiction Over Individuals

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco and its directors, and to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries.[41] The Holdco Articles would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, Holdco and its directors, officers and employees would (1) be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceeding relating to NYSE Group or any of its subsidiaries, and ISE Holdings may serve as the U.S. agent for proceedings relating to ISE Holdings or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts or the Commission.[42]

In addition, the Holdco Articles would provide that, so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of Holdco will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[43]

The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.[44] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[45] Furthermore, Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary[46] that it will comply with these provisions in the Holdco Articles.

The Exchange anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, each of whom the Commission has direct authority over pursuant Section 19(h)(4) of the Exchange Act.[47]

Access to Books and Records

Under the Proposed Rule Change, the Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.[48] In addition, the Holdco Articles would provide that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.[49] In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.[50]

Additional Matters

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their

[39] The analogous provision in the NYSE Group Certificate is Section 4(b) of Article IV.

[40] The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

[41] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(c).

[42] *See id.*

[43] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[44] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[45] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

[46] The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

[47] 15 U.S.C. 78s(h)(4).

[48] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

[49] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(e).

[50] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(g).

respective regulatory authority.[51] In addition, Holdco would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.[52] The Holdco Articles would also provide that, in discharging his or her responsibilities as a member of the Holdco board of directors or as an officer or employee of Holdco, each such director, officer or employee will (a) comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration to such matters).[53]

The Holdco Articles would also provide that all confidential information that comes into the possession of Holdco pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) not be made available to any persons other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof; (b) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco; and (c) not be used for any commercial purposes.[54] In addition, the Holdco Articles would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of Holdco to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.[55]

Additionally, the Holdco Articles would provide that, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.[56]

Finally, the Holdco Articles would provide that each director of Holdco would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to (1) engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.[57] This requirement would not, however, create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters.[58]

In addition, the Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary.[59] The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.[60]

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (1) cooperation with the Commission and such U.S. Regulated Subsidiaries; (2) compliance with U.S. federal securities laws; (3) inspection and copying of Holdco's books, records and premises; (4) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (5) maintenance of books and records in the United States; (6) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (7) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (8) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles. The form of Holdco's agreement and consent is attached as Exhibit 5M to this Proposed Rule Change.

Amendments to the Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that, before any amendment to or repeal of any provision of the Holdco Articles may become effectuated by means of a notarial deed of amendment, the same will be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. These requirements would also apply to any action by Holdco that would have the effect of amending or repealing any provision of the Holdco Articles.

[51] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(a).

[52] *See id.*

[53] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(l).

[54] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(h).

[55] *See id.*

[56] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(i).

[57] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[58] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

[59] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

[60] *See* Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy in the form attached hereto as Exhibit 5N, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that (1) a majority (as opposed to 75%) of the board of Holdco would be required to be independent; (2) executive officers of listed companies would no longer be prohibited from being considered independent for purposes of the Holdco board; (3) the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provide that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated; (4) references to certain European regulatory authorities would be updated, because their names have changed; (5) references to NYSE Alternext, Inc. would refer instead to NYSE Amex, because of this entity's name change; (6) footnote 2 of the current Independence Policy of NYSE Euronext would be deleted because the Holdco Independence Policy would not be applicable to NYSE Regulation, Inc., the Exchange, NYSE Amex or NYSE Market, which would have their own director independence policy in the form attached to this Proposed Rule Change as Exhibit 5K; and (7) references to the independence standards and criteria in the Dutch Corporate Governance Code would be added, because such standards and criteria will apply to Holdco, a Dutch company, and will supplement (rather than supersede or limit) the other independence standards and criteria set forth in the Holdco Independence Policy.

The Exchange believes that a majority independence standard is appropriate to ensure that Holdco's board as a whole consists of individuals with independent, objective perspectives, while at the same time affording Holdco sufficient flexibility to include persons with expertise and qualifications that will contribute meaningfully to the board's performance of its oversight function. The importance of allowing highly qualified individuals to serve on the board is underscored by the fact that Holdco will serve as the holding company for a complex, global business with highly specialized operations and regulatory functions. Although Holdco has unique responsibilities and functions as the holding company for the NYSE U.S. Regulated Subsidiaries, it will be subject to various corporate governance and regulatory obligations that will be addressed by means of ownership and voting limitations on its shareholders, commitments to provide access to its books and records and to submit to the jurisdiction of the Commission, director qualification requirements and other undertakings that are addressed in the Proposed Rule Change and will be formalized in the Holdco Articles and undertakings of Holdco to its U.S. Regulated Subsidiaries. The Exchange submits that some of these undertakings call for in-depth industry knowledge and expertise on the Holdco board, such as the requirement that Holdco's directors take into consideration the effect that Holdco's actions would have on the ability of its U.S. Regulated Subsidiaries to (i) foster cooperation and coordination with persons engaging in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, and (ii) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system.

In addition, the Exchange believes that the per se disqualification of listed company executives from being deemed independent should not be applicable to Holdco. The per se disqualification was initially adopted by the New York Stock Exchange, Inc. in early 2005 in the context of its unique circumstances and history and its management structure and board composition at that time.[61] The Exchange submits that those circumstances are no longer applicable and, following the proposed combination of NYSE Euronext and Deutsche Börse, the disqualification of listed company executives would impede rather than facilitate Holdco's efforts to ensure a qualified and balanced board composition and promote various other important corporate governance objectives, such as ensuring appropriate expertise and experience on its board, as well as representation of the interests of a diverse range of market constituencies and local European and U.S. interests. A per se disqualification would narrow the pool of potential Holdco director candidates and arbitrarily eliminate from consideration a large number of highly qualified, experienced individuals who have proven track records as business leaders. In addition, because the listed companies of the U.S. Regulated Subsidiaries tend to be U.S. domestic companies, this requirement could disproportionately restrict the eligibility of persons affiliated with U.S. companies as compared to non-U.S. companies to serve on the board of Holdco. Under the Holdco Independence Policy, the Holdco board would still need to assess whether a listed company executive meets the various independence criteria, including whether he or she has any ''material relationship'' with Holdco and it subsidiaries.

Furthermore, NYSE Euronext believes that the objectivity of board members is adequately protected by the various other independence criteria in the proposed Holdco Independence Policy, such as the requirement that independent directors may not be or have been within the last year, and may not have an immediate family member who is or within the last year was, a member of the Exchange, NYSE Arca or NYSE Amex. In addition, if and to the extent that a matter concerning a listed company whose executive is a Holdco director were ever to come before the Holdco board for consideration, such director would be required to be recused from acting on such matter pursuant to the Holdco board's conflicts of interest policy.

Finally, the current Independence Policy of NYSE Euronext provides that the sum of (a) executive officers of foreign private issuers, (b) executive officers of NYSE Euronext and (c) directors of affiliates of ''members'' (as defined in Sections 3(a)(A)(3)(ii), 3(a)(A)(3)(iii) and 3(a)(A)(3)(iv) of the Exchange Act) of NYSE, NYSE Arca or NYSE Amex, may not constitute more than a minority of the total number of directors of NYSE Euronext. The purpose of this requirement is to ensure that, although executives of listed companies who are foreign private issuers are not disqualified from serving on the board, such executives may not, together with NYSE Euronext executives and directors of affiliates of members, constitute more than a minority of the board. In light of the Exchange's proposal to eliminate the disqualification of listed company executives from the Holdco Independence Policy, this requirement would serve no purpose because the exception to such disqualification for foreign private issuer executives would also be eliminated. The Exchange further notes that under the proposed Holdco Independence Policy, executives of Holdco and directors of affiliates of exchange members would not be deemed independent and, accordingly,

[61] *See* Securities Exchange Act Release No. 34–51217 (February 16, 2005) (File No. SR–NYSE–2004–54), 70 FR 9688.

could not in any event constitute more than a minority of the Holdco board.

6. Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents

Pursuant to the Combination, NYSE Euronext will merge with Merger Sub, a wholly owned subsidiary of Holdco. NYSE Euronext, as the surviving corporation in the Merger, will become a wholly owned subsidiary of Holdco. Following the Merger, the current organizational documents of NYSE Euronext will remain in effect, except that the Exchange is proposing that, in addition to the aforementioned revisions relating to voting and ownership limitations, certain provisions will be amended to reflect the fact that, after the Combination, NYSE Euronext will be an intermediate holding company and will no longer be a public company traded on the Exchange, and the registration of its capital stock under Section 12 of the Exchange Act will be terminated upon application to the Commission. As a result, NYSE Euronext will no longer be subject to the Exchange's listing standards or to the corporate governance requirements applicable to publicly traded companies. As summarized below, the following revisions to the NYSE Euronext Certificate and NYSE Euronext Bylaws are proposed in order to (1) simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly owned subsidiary of Holdco following completion of the Combination; and (3) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions, and to update cross-references to sections, to reflect the other amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth in this Proposed Rule Change):

- The NYSE Euronext Certificate would be revised to provide that the registered office and agent of NYSE Euronext in Delaware will be the Corporation Trust Company, which is the registered agent of other subsidiaries of NYSE Euronext;
- The number of authorized shares of NYSE Euronext common stock and preferred stock will be reduced to 1,000 and 100, respectively, because it would no longer be necessary for NYSE Euronext to have a large number of widely held and actively traded shares;[62]
- The restrictions on transfers of NYSE Euronext shares contained in Section 4 of Article IV of the NYSE Euronext Certificate have now expired in accordance with their terms and would accordingly be deleted;
- Sections 2(A) and 2(B) of Article VI of the NYSE Euronext Certificate, and Section 2.2 of the NYSE Euronext Bylaws, would be amended to allow shareholders to call special meetings of shareholders and to postpone such meetings, in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination;
- Section 6 of Article VI of the NYSE Euronext Certificate, and Section 3.6 of the NYSE Euronext Bylaws (which would be renumbered as Section 3.5), would be amended to allow shareholders to fill board vacancies in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination;
- Section 1 of Article VIII of the NYSE Euronext Certificate, and Section 2.11 of the NYSE Euronext Bylaws (which would be renumbered as Section 2.9), would be amended to allow shareholders to take actions without a meeting and without prior notice if written consents are signed by the minimum number of votes that would be required to approve the action at a meeting, in order to give Holdco additional flexibility to take actions in its capacity as the sole shareholder of NYSE Euronext following completion of the Combination, and the reference at the end of Section 3.5 of the NYSE Euronext Bylaws to a special meeting of shareholders would be deleted because the NYSE Euronext shareholder may act by written consent to fill board vacancies;
- The supermajority shareholder vote requirements pursuant to Article X to amend or repeal certain provisions of the NYSE Euronext Certificate would be eliminated and replaced with a majority vote requirement, because a supermajority vote requirement would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a majority voting standard is consistent with the standard generally applicable for actions by shareholders under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;
- Section 2.3 of the NYSE Euronext Bylaws would be amended to clarify that notice of shareholder meetings is not required if waived in accordance with Section 10.3 of the NYSE Euronext Bylaws;
- The requirement in Section 2.6 of the NYSE Euronext Bylaws for the appointment of an inspector of elections for shareholders meetings would be deleted, because the requirement for an inspector of elections pursuant to Section 231 of the Delaware General Corporation Law would no longer apply to NYSE Euronext after completion of the Combination;[63]
- The requirement in Section 2.7 (which would be renumbered as Section 2.6) of the NYSE Euronext Bylaws that directors be elected by a majority of the votes cast (and that they must tender their resignation if such a majority vote is not received), except in the case of contested elections, and that the NYSE Euronext board of directors may fill any resulting vacancy or may decrease the size of the board, would be deleted and a plurality voting standard would be adopted for all director elections, because these requirements would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a plurality voting standard is consistent with the standard generally applicable for elections of directors under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;
- The requirements in Section 2.10 of the NYSE Euronext Bylaws requiring certain advance notice from shareholders of director nominations and shareholder proposals, and the requirement that only business brought before a special meeting of stockholders pursuant to NYSE Euronext's notice of the meeting may be brought before the meeting, would be eliminated, because these requirements would no longer

[62] Effective as of the time that NYSE Euronext merges with Pomme Merger Corporation, the Second Amended and Restated Certificate of Incorporation of NYSE Euronext (as the surviving corporation in the merger) will provide that 800,000,000 shares of common stock will be authorized and 100 shares of preferred stock will be authorized. All of the outstanding shares of NYSE Euronext will be held by Alpha Beta Netherlands Holding N.V. Promptly thereafter, (1) NYSE Euronext will conduct a reverse stock split so that Alpha Beta Netherlands Holding N.V. will hold a substantially reduced number of NYSE Euronext shares (*e.g.,* 1,000 common shares), and (2) the Second Amended and Restated Certificate of Incorporation of NYSE Euronext will accordingly be amended to reduce the total number of authorized shares of common stock to 1,000.

[63] *See* Section 231(e) of the Delaware General Corporation Law.

serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder;

• Section 3.1 of the NYSE Euronext Bylaws would be amended to clarify that the right of the NYSE Euronext board of directors to fix and change the number of directors on such board is subject to any rights of holders of any preferred stock to elect additional directors, in order to make this provision consistent with Section 2 of Article IV of the NYSE Euronext Certificate, which provides that preferred stock may be issued which may have voting rights;

• Sections 3.2(B) and 4.4 of the NYSE Euronext Bylaws would be amended to add ''if any'' after the references therein to the Nominating and Governance Committee, because NYSE Euronext would become a wholly owned subsidiary of Holdco and, as such, may not have a Nominating and Governance Committee;

• The requirement in Section 3.4 of the NYSE Euronext Bylaws that at least 75% of the board must be independent would be deleted, because NYSE Euronext would be a wholly owned subsidiary of Holdco after completion of the Combination and, therefore, it may be appropriate for executives of Holdco and its subsidiaries to serve on this board, and the reference to Section 3.4 in Section 3.2(A) would accordingly be deleted;

• Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws would be amended to clarify that notice of board meetings is not required if waived in accordance with Section 10.3 of the NYSE Euronext Bylaws;

• The advance notice period in Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws for electronic or telephonic notices of board meetings would be reduced from 24 hours to 12 hours, in order to simplify the requirements for board meetings and to be consistent with the analogous 12-hour time period currently required for notices pursuant to Section 3.7 of the NYSE Group Bylaws;

• Section 3.12 (which would be renumbered as Section 3.11) of the NYSE Euronext Bylaws would be amended to delete the requirement that, if the chairman or deputy chairman of the board of directors is also the chief executive officer or deputy chief executive officer, he or she may not participate in executive sessions of the board of directors, and if the chairman is not the chief executive officer or deputy chief executive officer, he or she will act as a liaison between the board of directors and the chief executive officer or the deputy chief executive officer, in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Euronext and in order to simplify the governance requirements for NYSE Euronext as a wholly owned subsidiary of Holdco;

• Certain aspects of the indemnification and expense advancement provisions in Section 10.6 of the NYSE Euronext Bylaws, including the terms of any insurance policy maintained by NYSE Euronext, would be simplified in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Euronext, and, therefore, a more streamlined process for indemnification claims is appropriate;

• The supermajority shareholder vote requirements in Section 10.10(B) of the NYSE Euronext Bylaws would be changed to a majority vote requirement, because a supermajority vote requirement would no longer serve any purpose after NYSE Euronext becomes wholly owned by a single shareholder and a majority voting standard is consistent with the standard generally applicable for actions by shareholders under the Delaware General Corporation Law and for actions by the parent entity of other wholly owned subsidiaries of NYSE Euronext such as NYSE Group;

• In light of the fact that NYSE Alternext US LLC formally changed its name to NYSE Amex LLC, references to NYSE Alternext US LLC in the NYSE Euronext Bylaws would be amended to refer instead to NYSE Amex LLC;

• Section 10.13 of the NYSE Euronext Bylaws—which requires that, for so long as NYSE Euronext directly or indirectly controls NYSE Amex, any amendments to the NYSE Euronext Certificate must be approved by the Commission—would be deleted and Article X of the NYSE Euronext Certificate would be amended to incorporate this requirement; and

• Certain clarifying, conforming or other technical edits would be made to Sections 1(B), 1(C), 1(L), 2(C) and 2(E) of Article V, Article X and Article XIII of the NYSE Euronext Certificate and to Sections 3.7 (which would be renumbered as Section 3.6) and 3.15(A)(2) and 3.15(B) (which would be renumbered as Section 3.14(A)(2) and 3.14(B), respectively) of the NYSE Euronext Bylaws. In addition, the numbering of certain sections of the NYSE Euronext Certificate and NYSE Euronext Bylaws, and cross-references to such sections, would be deleted or updated to reflect the amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth above.

In addition, the current Independence Policy of the NYSE Euronext board of directors would, effective as of the Combination, cease to apply.

7. Proposed Amendments to the NYSE Group Certificate and NYSE Group Bylaws

Under the Proposed Rule Change, the revisions summarized below to the NYSE Group Certificate and the NYSE Group Bylaws are proposed in order to: (1) Conform certain provisions to the analogous provisions of the organizational documents of NYSE Euronext, which would likewise be a wholly owned subsidiary of Holdco following completion of the Combination; and (2) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions to reflect the other amendments set forth in this Proposed Rule Change):

• Section 2 of Article IV of the NYSE Group Certificate would be amended to clarify that (1) preferred stock may be issued ''from time to time,'' and (2) the certificate of designations for such stock would fix, among other things, the ''relative, participating, optional and other'' rights of such shares including the qualifications and restrictions of any series of preferred stock, which is consistent with the analogous provisions in Section 2 of Article IV of the NYSE Euronext Certificate;

• Section 3 of Article V of the NYSE Group Certificate would be revised to clarify that the number of directors will be fixed ''from time to time,'' which is consistent with the analogous provision in Section 3 of Article VI of the NYSE Euronext Certificate;

• Section 5 of Article V of the NYSE Group Certificate would be amended to clarify that the right of the NYSE Group board of directors to remove directors is subject to any rights of holders of any preferred stock, in order to make this provision consistent with Section 2 of Article IV of the NYSE Group Certificate, which provides that preferred stock may be issued that may have voting rights, and also to make it consistent with the analogous provision in Section 5 of Article VI of the NYSE Euronext Certificate;

• Section 2.3 of the NYSE Group Bylaws would be amended to clarify that notice of shareholder meetings is not required if waived in accordance with Section 7.3 of the NYSE Group Bylaws;

• A new Section 2.8 would be added to the NYSE Group Bylaws to clarify that a list of shareholders entitled to

vote will be open to examination by shareholders, because this is required by Section 219 of the Delaware General Corporation Law and is consistent with the analogous provision in Section 2.9 (which would be renumbered as Section 2.8) of the NYSE Euronext Bylaws;

• The reference at the end of Section 3.4 of the NYSE Group Bylaws to a special meeting of shareholders would be deleted because the shareholder of NYSE Group may act by written consent to fill board vacancies pursuant to Section 2.9 of the NYSE Group Bylaws;

• Section 3.7 of the NYSE Group Bylaws would be amended to clarify that notice of any special meeting of directors is not required if waived in accordance with Section 7.3 of the NYSE Group Bylaws, and the methods of delivery of notices would be updated to delete references to telegrams, provide certain requirements for notices sent to non-U.S. addresses and add a reference to e-mail or other electronic transmission of notices, in each case to be consistent with the analogous provisions in Section 3.9 (which would be renumbered as Section 3.8) of the NYSE Euronext Bylaws;

• The reference in Section 3.8 of the NYSE Group Bylaws to restrictions on telephonic participation in meetings would be deleted, because the NYSE Group Bylaws and the NYSE Group Certificate do not contain any such restrictions, and the wording of this provision would be amended to be consistent with the analogous language in Section 3.10 (renumbered as Section 3.9) of the NYSE Euronext Bylaws;

• Section 7.4 would be revised to provide that the persons who are authorized to execute contracts and other instruments on behalf of NYSE Group would include the Chief Executive Officer, which is consistent with the analogous provision in Section 10.4 of the NYSE Euronext Bylaws;

• Certain aspects of the indemnification and expense advancement provisions in Section 7.6 of the NYSE Group Bylaws, including the terms of any insurance policy maintained by NYSE Group, would be simplified in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Group and, therefore, a more streamlined process for indemnification claims is appropriate, and these revisions would be consistent with the revisions to the analogous provisions of the NYSE Euronext Bylaws set forth in this Proposed Rule Change;

• Section 7.9 of the NYSE Group Bylaws would be amended to clarify that they may be amended or repealed, and new bylaws may be adopted, by either (1) the NYSE Group board of directors or (2) subject to any vote of holders of any class or series of NYSE Group stock required by law or the NYSE Group Certificate, the affirmative vote of holders of a majority of the votes entitled to be cast by holders of outstanding shares of NYSE Group entitled to vote generally in the election of directors, voting together as a single class;

• In light of the fact that NYSE Alternext US LLC formally changed its name to NYSE Amex LLC, references to NYSE Alternext US LLC in the NYSE Group Bylaws would be amended to refer instead to NYSE Amex LLC, and the definition of ''Regulated Subsidiary'' in the NYSE Group Certificate would be amended to include NYSE Amex; and

• Certain other clarifying, conforming or other technical edits would be made to Sections 4(a), 4(b)(1)(A)(w), 4(b)(1)(A)(y), 4(b)(1)(A)(z), 4(b)(1)(E)(iv), 4(b)(1)(E)(vi), 4(b)(1)(E)(x), 4(b)(1)(E)(xii), 4(b)(2)(C) and 4(b)(2)(E) of Article IV, Sections 6 and 8 of Article V, Article X, Article XII and Article XIV of the NYSE Group Certificate and to Sections 2.3, 2.9, 5.1 and 7.9 of the NYSE Group Bylaws. In addition, the numbering of certain sections of the NYSE Group Certificate and NYSE Group Bylaws would be updated to reflect the amendments set forth above.

8. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE Amex, NYSE Market and NYSE Regulation

The Third Amended and Restated Operating Agreement, dated as of April 1, 2009, of the Exchange (the ''Exchange Operating Agreement''), currently provides that (1) a majority of the members of the Exchange's board of directors must be U.S. persons and members of the board of directors of NYSE Euronext who satisfy the independence requirements of the NYSE Euronext board, and (2) at least 20% of the Exchange's board members must be persons who are not board members of NYSE Euronext but who qualify as independent under the independence policy of the NYSE Euronext board of directors (the ''Non-Affiliated Exchange Directors'').[64] The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.[65]

Under the Proposed Rule Change, these provisions would be amended (1) to provide that the independent members of the Exchange's board of directors, rather than the nominating and governance committee of the NYSE Euronext board of directors, will designate the Non-Affiliated Exchange Directors and make the other related determinations that were previously to be made by the nominating and governance committee of the NYSE Euronext board of directors; (2) to provide that instead of using the independence policy of the NYSE Euronext board of directors to assess the independence of the Exchange's board members, the Exchange will have its own independence policy in the form attached to this Proposed Rule Change as Exhibit 5K (the ''SRO Director Independence Policy''); (3) in light of the fact that the board of directors of NYSE Euronext will be decreased in size once it becomes a wholly owned subsidiary of Holdco, the requirement that a majority of the members of the Exchange's board of directors must be members of the board of directors of NYSE Euronext would be eliminated; and (4) to provide that at least 20% of the Exchange's directors must be persons who are not members of the board of directors of Holdco (rather than referring to the board of directors of NYSE Euronext). Substantially the same revisions would be made to the analogous provisions of the Amended and Restated Operating Agreement of NYSE Amex,[66] the Amended and Restated Bylaws of NYSE Market[67] and the Third Amended and Restated Bylaws of NYSE Regulation.[68]

The Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation would also be amended to change the registered office of these entities from National Registered Agents to The Corporation Trust Company and CT Corporation, respectively. In addition, references to NYSE Alternext US LLC in the Third Amended and Restated Bylaws of NYSE Regulation

[64] *See* Third Amended and Restated Operating Agreement of New York Stock Exchange LLC, Section 2.03(a).

[65] *See id.*

[66] *See* Amended and Restated Operating Agreement of NYSE Amex LLC, Section 2.03(a).

[67] *See* Amended and Restated Bylaws of NYSE Market, Inc., Article III Section 1.

[68] *See* Third Amended and Restated Bylaws of NYSE Regulation, Inc., Article III Section 1.

would be changed to refer instead to NYSE Amex.

The SRO Director Independence Policy to be adopted by each of the Exchange, NYSE Market, NYSE Regulation and NYSE Amex under the Proposed Rule Change would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that certain conforming changes would be made, including the deletion of provisions that currently apply only to NYSE Euronext directors and expressly do not apply to directors of these NYSE U.S. Regulated Subsidiaries. In particular, (1) references to NYSE Euronext would refer instead to the relevant NYSE U.S. Regulated Subsidiary or Holdco, as applicable; (2) the requirement that at least three-fourths of the directors must be independent would be deleted, since the organizational documents of these NYSE U.S. Regulated Subsidiaries contain the independence and other qualification requirements for directors; (3) the requirement in the Independence Policy of NYSE Euronext that the board consider the special responsibilities of a director in light of NYSE Euronext's ownership of NYSE U.S. Regulated Subsidiaries and European regulated entities would be deleted, because unlike NYSE Euronext, these NYSE U.S. Regulated Subsidiaries are not holding companies; (4) the requirement for directors to inform the Chairman of the Nominating and Governance Committee of certain relationships and interests would be deleted, since the boards of these NYSE U.S. Regulated Subsidiaries do not have a Nominating and Governance Committee, except that in the SRO Director Independence Policy to be adopted by NYSE Regulation, this provision would reference the Nominating and Governance Committee of NYSE Regulation, Inc.; (5) references to NYSE Alternext, Inc. would refer instead to NYSE Amex, because of this entity's name change; (6) because the current Independence Policy of NYSE Euronext provides that a director of an affiliate of a Member Organization cannot qualify as an independent director of these NYSE U.S. Regulated Subsidiaries, the conflicting language stating that a director of an affiliate of a Member Organization shall not per se fail to be independent would be deleted; and (7) because language in the current Independence Policy of NYSE Euronext provides that an executive officer of an issuer whose securities are listed on a NYSE Exchange cannot qualify as an independent director of these NYSE U.S. Regulated Subsidiaries, the conflicting language providing an exception applicable only to NYSE Euronext directors would be deleted. In addition, the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provides that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated. This provision is designed to ensure that although persons who are directors of an affiliate of a Member Organization or who are executive officers of a ''foreign private issuer'' listed on a NYSE Exchange may in some circumstances qualify as independent for purposes of NYSE Euronext board membership, such persons may not, together with executive officers of NYSE Euronext, constitute more than a minority of the total NYSE Euronext directors. Under the proposed SRO Director Independence Policy, such persons could not be deemed to be independent directors of the relevant NYSE U.S. Regulated Subsidiary and, accordingly, this limitation on the number of such persons who may serve on the board is unnecessary.

9. Proposed Amendments to the Exchange Rules, NYSE Amex Rules and NYSE Arca Equities Rules

Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules, as summarized below:

- References therein to ''NYSE Euronext'' would be replaced with references to Holdco, except that references to NYSE Euronext in Rule 22 and Rule 422 would be retained and references to Holdco would be added; and
- Rule 2 would be revised to delete the definitions of ''member'' and ''member organization'' relating to NYSE Amex which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because under the Proposed Rule Change, that section of the NYSE Euronext Certificate will be revised to incorporate this language,

In addition, certain technical amendments would be made to the NYSE Amex Rules and NYSE Arca Equities Rules to replace references therein to ''NYSE Euronext'' with references to Holdco.

10. Proposed Technical Amendment to the NYSE Trust Agreement

Following completion of the Combination, NYSE Euronext will become a wholly owned subsidiary of Holdco and, as such, its board of directors will likely be reduced in size and may not include directors who satisfy the independence criteria that are currently applicable. Accordingly, under the Proposed Rule Change, the functions currently performed by the nominating and governance committee of NYSE Euronext in connection with reviewing and appointing trustees pursuant to the Trust Agreement, dated as of April 4, 2007, by and among NYSE Euronext, NYSE Group and the other parties thereto, would be transferred to the Holdco Nominating, Governance and Corporate Responsibility Committee. References in such trust agreement to the nominating and governance committee of NYSE Euronext would be replaced with references to the Holdco Nominating, Governance and Corporate Responsibility Committee, as indicated in Exhibit 5O attached to this Proposed Rule Change.

11. Listing of Holdco Shares on the Exchange

Holdco intends to list its shares on the Exchange, and to apply for admission of its shares to trading on the regulated market of the Frankfurt Stock Exchange and the regulated market segment of the Euronext Paris. Pursuant to Rule 497, any security of Holdco and its affiliates will not be approved for listing on the Exchange unless NYSE Regulation finds that such securities satisfy the Exchange's rules for listing, and such finding is approved by the NYSE Regulation board of directors.

NYSE Regulation will be responsible for all Exchange listing-compliance decisions with respect to Holdco as an issuer.[69] NYSE Regulation will prepare a quarterly report, as described in Rule 497(c)(1) summarizing its monitoring of Holdco's compliance with such listing standards. This report will be provided to the NYSE Regulation board of directors and a copy will be forwarded promptly to the Commission. Once a year, an independent accounting firm will review Holdco's compliance with the Exchange's listing standards and a copy of its report will be forwarded promptly to the Commission. If NYSE Regulation determines that Holdco is not in compliance with any applicable listing standard of the Exchange, NYSE Regulation will notify Holdco promptly and request a plan for compliance. Within five business days of providing such notice to Holdco, NYSE Regulation will file a report with the Commission

[69] Certain aspects of NYSE Regulation's responsibilities are performed by FINRA, subject to oversight by NYSE Regulation.

identifying the date on which Holdco is not in compliance with the listing standard at issue and any other material information conveyed to Holdco in the notice of non-compliance. Within five business days of receiving a plan of compliance from the issuer, NYSE Regulation will notify the Commission of such receipt, whether the plan was accepted by NYSE Regulation or what other action was taken with respect to the plan, and the time period provided to regain compliance with the Exchange's listing standard, if any.

12. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)[70] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1)[71] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Combination, the U.S. Regulated Subsidiaries will operate in the same manner following the Combination as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)[72] of the Exchange Act because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange expects that the Combination will position the Holdco Group to be a leader in a diverse set of large and growing businesses, including derivatives, listings, cash equities, post-trade settlement and asset servicing, market data and technology servicing. The Exchange believes this will enable the Holdco Group to leverage technology and a unique collection of markets to create a mutually reinforcing capital markets community driving efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients. As a true pacesetter across the spectrum of capital markets services, the Holdco Group would be positioned to offer clients global scale, product innovation, operational and capital efficiencies and an enhanced range of technology and market information solutions.

In addition, the Exchange expects that the Holdco Group would be positioned to serve as a benchmark regulatory model, facilitating transparency and standardization in capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–51 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–NYSE–2011–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–51 and should be submitted on or before November 10, 2011.

[70] 15 U.S.C. 78(f)(b).

[71] 15 U.S.C. 78(f)(b)(1).

[72] 15 U.S.C. 78(f)(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[73]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27190 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65573; File No. SR–NYSEArca–2011–59]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Adding Commentary .01 to Rule 6.37B Concerning Market Maker Continuous Quoting Obligations and Adjusted Option Series

October 14, 2011.

I. Introduction

On August 16, 2011, NYSE Amex LLC (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Commentary .01 to Rule 6.37B to indicate that market makers will not be obligated to quote in adjusted option series and to reference an existing exception to the quoting obligations. The proposed rule change was published for comment in the **Federal Register** on September 1, 2011.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 6.37B (i) To add an exception to relieve market makers from the obligation to continuously quote in adjusted option series, and (ii) to reflect in Rule 6.37B an exception from the continuous quote requirements for Long-Term Equity Option Series (''LEAPS'') that is currently provided for in Rule 6.4(e)(i).

Rule 6.37B, relating to market maker quotations, requires a Lead Market Maker to provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each such issue. Rule 6.37B also requires non-lead market makers to provide continuous two-sided quotations throughout the trading day in their appointed issues for 60% of the time the Exchange is open for trading in each such issue.

Rule 6.4(e)(i), relating to LEAPS open for trading, currently provides that Exchange Rules regarding continuous quoting obligations do not apply to index option series until the time to expiration is less than 12 months and do not apply to equity options or option on Exchange Traded Fund Shares until the time to expiration is less than nine months.[4]

The Exchange now proposes to add Commentary .01 to Rule 6.37B (the rule applicable to market maker quotations) to reflect the exception for LEAPS that is currently provided for in Rule 6.4(e)(i) to the continuous quoting obligations contained in Rule 6.37B. In other words, without altering the substance of the exception, the Exchange is proposing to include text that already appears in Rule 6.4(e)(i) into Rule 6.37B in order to reference that exception in the rule that addresses market maker quoting obligations.

In addition, the Exchange proposes to extend the exception from the continuous quoting obligations to certain ''adjusted series.'' The Exchange proposes to define an ''adjusted series'' for purposes of Rule 6.37B as ''an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.'' [5]

In its filing, the Exchange notes that adjusted series are generally active for a short period of time following adjustment and thereafter become inactive as new orders to open options positions in the underlying are almost exclusively placed in the new standard contracts.[6] The Exchange noted that adjusted series may not meet the standards to be considered ''active'' and thereby, under Commentary .03 to NYSE Arca Rule 6.86, the Exchange may no longer disseminate quotes in such series.[7] Consequently, market makers are currently required to submit quotes in adjusted series that may not be published to OPRA unless otherwise requested.[8]

In its filing, the Exchange states that market makers, including Lead Market Makers, that have recently withdrawn from assignments in classes have informed the Exchange that the withdrawals were based in part on the obligation to continuously quote adjusted options series whereby the quoting obligations on such less frequently traded option series impacted the risk parameters acceptable to the market makers.[9] The Exchange noted that market makers have also expressed concern that the adjusted nature of these series complicates the calculation of an appropriate quote.[10] As a result of withdrawals from such assignments by market makers, the Exchange states that liquidity, as well as volume, has been negatively impacted in the affected options classes listed on the Exchange.[11] The Exchange now proposes to add an exception to Rule 6.37B to relieve market makers from the obligation to continuously quote in adjusted option series in order to encourage market makers, including Lead Market Makers, to continue their appointments in option classes that include adjusted series.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [12] and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation

[73] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65210 (August 26, 2011), 76 FR 54516 (''Notice'').

[4] In addition, Rule 6.4(e)(1) provides that trading in such LEAPS will commence either when there is buying or selling interest, or forty minutes prior to the close of trading for the day, whichever occurs first. Further, the rule provides that quotations will not be posted for extended far term option series until trading in such series is commenced on the day.

[5] The Exchange provided additional background regarding adjusted series options in its Notice. *See* Notice, *supra* note 3, at 54517.

[6] *See id.*

[7] *See id.*

[8] Commentary .03 to Rule 6.86 states, in part, ''The Exchange may determine that a series has become active intraday if (i) the series trades at any options exchange; (ii) NYSE Arca receives an order in the series; or (iii) NYSE Arca receives a request for quote from a customer in that series. If a series becomes active intraday, the Exchange will immediately disseminate quotes in the series to OPRA, and continue to disseminate quotes for the balance of the trading day.''

[9] *See* Notice, *supra* note 3, at 54517. *See also* Rule 6.35 (providing for market maker appointments by class).

[10] *See* Notice, *supra* note 3, at 54517.

[11] *See id.*

[12] 15 U.S.C. 78f.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposal to relieve market makers from the obligation to continuously quote in adjusted series would not affect market makers' other obligations. For example, the Commission notes that the proposal does not excuse a market maker from the obligations to respond with a two-sided, legal width market to a call for a market by a floor broker.[15] The Commission also notes that the proposal does not excuse a market maker from the obligation to submit a single quote or maintain continuous quotes in one or more series of an option issue within the market maker's appointment whenever, in the judgment of such Trading Official, it is necessary to do so in the interest of maintaining fair and orderly markets.[16] Accordingly, the Exchange's proposal concerning adjusted series is narrowly tailored to, among other things, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. To the extent such series, shortly after the adjustment, become inactive as a result of a lack of interest in the series by market participants who have instead focused their trading in the new standard contracts, the Exchange's proposal would reduce the burden on market makers to submit continuous quotes that the Exchange may not submit to OPRA. In so doing, the proposal may incentivize market makers to continue appointments in classes that have adjusted option series, and thereby should help maintain liquidity in these classes to the benefit of the Exchange, its OTP Holders, and investors. In addition, the obligation to continuously quote in such illiquid series, for which there may be little or no trading interest, is a minor part of a market maker's overall obligations and thus requiring a continuous quote may not justify the system resources necessary to accommodate them.

Further, the proposed new Commentary .01 to Rule 6.37B (the rule applicable to market maker quotations) to reflect the exception for LEAPS provided for in Rule 6.4(e)(i) to the continuous quoting obligations contained in Rule 6.37B, is not a new substantive provision, but rather references the exception currently provided for in Rule 6.4(e)(i). In so doing, the proposed change clarifies the exception by referencing it in the rule applicable to market maker quoting obligations generally.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2011–59) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27137 Filed 10–19–11; 8:45 am]

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[15] *See* NYSE Arca Rule 6.37B.

[16] *See* NYSE Arca Rule 6.37(b)(5) and Commentary .05.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65575; File No. SR–NASDAQ–2011–141]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Interpretation of Rule 4120(a)(11)

October 14, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2011, the NASDAQ Stock Market, LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify its interpretation of Rule 4120(a)(11) regarding at what price level to initiate a subsequent trading halts for any security that has been previously halted. NASDAQ will implement the proposed change immediately upon filing. There is no new proposed rule text, and a copy of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is modifying its interpretation and practices related to certain language contained in Rule 4120(a)(11) which generally allows for the pausing of trading in individual securities should that security experience a significant percentage price increase or decline. Once a stock is halted pursuant to the rule, a five-minute halt period commences, after which trading is re-commenced using prices determined by NASDAQ's halt-cross process.

Currently, NASDAQ interprets language in Rule 4120(a) that states ''[p]rice moves under this paragraph will be calculated by changes in each consolidated last-sale price disseminated by a network processor over a five minute rolling period measured continuously[.]'' as requiring a continuous look back of five minutes—even when a stock is currently halted for a previous triggering price increase or decline. In this situation, trade reports for transactions taking place immediately before, or contemporaneous with, the halt can be submitted and disseminated, and thus set a new ''within five minutes'' comparison price level with any subsequent opening price coming out of the halt-cross process. Should a resulting price decline differential between the late intra-halt disseminated price and any new opening price coming out of the cross halt be great enough, another disruptive halt can be triggered.

In response, NASDAQ proposes to modify its interpretation of what price its systems will for [sic] consider for evaluating the need for any subsequent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

halt during the initial time period when a stock is coming out of a halt commenced pursuant to Rule 4120(a)(11). Under the proposed change, NASDAQ systems will not look back for any prices disseminated during a halt and instead will use the opening price determined by its halt-cross process as the initial price level against which subsequent price increases or declines will be measured. As before, any subsequent triggering price increases or declines within any continuous five-minute period, even one immediately triggering a halt in comparison to the halt-cross process, will initiate a halt in conformity with Rule 4120(a)(11).

NASDAQ believes that the above interpretation will ensure that prices determined and submitted at a period of time around the start of a trading halt do not carry over and inappropriately impact attempts to re-start trading after that halt. NASDAQ also understands that this approach to initial pricing coming out of a halt is already in effect at other listing markets likewise subject to uniform percentage increase or decline stock halt rules.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(5) of the Act[4] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ believes that the change will result in the adoption of a clear policy with respect to the meaning, administration, and enforcement of Rule 4120(a)(11), thereby promoting members' understanding of the parameters of the rule and the efficiency of its administration.

B. Self-Regulatory Organization's Statement on Burden on Competition

As all listing markets are subject to uniform halt rules, and it is NASDAQ's understanding that its proposed approach to evaluating prices coming out of a halt is similar to that already being used by other listing markets, NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[5] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2011–141 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2011–141. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–141 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27136 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65568; File No. SR–FINRA–2011–058]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

October 14, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 6433 (Minimum Quotation Size Requirements For OTC Equity Securities) (the ''Rule'') requires every member functioning as an OTC Market Maker [3] in an OTC Equity Security [4] that enters firm quotations into any inter-dealer quotation system that permits quotation updates on a real-time basis to honor those quotations for certain minimum sizes (''minimum quotation sizes''). Under the Rule, different minimum quotation sizes apply depending upon the price level of the bid or offer and, therefore, a different minimum quotation size can apply to each side of the market being quoted by the member in a given security.

FINRA is proposing changes to the minimum quotation sizes to, among other things, simplify the tier structure, facilitate the display of customer limit orders under new FINRA Rule 6460 (Display of Customer Limit Orders) (the ''limit order display rule'') [5] and expand the scope of the rule, as further discussed below.[6]

Under the proposed approach, the minimum quotation size required for display of a quotation in an OTC Equity Security would fall into one of six tiers rather than nine tiers. Specifically, for OTC Equity Securities priced between $0.51 and $0.9999/share, the minimum quotation size would be 200 shares; between $0.26 and $0.5099/share, the minimum quotation size would be 500 shares; between $0.02 and $0.2599/share, the minimum quotation size would be 1,000 shares; and between $0.0001 and $0.0199/share, the minimum quotation size would be 10,000 shares.[7] For quotations in securities priced at least $1.00/share, the proposed rule generally would parallel the approach taken by the exchanges by setting the minimum quotation size at a round lot of 100 shares,[8] except that, with respect to OTC Equity Securities priced at or above $175.00/share, the minimum quotation size would equal the round lot size applicable to those securities, which is one (1) share.[9]

In addition to simplifying the tier structure, FINRA believes that the proposed revisions will benefit investors by facilitating display of customer limit orders under the limit order display rule, which generally requires that OTC Market Makers fully display better-priced customer limit orders (or same-priced customer limit orders that are at the best bid or offer and that increase the OTC Market Maker's size by more than a *de minimis* amount).[10] OTC Market Makers are not required to display a customer limit order unless doing so would comply with the minimum quotation sizes applicable to the display of quotations on an inter-dealer quotation system.[11] Therefore, although a customer limit order may otherwise have been required to be displayed under the limit order display rule because it improved price or size more than a *de minimis* amount, if the order is less than the minimum quotation size set forth in this Rule, the member is not required to display the order.

FINRA believes that the proposed modifications to the Rule's tiers will result in the display of a larger number of customer limit orders because more limit orders should meet the revised minimums than those currently in place under the Rule. Based upon a review of a sample of Order Audit Trail System data submitted over the past year in OTC Equity Securities, only approximately 50% of customer limit orders in the sample met the current Rule's thresholds and would have been eligible to be displayed. For example, the existing tiers apply a 2,500 share minimum to OTC Equity Securities priced between $0.51 and $1.00/share, resulting in minimum dollar commitments to the market that range from $1,275.00 (for 2,500 shares priced at $0.51/share) to $2,500.00 (for 2,500 shares priced at $1.00/share). In contrast, the proposed minimum quotation size of 200 shares applicable to quotes priced between $0.51 and $0.9999/share would have resulted in a significant increase in the number of limit orders that would have been eligible to be displayed—over 90% of the orders comprising the sample.

FINRA also is proposing to expand the scope of the Rule to apply to all quotations or orders displayed in an inter-dealer quotation system, including quotations displayed by alternative

[3] *See* FINRA Rule 6420(f).

[4] ''OTC Equity Security'' means any equity security that is not an ''NMS stock'' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. *See* FINRA Rule 6420(e).

[5] *See* Securities Exchange Act Release No. 62359 (June 22, 2010), 75 FR 37488 (June 29, 2010) (File No. SR–FINRA–2009–054; Order Approving NMS–Principled Rules for OTC Equity Securities) (''NMS–Principled Rules Approval Order''). FINRA Rule 6460 became effective on May 9, 2011.

[6] The proposal also would incorporate the requirements of FINRA Rule 6434 (Minimum Pricing Increments for OTC Equity Securities) which, among other things, prohibits members from displaying a bid or offer in an OTC Equity Security in an increment smaller than $0.01 if the bid or offer is priced $1.00 or greater per share, or in an increment smaller than $0.0001 if the bid or offer is priced below $1.00. *See* FINRA Rule 6460(b)(8).

[7] Under the proposed revisions, securities priced under $0.02/share would be subject to a larger minimum quotation size than the current Rule. Increasing the minimum for quotations in this lower-priced tier should result in more substantive dollar-value commitments to the market. For securities priced at or above $0.02/share, the minimum quotation size requirements would be reduced so that a greater percentage of customer limit orders priced in this range would be eligible for display, while continuing to recognize the utility of requiring that displayed quotations represent a minimum aggregate dollar value commitment to the market.

[8] A round lot of 100 shares applies to most NASDAQ and NYSE listed securities.

[9] The unit of trade for OTC Equity Securities traded at or above $175.00/share is one (1) Share (*i.e.,* transactions in these securities for fewer than 100 shares no longer are considered ''odd-lot transactions'' for dissemination purposes). *See* Trade Reporting Notice, OTC Equity Security Transactions (April 21, 2008).

[10] The limit order display rule was adopted as part of a broader effort to extend certain protections in place for NMS stocks to quoting and trading in OTC Equity Securities. *See* NMS–Principled Rules Approval Order. As stated in the proposal for the limit order display rule, FINRA believes that applying the display requirements to OTC Equity Securities will improve transparency in the OTC equity market and advances the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation. *See* Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) (Notice of Filing File No. SR–FINRA–2009–054).

[11] *See Regulatory Notice* 10–42 (September 2010).

trading systems (ATSs) or those representing customer trading interest. The scope of the current rule is limited to quotations where the member ''functions as a market maker in OTC Equity Securities.'' Therefore, the Rule does not currently apply to quotes by ATSs (because they are not market makers) and quotes representing customer trading interest (*e.g.,* customer limit orders). However, ATSs have become increasingly active in the over-the-counter market and FINRA believes that the minimum quotation size requirements should apply uniformly for any trading interest displayed on an inter-dealer quotation system by members, whether submitted by an OTC Market Maker or an ATS.[12] In addition, FINRA believes that expanding the scope of the Rule to include quotations representing customer limit orders will ensure that minimum quotation sizes are observed consistently by all members displaying quotations on an inter-dealer quotation system.

Of course, each member would continue to be required to honor its quotations to the full quantity displayed in accordance with Rule 5220 (Offers at Stated Prices), which generally provides that no member shall make an offer to buy or sell any security at a stated price unless such member is prepared to purchase or sell the security at such price and under such conditions as are stated at the time of such offer to buy or sell.[13] Likewise, member obligations pursuant to Rule 5210 (Publication of Transactions and Quotations) continue to apply. Among other things, Rule 5210 generally prohibits members from publishing, circulating, or causing to be published or circulated, any quotation which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.[14]

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.[16] Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the proposed rule change meets these requirements by simplifying the tier structure and facilitating display of customer limit orders consistent with Rule 6460, while still recognizing the utility of requiring that quotes in lower-priced securities represent a minimum dollar-value commitment to the market. FINRA believes that the proposed revisions to the minimum quotation sizes should benefit investors by increasing the percentage of customer limit orders that will be eligible for display under Rule 6460. This should improve transparency and enhance execution of customer limit orders. Finally, FINRA believes that the applicability of the minimum quotation sizes to all members posting quotations in an inter-dealer quotation system will promote consistency in the minimum quotation sizes displayed on an inter-dealer quotation system.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–058 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–FINRA–2011–058. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

[12] While ATS quotes and quotes representing customer trading interest currently are not captured within the scope of the Rule, as a practical matter, members displaying any quotation on an inter-dealer quotation system often must post a size that is at least equal to this Rule's minimums due to the systems requirements of inter-dealer quotation systems that program the size field consistent with this Rule.

[13] *See also* Rule 5220.01 (Firmness of Quotations).

[14] *See also* Rule 5210.01 (Manipulative and Deceptive Quotations).

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78*o*–3(b)(11).

you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–058, and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27135 Filed 10–19–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65572; File No. SR–NYSEAmex–2011–61]

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of Proposed Rule Change Adding Commentary .01 to Rule 925.1NY Concerning Market Maker Continuous Quoting Obligations and Adjusted Option Series

October 14, 2011.

I. Introduction

On August 16, 2011, NYSE Amex LLC (''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Commentary .01 to Rule 925.1NY to indicate that market makers will not be obligated to quote in adjusted option series and to reference an existing exception to the quoting obligations. The proposed rule change was published for comment in the **Federal Register** on September 1, 2011.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 925.1NY (i) To add an exception to relieve market makers from the obligation to continuously quote in adjusted option series, and (ii) to reflect in Rule 925.1NY an exception from the continuous quote requirements for Long-Term Equity Option Series (''LEAPS'') that is currently provided for in Commentary .03(a) to Rule 903.

Rule 925.1NY, relating to market maker quotations, requires Specialists to provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each such issue. Rule 925.1NY also requires non-specialist market makers to provide continuous two-sided quotations throughout the trading day in their appointed issues for 60% of the time the Exchange is open for trading in each such issue.

Commentary .03(a) to Rule 903, relating to LEAPS open for trading, currently provides that Exchange Rules regarding continuous quoting obligations do not apply to index option series until the time to expiration is less than 12 months and do not apply to equity options or option on Exchange Traded Fund Shares until the time to expiration is less than nine months.[4]

The Exchange now proposes to add Commentary .01 to Rule 925.1NY (the rule applicable to market maker quotations) to reflect the exception for LEAPS that is currently provided for in Commentary .03(a) to Rule 903 to the continuous quoting obligations contained in Rule 925.1NY. In other words, without altering the substance of the exception, the Exchange is proposing to include text that already appears in Commentary .03(a) to Rule 903 into Rule 925.1NY in order to reference that exception in the rule that addresses market maker quoting obligations.

In addition, the Exchange proposes to extend the exception from the continuous quoting obligations to certain ''adjusted series.'' The Exchange proposes to define an ''adjusted series'' for purposes of Rule 925.1NY as ''an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.''[5]

In its filing, the Exchange notes that adjusted series are generally active for a short period of time following adjustment and thereafter become inactive as new orders to open options positions in the underlying are almost exclusively placed in the new standard contracts.[6] The Exchange noted that adjusted series may not meet the standards to be considered ''active'' and thereby, under NYSE Amex Rule 970.1NY, the Exchange may no longer disseminate quotes in such series.[7] Consequently, market makers are currently required to submit quotes in adjusted series that may not be published to OPRA unless otherwise requested.[8]

In its filing, the Exchange states that market makers, including Specialists, that have recently withdrawn from assignments in classes have informed the Exchange that the withdrawals were based in part on the obligation to continuously quote adjusted options series whereby the quoting obligations on such less frequently traded option series impacted the risk parameters acceptable to the market makers.[9] The Exchange noted that market makers have also expressed concern that the adjusted nature of these series complicates the calculation of an appropriate quote.[10] As a result of withdrawals from such assignments by market makers, the Exchange states that liquidity, as well as volume, has been negatively impacted in the affected options classes listed on the Exchange.[11] The Exchange now proposes to add an exception to Rule 925.1NY to relieve market makers from the obligation to continuously quote in adjusted option series in order to encourage market makers, including Specialists, to continue their appointments in option classes that include adjusted series.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[12] and the rules and regulations thereunder applicable to a national securities exchange.[13] In

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65209 (August 26, 2011), 76 FR 54518 (''Notice'').

[4] In addition, Commentary .03(a) to Rule 903 provides that trading in such LEAPS will commence either when there is buying or selling interest, or forty minutes prior to the close of trading for the day, whichever occurs first. Further, the rule provides that quotations will not be posted for extended far term option series until trading in such series is commenced on the day.

[5] The Exchange provided additional background regarding adjusted series options in its Notice. *See* Notice, *supra* note 3, at 54519.

[6] *See id.*

[7] *See id.*

[8] NYSE Amex Rule 970.1NY states, in part, ''The Exchange may determine that a series has become active intraday if (i) The series trades at any options exchange; (ii) NYSE Amex receives an order in the series; or (iii) NYSE Amex receives a request for quote from a customer in that series. If a series becomes active intraday, the Exchange will immediately disseminate quotes in the series to OPRA, and continue to disseminate quotes for the balance of the trading day.''

[9] *See* Notice, *supra* note 3, at 54519. *See also* Rule 925NY (providing for market maker appointments by class).

[10] *See* Notice, *supra* note 3, at 54519.

[11] *See id.*

[12] 15 U.S.C. 78f.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the Exchange'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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposal to relieve market makers from the obligation to continuously quote in adjusted series would not affect market makers' other obligations. For example, the Commission notes that the proposal does not excuse a market maker from the obligations to respond with a two-sided, legal width market to a call for a market by a floor broker.[15] The Commission also notes that the proposal does not excuse a market maker from the obligation to submit a single quote or maintain continuous quotes in one or more series of an option issue within the market maker's appointment whenever, in the judgment of such Trading Official, it is necessary to do so in the interest of maintaining fair and orderly markets.[16] Accordingly, the Exchange's proposal concerning adjusted series is narrowly tailored to, among other things, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. To the extent such series, shortly after the adjustment, become inactive as a result of a lack of interest in the series by market participants who have instead focused their trading in the new standard contracts, the Exchange's proposal would reduce the burden on market makers to submit continuous quotes that the Exchange may not submit to OPRA. In so doing, the proposal may incentivize market makers to continue appointments in classes that have adjusted option series, and thereby should help maintain liquidity in these classes to the benefit of the Exchange, its ATP Holders, and investors. In addition, the obligation to continuously quote in such illiquid series, for which there may be little or no trading interest, is a minor part of a market maker's overall obligations and thus requiring a continuous quote may not justify the system resources necessary to accommodate them.

Further, the proposed new Commentary .01 to Rule 925.1NY (the rule applicable to market maker quotations) to reflect the exception for LEAPS provided for in Commentary .03(a) to Rule 903 to the continuous quoting obligations contained in Rule 925.1NY, is not a new substantive provision, but rather references the exception currently provided for in Commentary .03(a) to Rule 903. In so doing, the proposed change clarifies the exception by referencing it in the rule applicable to market maker quoting obligations generally.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEAmex–2011–61) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27134 Filed 10–19–11; 8:45 am]

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[14] 15 U.S.C. 78f(b)(5).

[15] *See* NYSE Amex Rule 925NY(b)(6).

[16] *See* NYSE Amex Rule 925.1NY(d).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65554; File No. SR–NASDAQ–2011–142]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accept Inbound Orders Routed From Its Affiliates

October 13, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to accept inbound orders routed by Nasdaq Execution Services LLC (''NES'') from both the NASDAQ OMX PSX facility (''PSX'') of NASDAQ OMX PHLX (''PHLX'') as well as from the NASDAQ OMX BX Equities Market of NASDAQ OMX BX, Inc. (''BX''), as described further below, on a one year pilot basis.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NES provides all routing functions for The NASDAQ Stock Market (''NASDAQ'') as well as, pursuant to recent proposed rule changes, for BX and PHLX.[3] Accordingly, NASDAQ now proposes that NES be permitted to route orders from BX and PSX to the Exchange on a one year pilot basis.

NES is a broker-dealer and member of NASDAQ, PHLX and BX. BX, NASDAQ, PHLX and NES are affiliates. This raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65470 (October 3, 2011) (SR–BX–2011–048); and 65469 (October 3, 2011) (SR–Phlx–2011–108).

regulatory obligations and its commercial interests.[4]

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NES's affiliation with the NASDAQ.[5] The Commission has also expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders.[6] To address the Commission's concerns, NASDAQ proposes to accept inbound orders that NES routes from PHLX and BX, respectively, in its capacity as a facility of PHLX and BX, subject to certain limitations and conditions:

- First, the Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[7] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[8] Pursuant to the Regulatory Contract, however, NASDAQ retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.[9]
- Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.
- Fourth, the Exchange will adopt Rule 2160(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.
- Fifth, the Exchange proposes that the routing of orders from NES to the Exchange, in NES's capacity as a facility of PHLX as well as BX, be authorized for a pilot period of one year.

The Exchange believes that the above-listed conditions protect the independence of the Exchange's regulatory responsibility with respect to NES, and that these mitigate the aforementioned concerns about potential conflicts of interest and unfair competitive advantage.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Sections 6(b)(5) of the Act,[11] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the proposed rule change will allow the Exchange to receive inbound routes of orders from NES, acting in its capacity as a facility of PHLX or BX, in a manner consistent with prior approvals and established protections. The Exchange believes that the proposed conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange to its advantage.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would benefit users by offering more opportunities for their orders to be executed.[14] The Commission notes that the proposed rule change is consistent with rules of other national securities exchanges, and does not raise any new substantive issues.[15] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposal to be operative upon filing with the Commission.[16]

[4] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (SR–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–PHLX–2010–79).

[7] 17 CFR 240.17d–2.

[8] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[9] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of PHLX or BX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] *See* SR–NASDAQ–2011–142, Item 7.

[15] *See, e.g.,* Securities Exchange Act Release Nos. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024); and 64729 (June 23, 2011), 76 FR 38232 (June 29, 2011) (SR–NYSE–2011–24).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–142 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–142. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–142 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27133 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65551; File No. SR–FINRA–2011–056]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7730 Regarding TRACE Reporting Fees For Transactions in Agency Pass-Through Mortgage-Backed Securities Traded ''To Be Announced''

October 13, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7730 to establish a transaction reporting fee of $1.50 per transaction for a TRACE-Eligible Security that is an Agency Pass-Through Mortgage-Backed Security traded ''to be announced'' and to incorporate minor technical amendments.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 16, 2011, amendments to the FINRA Rule 6700 Series (the TRACE rules) and Rule 7730 (TRACE fees) became effective.[5] The amendments defined Asset-Backed Securities (''ABS'') as TRACE-Eligible Securities and extended TRACE reporting requirements to transactions in ABS in the TRACE rules.[6] In addition, the TRACE reporting fees in effect for transactions in corporate bonds and Agency Debt Securities were extended to transactions in ABS in Rule 7730.[7]

As a result, currently the reporting fee for transactions in ABS, including Agency Pass-Through Mortgage-Backed Securities (''Agency Pass-Through MBS'') traded to-be-announced

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (order approving File No. SR–FINRA–2009–065) (''TRACE ABS filing''); Securities Exchange Act Release No. 64364 (April 28, 2011), 76 FR 25385 (May 4, 2011) (order approving File No. SR–FINRA–2011–012) (''supplemental TRACE ABS filing''); *Regulatory Notice* 10–55 (October 2010) (establishing May 16, 2011 as the effective date for the TRACE ABS filing); and *Regulatory Notice* 11–20 (May 2011) (establishing May 16, 2011 as the effective date for the supplemental TRACE ABS filing).

[6] ''Asset-Backed Security'' and ''TRACE-Eligible Security'' are defined in, respectively, Rule 6710(m) and Rule 6710(a).

[7] ''Agency Debt Security'' is defined in Rule 6710(l).

(''TBA''),[8] is based upon a sliding scale and ranges from $0.475 to $2.375 per transaction depending upon the size (volume) of the reported transaction.[9] Most ABS transactions, including Agency Pass-Through MBS traded TBA (''TBA transactions''), are in excess of $1,000,000 par value (or, in the case of certain ABS, in excess of $1,000,000 as measured by the original face value or Remaining Principal Balance of the security, as applicable).[10] Thus, for most ABS transactions, the highest reporting fee, $2.375 per transaction, applies.

FINRA proposes to amend the transaction reporting fee in Rule 7730 applicable to TBA transactions. Specifically, FINRA proposes to charge a member a flat fee of $1.50 per TBA transaction in lieu of the current reporting fee that is based upon a sliding scale depending on the size (volume) of the transaction.[11]

Agency Pass-Through MBS are the most liquid sector among all ABS, and transactions in Agency Pass-Through MBS are a significant share of the volume of all ABS transactions. Many Agency Pass-Through MBS are TBA transactions. The proposed amendment to Rule 7730 to modify the reporting fee from multiple rates based upon transaction size (volume) to a flat rate of $1.50 per transaction for TBA transactions regardless of transaction size (volume) would reduce the reporting fee for approximately 95 percent of all TBA transactions.[12] In addition, the proposed fee reduction would substantially reduce reporting fees that members pay in connection with ABS transactions in general, as TBA transactions account for approximately 85 percent of the total volume (size) traded in ABS and approximately 51 percent of all ABS transactions.[13]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be November 1, 2011.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[14] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed amendment, which will establish a flat fee per transaction for reporting TBA transactions regardless of the size (volume) of the TBA transaction, is a reasonable and fair adjustment to TRACE reporting fees in that, currently, for TBA transactions, members are subject to the highest TRACE reporting fee for almost all such transactions, and the proposed amendment will reduce the reporting fee for 95 percent of such transactions, and will result in a more equitable allocation among members for ABS reporting fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and paragraph (f)(2) of Rule 19b–4 thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

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[8] As provided in Rule 6710(v), ''Agency Pass-Through Mortgage-Backed Security'' means

''a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to ''pass through'' the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.''

''Agency'' and ''Government-Sponsored Enterprise'' (''GSE'') are defined in, respectively, Rule 6710(k) and Rule 6710(n).

As provided in Rule 6710(u), ''TBA'' means

'' 'to be announced' and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security * * * where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).''

In a transaction traded TBA, the parties agree on a price for delivering a given volume of Agency Pass-Through MBS at a specified future date.

[9] As set forth in Rule 7730(b)(1)(A), for trades up to and including $200,000 par value, the reporting fee is $0.475 per trade; for trades over $200,000 and up to and including $999,999.99 par value, the reporting fee is $0.000002375 times par value (*i.e.,* $0.002375 per $1000 par value) per trade; and for trades of $1,000,000 par value or more, the reporting fee is $2.375 per trade. (Trade reporting and other TRACE fees are also summarized in a fee chart in Rule 7730.)

[10] For some ABS transactions, including TBA transactions, par value is not the correct term to describe the size (volume) of a transaction. When calculating reporting fees for transactions in such securities, Rule 7730(b)(1)(B) provides that the size (volume) of a transaction is the lesser of the original face value or the Remaining Principal Balance. ''Remaining Principal Balance'' and ''Time of Execution'' are defined in, respectively, Rule 6710(aa) and Rule 6710(d).

[11] The proposed TBA transaction fee would be set forth in Rule 7730(b)(1)(B). FINRA also proposes three minor technical amendments to Rule 7730(b)(1). The provision regarding the sliding scale, which determines a reporting fee based on the size (volume) of a transaction, would be incorporated in Rule 7730(b)(1)(B) and deleted in Rule 7730(b)(1)(A). The provision indicating that, for ABS where par value is not used to determine the size (volume) of a transaction, for purposes of trade reporting fees, the size (volume) of a transaction is the lesser of the original face value or the Remaining Principal Balance would be incorporated in Rule 7730(b)(1)(A) and deleted in Rule 7730(b)(1)(B). In addition, the final sentence of current Rule 7730(b)(1)(B) would be deleted.

[12] A review of ABS transaction data reported to TRACE between May 16, 2011 and July 31, 2011, indicates that more than 95 percent of all TBA transactions are larger than $1 million and, thus, are billed at the rate of $2.375 per transaction. Reducing the reporting fee to a flat fee of $1.50 per transaction will raise fees on approximately five percent of TBA transactions, and lower fees on approximately 95 percent of such transactions.

[13] A review of ABS transaction data reported to TRACE between May 16, 2011 and July 31, 2011, showed that TBAs trade in a liquid market. The average daily volume of TBA transactions is approximately $219 billion. The average daily number of trades is slightly more than 7,000. The average daily volume of TBA transactions is approximately ten times the average daily volume of all corporate bonds.

[14] 15 U.S.C. 78*o*–3(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2011–056 and should be submitted on or before November 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27132 Filed 10–19–11; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA. *Fax:* 202–395–6974. *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235. *Fax No.:* 410–966–2830. *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 19, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Medical Report on Adult with Allegation of Human Immunodeficiency Virus Infection; Medical Report on Child with Allegation of Human Immunodeficiency Virus Infection—20 CFR 416.933–20; CFR 416.934 —0960–0500.* SSA uses Forms SSA–4814–F5 and SSA–4815–F6 to collect information necessary to determine if an individual with human immunodeficiency virus infection, who is applying for Supplemental Security Income (SSI) disability benefits, meets the requirements for presumptive disability payments. The respondents are the medical sources of the applicants for SSI disability payments.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–4814–F5	46,200	1	10	7,700
SSA–4815–F6	12,900	1	10	2,150
Totals	59,100			9,850

2. *Supplement to Claim of Person Outside the United States—20 CFR 404.463, 20 CFR 422.505(b) and 20 CFR 407.27(c)—0960–0051.* Claimants or beneficiaries (both United States (U.S.) citizens and aliens entitled to benefits) living outside the U.S. complete Form SSA–21 as a supplement to an application for benefits. SSA collects the information to determine eligibility for U.S. Social Security benefits for those months a beneficiary or claimant is outside the U.S., and to determine if tax withholding applies. In addition, SSA uses the information to terminate Supplemental Medical Insurance coverage for recipients who request it, because they are or will be out of the U.S. The respondents are individuals entitled to Social Security benefits who are, will be, or have been residing outside the U.S. for three months or longer.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–21 (non-residents)	36,874	1	5	3,073

[17] 17 CFR 200.30–3(a)(12).

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–21 (U.S. citizens and residents)	1,941	1	15	485
Totals	38,815			3,559

3. *Credit Card Payment Form—0960–0648.* SSA uses form SSA–1414 to process: (1) Credit card payments from former employees and vendors with outstanding debts to the agency; (2) advance payments for reimbursable agreements; and (3) credit card payments for all Freedom of Information Act (FOIA) requests requiring payment. The respondents are former employees and vendors who have outstanding debts to the agency, entities who have reimbursable agreements with SSA, and individuals who request information through FOIA.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1414	6,000	1	2	200

4. *Benefit Offset National Demonstration—0960–0785.* In an effort to produce strong evidence about the effectiveness of potential solutions that would improve the historically very low rate of return to work among SSDI beneficiaries, SSA is currently conducting the Benefit Offset National Demonstration (BOND) project. The demonstration project will evaluate the result of policy changes and services on the Social Security Disability Insurance (SSDI) program.

Under current law, Social Security beneficiaries lose their SSDI benefit if they have earnings and/or work activity above the threshold of substantial gainful activity (SGA) after completing the trial work period and two-month grace period. The benefit-offset component of this demonstration reduces benefits by $1 for each $2 in earnings above the BOND threshold, resulting in a gradual reduction in benefits as earnings increase.

BOND tests a benefit offset alone and in conjunction with enhanced work incentives counseling. The central research questions include:

- What is the effect of the benefit offset alone on employment and other outcomes?
- What is the effect of the benefit offset in combination with enhanced work incentives counseling on employment and other outcomes?

The public survey data collections for BOND have four components—an impact study, a cost-benefit analysis, a participation analysis, and a process study. The data collections are a primary source for data to measure the effects of a more generous benefit offset and the provision of enhanced work incentives counseling on SSDI beneficiaries' work efforts and earnings. Ultimately, these data will benefit researchers, policy analysts, policy makers, and the United States Congress in a wide range of program areas.

The effects of BOND on the well-being of SSDI beneficiaries could manifest themselves in many dimensions and could be relevant to an array of other public programs. This project offers the opportunity to obtain reliable measures of these effects based upon a nationally representative sample. The long-term indirect benefits of this research are likely to be substantial. Respondents are SSDI beneficiaries and concurrent SSDI and SSI recipients who we randomly assign to the study (Stage 1), and SSDI beneficiaries who agree to participate in the study (Stage 2).

Type of Request: Revision of an OMB-approved information collection.

Survey	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
Participation Agreement	12,600	1	12,600	20	4200
Baseline Survey	12,600	1	12,600	41	8,610
Interim Survey	10,080	1	10,080	29	4,872
Stage 1 36-month Survey	8,000	1	8,000	49	6,533
Stage 2 36-month Survey	10,080	1	10,080	60	10,080
Enhanced Work Incentives Assessment	3,000	1	3,000	35	1,750
Key Informant Interviews	100	7	700	60	700
Stage 2 Participant Focus Groups	600	1	600	90	900
Stage 1 First Contact Letter Survey	500	1	500	3	25
Totals	57,560		58,160		37,670

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than November 21, 2011. Individuals can obtain copies of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Claimant's Work Background—20 CFR 404.1565(b) and 20 CFR 416.965(b)—0960–0300. Sections 205(a) and 1631(e) of the Social Security Act provide the Commissioner of Social Security with the authority to establish procedures for determining if a claimant is entitled to disability benefits. The administrative law judge (ALJ) may ask individuals to provide background information on Form HA–4633 about work they performed in the past 15 years. The ALJ uses the information to assess an individual's disability based on an updated summary of the individual's relevant work history. The HA–4633 becomes part of the documentary evidence of record. The respondents are claimants for disability benefits under title II or title XVI who requested a hearing before an ALJ.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4633	200,000	1	15	50,000

Dated: October 17, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–27222 Filed 10–19–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7662]

60-Day Notice of Proposed Information Collection: DS–4184, Risk Management and Analysis (RAM)

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:* Risk Analysis and Management.
- *OMB Control Number:* None.
- *Type of Request:* New.
- *Originating Office:* Bureau of Administration, Office of Logistics Management (A/LM).
- *Form Number:* DS–4184.
- *Respondents:* Potential contractors and grantees.
- *Estimated Number of Respondents:* 1250.
- *Estimated Number of Responses:* 6250.
- *Average Hours per Response:* 1 hour 15 minutes.
- *Total Estimated Burden:* 7813 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from October 20, 2011.

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

- *E-mail: Vazquezeh@State.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, 2201 C St., NW., SA–15 Room 3200, Washington, DC 20520.
- *Fax:* 703–812–2307.

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 Edward H. Vazquez, U.S. Department of State who may be reached by the following methods: Mail: U.S. Department of State, 2201 C St., NW., SA–15 Room 3200, Washington, DC 20520; Tel: 703–812–2308 or e-mail: *Vazquezeh@State.gov.*

If you have access to the internet you may submit comments online by going to: *http://www.regulations.gov/search/Regs/home.html#home.*

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:

The information collected from individuals and organizations is specifically used to conduct screening to ensure that State funded activities do not provide support to entities or individuals deemed to be a risk to national security.

Methodology:

The State Department, is implementing a Risk Analysis and Management Program to vet potential contractors and grantees seeking funding from the Department of State to mitigate the risk that such funds might benefit terrorists or their supporters. To conduct this vetting program the Department envisions collecting information from contractors, sub-contractors, grantees and sub-grantees regarding their directors, officers or key employees. The information collected will be compared to information gathered from commercial, public, and U.S. government databases to determine the risk that the applying organization, entity or individual might use Department funds or programs to benefit terrorist entities. This program will initially be conducted as a pilot program as directed by Congress in the FY 2010 Department of State, Foreign Operations, and Related Programs Appropriations Act, as carried forward in the FY 2011 Full-Year Continuing Appropriations Act.

Methodology: We will collect this information either through mail, fax or electronic submission.

Dated: October 14, 2011.

Catherine I. Ebert-Gray,

Deputy Assistant Secretary, Bureau of Administration, Department of State.

[FR Doc. 2011–27191 Filed 10–19–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 7661]

Determination Under the Foreign Assistance Act and the Department of State, Foreign Operations, and Related Programs Appropriations Acts

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended (FAA), notice is hereby given that the Deputy Secretary of State has made a determination pursuant to Section 620H of the FAA, and Section

7021 of the Department of State, Foreign Operations, and Related Programs Appropriations, 2010 (Div. F, Pub. L. 111–117), and similar provisions in prior-year appropriations acts, and has concluded that publication of the determination would be harmful to the national security of the United States.

This notice shall be published in the **Federal Register.**

Dated: October 4, 2011.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2011–27217 Filed 10–19–11; 8:45 am]

BILLING CODE 4710–27–P

STATE DEPARTMENT

[Public Notice 7605]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 15, 16, and 17. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, *phone:* 571–345–2214.

Dated:October 11, 2011.

Justine M. Sincavage,

Director of the Diplomatic, Security Service, Acting, U.S. Department of State.

[FR Doc. 2011–27206 Filed 10–19–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 7606]

''100,000 Strong'' Initiative Federal Advisory Committee: Notice of Meeting

Summary: The Bureau of East Asian and Pacific Affairs of the Department of State hereby gives notice of a public meeting of the ''100,000 Strong'' Initiative Federal Advisory Committee. The ''100,000 Strong'' Federal Advisory Committee, composed of prominent China experts and leaders in business, academic, and non-profit organizations, serves a critical advisory role in achieving the Administration's goal, announced in May 2010, of seeing 100,000 Americans study in China by 2014.

Agenda: Implementation of the 100,000 Strong Initiative in the private sector.

Time and Place: The meeting will take place on Friday, November 4, 2011, from 1 p.m. to 4 p.m. EDT at the Department of State, Washington, DC. Participants should arrive by 12:30 p.m. at 2201 C Street, NW., C Street Lobby, and will be directed to the meeting room.

Public Participation: This Advisory Committee meeting is open to the public, subject to the capacity of the meeting room. Access to the building is controlled; persons wishing to attend should contact Kim McClure of the Department of State's Bureau of East Asian and Pacific Affairs at *mcclurekm@state.gov* and provide their name, affiliation, date of birth, country of citizenship, government identification type and number, e-mail address, and mailing address no later than October 28, 2011. Data from the public is requested pursuant to Public Law 99–399 (Omnibus Act of 1986) as amended; Public Law 107–56 (USA PATRIOT ACT); and Executive Order 13356. The primary purpose for collecting this information is to validate the identity of individuals who enter Department facilities. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. Persons who cannot participate in the meeting but who wish to comment are welcome to do so by e-mail to Kim McClure at *mcclurekm@state.gov.* A member of the public needing reasonable accommodation should advise the contact person identified above not later than October 21, 2011. Requests made after that date will be considered, but might not be able to be fulfilled. Members of the public who are unable to attend the Advisory Committee meeting in person but would like to participate by teleconferencing can contact Kim McClure at 202–647–7059 to receive the conference call-in number and the relevant information.

Dated: October 4, 2011.

Carola McGiffert,

Deputy Director—100,000 Thousand Strong Initiative, Department of State.

[FR Doc. 2011–27214 Filed 10–19–11; 8:45 am]

BILLING CODE 4710–30–P

DEPARTMENT OF STATE

[Public Notice 7651]

U.S. Department of State Advisory Committee on Private International Law (ACPIL)—Online Dispute Resolution Study Group Meeting (ODR)

The Department of State, Office of Legal Adviser, Office of Private International Law ACPIL online dispute resolution (ODR) study group would like to give notice of a public meeting on Friday October 28 from 10 a.m. to 1 p.m. EDT. The ACPIL ODR Study Group will meet to discuss the upcoming meeting of the UNCITRAL ODR Working Group that will take place November 14–18 in Vienna. The UNCITRAL ODR Working Group is charged with the development of legal instruments for resolving both business to business and business to consumer cross-border electronic commerce disputes. At the November meeting, the Working Group will continue to consider inter alia ODR procedural rules for resolution of cross-border electronic commerce disputes.

For the report of the first two sessions of the UNCITRAL ODR Working Group (December 13–17, 2010 in Vienna (A/CN.9/716) and May 23–27, 2011 in New York (A/CN.9/721)) please follow the following link: *http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html.*

We expect that a revised draft text of online procedural rules that will be considered at the upcoming UNCITRAL ODR Working Group session will be available on the same link before the meeting.

Time and Place: The public meeting will take place at the Office of the Assistant Legal Adviser for Private International Law, Department of State, Washington, DC. Participants should appear by 9:45 a.m. at the C Street gate to Navy Hill, corner of C Street, NW., and 23rd Street, NW., at the gate to the Navy Hill compound. If you are unable to attend the public meeting and would like to participate from a remote

location, teleconferencing will be available.

Public Participation: This study group meeting is open to the public, subject to the capacity of the meeting room. Access to the meeting building is controlled; persons wishing to attend should contact Tricia Smeltzer or Niesha Toms of the Department of State Legal Adviser's Office at *SmeltzerTK@state.gov* or *TomsNN@state.gov* and provide your name, address, date of birth, citizenship, driver's license or passport number, e-mail address, and mailing address to get admission into the meeting. Persons who cannot attend but who wish to comment are welcome to do so by e-mail to Michael Dennis at *DennisMJ@state.gov.* A member of the public needing reasonable accommodation should advise those same contacts not later than October 21, 2011. Requests made after that date will be considered, but might not be able to be fulfilled. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Tricia Smeltzer 202–776–8423 or Niesha Toms at 202–776–8420 to receive the conference call-in number and the relevant information.

Dated: October 6, 2011.

Michael Dennis,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2011–27216 Filed 10–19–11; 8:45 am]

BILLING CODE 4710–28–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership Availability in the National Parks Overflights Advisory Group Aviation Rulemaking Committee—Representative of Native American Tribes

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of a vacancy (due to completion of membership on April 2, 2012) on the NPOAG (now the NPOAG Aviation Rulemaking Committee (ARC)) for a representative of Native American tribal concerns and invites interested persons to apply to fill the vacancy.

DATES: Persons interested in serving on the NPOAG ARC should contact Mr. Barry Brayer in writing and postmarked or e-mailed on or before November 30, 2011.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, AWP–1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group was established in March 2001, and is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of Title 5, United States Code, for intermittent Government service.

By FAA Order No. 1110–138, signed by the FAA Administrator on October 10, 2003, the NPOAG became an Aviation Rulemaking Committee (ARC). FAA Order No. 1110–138, was amended and became effective as FAA Order No. 1110–138A, on January 20, 2006.

The current NPOAG ARC is made up of one member representing general aviation, three members representing the air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are: Heidi Williams, Aircraft Owners and Pilots Association; Alan Stephen, fixed-winged air tour operator representative; Elling Halvorson, Papillon Airways, Inc.; Matthew Zuccaro, Helicopter Association International; Chip Dennerlein, Siskiyou Project; Gregory Miller, American Hiking Society; Dick Hingson, Sierra Club; Bryan Faehner, National Parks Conservation Association; Rory Majenty, Hualapai Nation; and Ray Russell, Navajo Parks and Recreation. Rory Majenty of the Hualapai Nation is the current NPOAG member with the expiring term on April 2, 2012.

In order to retain balance within the NPOAG ARC, the FAA and NPS invite persons interested in serving on the ARC to represent Native American tribes, to contact Mr. Barry Brayer (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the ARC must be made to Mr. Brayer in writing and postmarked or e-mailed on or before November 30, 2011. The request should indicate whether or not you are a member of an association or group related to Native American tribal issues or concerns or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to tribal concerns. The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA on October 11, 2011.

Barry Brayer,

NPOAG Co-Chairman, Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2011–27091 Filed 10–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 333X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Forsyth County, NC

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR pt. 1152

subpart F-*Exempt Abandonments and Discontinuances of Service* to discontinue service over approximately 10.0 miles of rail line between mileposts L–0.0 (near Trade Street in Winston-Salem) and L–10.0 (near the intersection of Hampton Road and Idols Road in Clemmons), in Forsyth County, N.C. The line traverses United States Postal Service Zip Codes 27012, 27101, 27103, 27104, 27105, and 27127.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[1]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will become effective on November 19, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[2] must be filed by October 31, 2011.[3] Petitions to reopen must be filed by November 9, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: Robert A. Wimbish, 2401 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 17, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–27220 Filed 10–19–11; 8:45 am]

BILLING CODE 4915–01–P

[1] Because this is a discontinuance proceeding and not an abandonment, the proceeding is exempt from the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), and 49 CFR 1105.11 (transmittal letter).

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

DEPARTMENT OF THE TREASURY

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Christopher Sterner, Deputy Chief Counsel (Operations).
2. Drita Tonuzi, Deputy Division Counsel (Large Business and International).
3. Frances F. Regan, Area Counsel (Small Business/Self Employed).
4. Mark S. Kaizen, Associate Chief Counsel (General Legal Services).
5. Steven A. Musher, Associate Chief Counsel (International).

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: October 11, 2011.

William J. Wilkins,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2011–27185 Filed 10–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Christopher Meade, Principal Deputy General Counsel (Department of Treasury).
2. Faris R. Fink, Commissioner (Small Business/Self Employed).
3. Joseph H. Grant, Deputy Commissioner (Tax Exempt and Government Entities).

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: October 11, 2011.

William J. Wilkins,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2011–27187 Filed 10–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4029

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 4029, Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits.

DATES: Written comments should be received on or before December 19, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, 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 Elaine Christophe at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits.

OMB Number: 1545–0064.

Form Number: 4029.

Abstract: Form 4029 is used by members of recognized religious groups

to apply for exemption from social security and Medicare taxes under Internal Revenue Code sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Current Actions: There are no changes being made to the Form 4029 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,754.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 3,792.

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: October 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–27188 Filed 10–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Gulf War Veterans' Illnesses Task Force

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice with request for comments.

SUMMARY: The Secretary, Department of Veterans Affairs (VA) established the Gulf War Veterans' Illnesses Task Force (GWVI–TF) in August 2009 to conduct a comprehensive review of VA's approach to and programs addressing 1990–1991 Gulf War Veterans' illnesses. The second Gulf War Veterans' Illnesses Task Force Draft Written Report is now complete. VA is inviting public comments on the Gulf War Veterans' Illnesses Task Force Draft Report for Public Comment.

DATES: Written comments must be received on or before November 21, 2011.

ADDRESSES: Although VA prefers electronic submission of public comments through *http://www.regulations.gov;* written comments may be submitted through mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420 or by fax to (202) 273–9026. Please view and/or download the Gulf War Veterans' Illnesses Task Force Draft Report for Public Comment at *http://www.va.gov/opa/publications/Draft_2011_GWVI-TF_Report.pdf.* Please write: ''Gulf War Veterans' Illnesses Task Force Draft Written Report or GWVI–TF Report'' in the subject line of your letter or e-mail. Copies of all comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. Comments may also be viewed online during the comment period, through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.* You can also submit ideas on improving VA services to Gulf War Veterans at *http://vagulfwartaskforce.uservoice.com/.* Please subscribe to our quarterly Gulf War Veterans Newsletter by including your e-mail address with your comment.

FOR FURTHER INFORMATION CONTACT: John Kent, GWVI–TF Secretary, OSVA, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 461–4814.

Approved: October 14, 2011.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011–27082 Filed 10–19–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Species; Designation of Critical Habitat for the Southern Distinct Population Segment of Eulachon; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 101027536–1591–03]

RIN 0648–BA38

Endangered and Threatened Species; Designation of Critical Habitat for the Southern Distinct Population Segment of Eulachon

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue a final rule to designate critical habitat for the southern Distinct Population Segment (DPS) of Pacific eulachon (*Thaleichthys pacificus*), pursuant to section 4 of the Endangered Species Act (ESA). We designate 16 specific areas as critical habitat within the states of California, Oregon, and Washington. The designated areas are a combination of freshwater creeks and rivers and their associated estuaries, comprising approximately 539 km (335 mi) of habitat. The Tribal lands of four Indian Tribes are excluded from designation after evaluating the impacts of designation and benefits of exclusion associated with Tribal land ownership and management by the Tribes. No areas were excluded from designation based on economic impacts.

This final rule responds to and incorporates public comments received on the proposed rule and supporting documents, as well as peer reviewer comments received on our draft biological report and draft economic report.

DATES: This rule will take effect on December 19, 2011.

ADDRESSES: Reference materials regarding this rulemaking can be obtained via the Internet at: *http://www.nwr.noaa.gov* or by submitting a request to the Protected Resources Division, Northwest Region, National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Marc Romano, NMFS, Northwest Region, 503–231–2200, or Jim Simondet, NMFS, Southwest Region, 707–825–5171, or Dwayne Meadows, NMFS, Office of Protected Resources, 301–427–8403.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2010, we listed the southern DPS of eulachon as threatened under the ESA (75 FR 13012). A proposed critical habitat rule for the southern DPS of eulachon was published in the **Federal Register** on January 5, 2011 (76 FR 515). The present rule describes the final critical habitat designation, including responses to public comments and peer reviewer comments, and supporting information on eulachon biology, distribution, and habitat use, and the methods used to develop the final designation.

We considered various alternatives to the critical habitat designation for the southern DPS of eulachon. The alternative of not designating critical habitat for the southern DPS of eulachon would impose no economic, national security, or other relevant impacts, but would not provide any conservation benefit to the species. This alternative was considered and rejected because such an approach does not meet the legal requirements of the ESA and would not provide for the conservation of the southern DPS of eulachon. The alternative of designating all potential critical habitat areas (*i.e.,* no areas excluded) also was considered and rejected because for some areas the benefits of exclusion from designation outweighed the benefits of inclusion.

An alternative to designating all potential critical habitat areas is the designation of critical habitat within a subset of these areas. Under section 4(b)(2) of the ESA, NMFS must consider the economic impact, impacts on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary of Commerce (Secretary) has the discretion to exclude an area from designation as critical habitat if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to the southern DPS of eulachon if an area were designated), as long as exclusion of the area will not result in extinction of the species. We prepared an analysis describing our exercise of discretion, which is contained in our Final Section 4(b)(2) Report (NMFS, 2011a). Under this preferred alternative we have excluded Indian lands in California and Washington from designation as critical habitat. The total estimated economic impact of designating all specific areas (without any exclusions) is $512,000 (discounted at 7 percent) or $532,000 (discounted at 3 percent). However the total estimated economic impact of the preferred alternative would be approximately $487,300 (discounted at 7 percent) or $506,300 (discounted at 3 percent). We determined that the exclusion of Indian lands would not significantly impede the conservation of the southern DPS of eulachon nor result in extinction of the species. We selected this as the preferred alternative because it results in a critical habitat designation that supports the conservation of the southern DPS of eulachon while reducing other relevant impacts. This alternative also meets the requirements under the ESA and our joint NMFS–U.S. Fish and Wildlife Service (USFWS) regulations concerning critical habitat at 50 CFR 424.19.

Section 3 of the ESA (16 U.S.C. 1532(5)(A)) defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean: ''to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.'' We may not designate critical habitat in areas outside of U. S. jurisdiction (50 CFR 424.12(h)). Section 4 of the ESA requires that, before designating critical habitat, we consider economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of exclusion outweigh the benefits of designation, unless excluding an area from critical habitat will result in the extinction of the species concerned. Once critical habitat is designated, section 7(a)(2) of the ESA requires that each federal agency, in consultation with NMFS and with our assistance, ensure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of critical habitat. This requirement is additional to the

section 7 requirement that federal agencies ensure their actions do not jeopardize the continued existence of listed species.

Eulachon Natural History

Eulachon are an anadromous fish, meaning adults migrate from the ocean to spawn in freshwater creeks and rivers where their offspring hatch and migrate back to the ocean to forage until maturity. Although they spend 95 to 98 percent of their lives at sea (Hay and McCarter, 2000), current data only provides an incomplete picture concerning their saltwater existence. The species is endemic to the northeastern Pacific Ocean, ranging from northern California to the southeastern Bering Sea in Bristol Bay, Alaska (McAllister, 1963; Scott and Crossman, 1973; Willson *et al.,* 2006). This distribution coincides closely with the distribution of the coastal temperate rain forest ecosystem on the west coast of North America (with the exception of populations spawning west of Cook Inlet, Alaska).

In the portion of the species' range that lies south of the United States–Canada border, most eulachon production originates in the Columbia River basin. Within the Columbia River basin, the major and most consistent spawning runs return to the mainstem of the Columbia River and the Cowlitz River (Gustafson *et al.,* 2010). Spawning also occurs in other tributaries to the Columbia River, including the Grays, Elochoman, Kalama, Lewis, and Sandy Rivers (WDFW and ODFW, 2001). Historically, the only other large river basins in the contiguous United States where large, consistent spawning runs of eulachon have been documented are the Klamath River in northern California and the Umpqua River in Oregon. Eulachon have been found in numerous coastal rivers in northern California (including the Mad River and Redwood Creek), Oregon (including Tenmile Creek south of Yachats, OR) and Washington (including the Quinault and Elwha Rivers) (Emmett *et al.,* 1991; Willson *et al.,* 2006).

Major eulachon production areas in Canada are the Fraser and Nass rivers (Willson *et al.,* 2006). Numerous other river systems in central British Columbia and Alaska have consistent yearly runs of eulachon and historically supported significant levels of harvest (Willson *et al.,* 2006; Gustafson *et al.,* 2010). Many sources note that runs occasionally occur in other rivers and streams, although these tend to be sporadic, appearing in some years but not others, and appearing only rarely in some river systems (Hay and McCarter, 2000; Willson *et al.,* 2006).

Early Life History and Maturation

Eulachon eggs can vary considerably in size but typically are approximately 1 mm (0.04 in) in diameter and average about 43 mg (0.002 oz) in weight (Hay and McCarter, 2000). Eggs are enclosed in a double membrane; after fertilization in the water, the outer membrane breaks and turns inside out, creating a sticky stalk which acts to anchor the eggs to the substrate (Hart and McHugh, 1944; Hay and McCarter, 2000). Eulachon eggs hatch in 20 to 40 days with incubation time dependent on water temperature (Smith and Saalfeld, 1955; Langer *et al.,* 1977). Shortly after hatching, the larvae are carried downstream and dispersed by estuarine, tidal, and ocean currents. Larval eulachon may remain in low salinity, surface waters of estuaries for several weeks or longer (Hay and McCarter, 2000) before entering the ocean. Similar to salmon, juvenile eulachon are thought to imprint on the chemical signature/smell of their natal river basin. However, juvenile eulachon spend less time in freshwater environments than do juvenile salmon and researchers believe that this may cause returning eulachon to stray between spawning sites at higher rates than salmon (Hay and McCarter, 2000).

Once juvenile eulachon enter the ocean, they move from shallow nearshore areas to deeper areas over the continental shelf. Larvae and young juveniles become widely distributed in coastal waters, where they are typically found near the ocean bottom in waters 20 to 150 m deep (66 to 292 ft) (Hay and McCarter, 2000) and sometimes as deep as 182 m (597 ft) (Barraclough, 1964). There is currently little information available about eulachon movements in nearshore marine areas and the open ocean. However, eulachon occur as bycatch in the ocean shrimp (*Pandalus jordani*) fishery (Hay *et al.,* 1999; Olsen *et al.,* 2000; Northwest Fishery Science Center (NWFSC), 2008; Hannah and Jones, 2009), indicating that the distribution of these two species may overlap in the ocean.

Spawning Behavior

Eulachon typically spend several years in salt water before returning to fresh water as a ''run'' to spawn from late winter through early summer. Eulachon are semelparous, meaning that they spawn once and then die (Gustafson *et al.,* 2010; Hay *et al.,* 2002). Spawning grounds are typically in the lower reaches of larger rivers fed by snowmelt (Hay and McCarter, 2000). Willson *et al.* (2006) concluded that the age distribution of eulachon in a spawning run varies considerably, but typically consists of fish that are 2 to 5 years old. Eulachon eggs commonly adhere to sand (Langer *et al.,* 1977) or pea-sized gravel (Smith and Saalfeld, 1955), though eggs have been found on silt, gravel to cobble sized rock, and organic detritus (Smith and Saalfeld, 1955; Langer *et al.,* 1977; Lewis *et al.,* 2002). Eggs found in areas of silt or organic debris reportedly suffer much higher mortality than those found in sand or gravel (Langer *et al.,* 1977).

In many rivers, spawning is limited to the part of the river that is influenced by tides (Lewis *et al.,* 2002), but some exceptions exist. In the Berners Bay system of Alaska, the greatest abundance of eulachon are observed in tidally-influenced reaches, but some fish ascend well beyond the tidal influence (Willson *et al.,* 2006). In the Kemano River, Canada, water velocity greater than 0.4 meters/second begins to limit the upstream movements of eulachon (Lewis *et al.,* 2002).

Entry into the spawning rivers appears to be related to water temperature and the occurrence of high tides (Ricker *et al.,* 1954; Smith and Saalfeld, 1955; Spangler, 2002). Spawning generally occurs in January, February, and March in the Columbia River, the Klamath River, and the coastal rivers of Washington and Oregon, and April and May in the Fraser River (Gustafson *et al.,* 2010). Eulachon runs in central and northern British Columbia typically occur in late February and March or late March and early April. Attempts to characterize eulachon run timing are complicated by marked annual variation in timing. Willson *et al.* (2006) give several examples of spawning run timing varying by a month or more in rivers in British Columbia and Alaska. Climate change, especially as it affects ocean conditions, is considered a significant threat to eulachon and their habitats and may also be a factor in run timing (Gustafson *et al.,* 2010). Most rivers supporting spawning runs of eulachon are fed by extensive snowmelt or glacial runoff, so elevated temperatures and changes in snow pack and the timing and intensity of stream flows will likely impact eulachon run timing. There are already indications, perhaps in response to warming conditions and/or altered stream flow timing, that spawning runs are occurring earlier in several rivers within the range of the southern DPS (Moody, 2008).

Water temperature at the time of spawning varies across the range of the species. Although spawning generally occurs at temperatures from 4 to 7 °C (39

to 45 °F) in the Cowlitz River (Smith and Saalfeld, 1955), and at a mean temperature of 3.1 °C (37.6 °F) in the Kemano and Wahoo Rivers, peak eulachon runs occur at noticeably colder temperatures (between 0 and 2 °C [32 and 36 °F]) in the Nass River. The Nass River run is also earlier than the eulachon run that occurs in the Fraser River, which typically has warmer temperatures than the Nass River (Langer *et al.,* 1977).

Prey

Eulachon larvae and juveniles eat a variety of prey items, including phytoplankton, copepods, copepod eggs, mysids, barnacle larvae, and worm larvae (Barraclough, 1967; Barraclough and Fulton, 1967; Robinson *et al.,* 1968a, 1968b). Eulachon adults feed on zooplankton, chiefly eating crustaceans such as copepods and euphausiids (Hart, 1973; Scott and Crossman, 1973; Hay, 2002; Yang *et al.,* 2006), unidentified malacostracans (Sturdevant, 1999), and cumaceans (Smith and Saalfeld, 1955). Adults and juveniles commonly forage at moderate depths (20–150 m [66–292 ft]) in nearshore marine waters (Hay and McCarter, 2000). Eulachon adults do not feed during spawning (McHugh, 1939; Hart and McHugh, 1944).

Summary of Comments Received and Responses

We solicited public comment for a total of 60 days on the proposed designation of critical habitat for the southern DPS of eulachon. In addition, we held a public hearing on the proposal in Portland, Oregon on January 26, 2011 at which one member of the public provided oral testimony. This testimony was recorded and our responses to comments address substantive comments from that individual. We received written comments from eight commenters, and these are available online at: *http://www.regulations.gov/#!docketDetail;rpp=10;po=10;D=NOAA-NMFS-2011-0013.* Summaries of the substantive comments received, and our responses, are organized by category and provided below.

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the Information Quality Act (IQA). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. Two documents supporting this final designation of critical habitat for the southern DPS of eulachon are considered influential scientific information and subject to peer review. In accordance with the OMB policies, we solicited technical review of the draft Biological Report (NMFS, 2010a) and the draft Economic Analysis (NMFS, 2010b). Each of these reports was reviewed by three independent experts selected from the academic and scientific communities.

There was substantial overlap between the comments from the peer reviewers and the substantive public comments. The comments were sufficiently similar that we have responded to the peer reviewer's comments through our general responses below. Revisions resulting from peer review and public comments have been made to the documents supporting this designation (*i.e.,* Biological Report, Economic Analysis, and Section 4(b)(2) Report) and the final versions of those documents can be found on our Web site at: *http://www.nwr.noaa.gov/Other-Marine-Species/Eulachon.cfm.*

Physical or Biological Features Essential for Conservation

Comment 1: One commenter suggested that nearshore and marine waters are essential as a migratory corridor for the passage of eulachon, and passage should be included as a feature in nearshore and marine waters.

Response: Eulachon migrate from their natal streams to marine waters of the continental shelf, and likely migrate throughout coastal waters until they return as adults to spawn. There are two difficulties with relying on a passage feature in the ocean for a species such as eulachon: (1) There is no information regarding the characteristics or conditions in coastal waters that would make a specific area suitable for passage, and (2) there is no evidence that eulachon use specific marine areas for migration. Regarding the first point, there is no information to indicate that eulachon rely on habitat features to guide migration, such as a particular type of current, temperature gradient, bathymetry, coastline, *etc.* Since there are no known characteristics of an area that would aid in delineation, one must consider whether there is some other evidence of a migration corridor or site, such as documented use for completing a portion of the life history. In the case of eulachon, there are no observations of eulachon migration that would allow us to infer the presence of migratory pathways in specific areas of the ocean. Absent information on the detailed characteristics that would allow delineation of a specific area, or information that eulachon actually use a defined area, we were unable to identify 'specific areas' in the ocean that contain migratory pathways.

Eulachon biology and habitat use differ from other species for which we have identified migratory pathways as an essential feature in marine waters. For example, green sturgeon (*Acipenser medirostris*) are primarily associated with bottom habitats in the ocean and travel along the coast in a migration corridor that is delimited by bathymetry (specifically, we identified the 60 fathom contour as the seaward extent of a green sturgeon migration feature) (74 FR 52300; October 9, 2009). Green sturgeon adherence to a migration corridor shoreward of this depth contour is documented through tagging studies and bycatch in fisheries (Erickson and Hightower, 2007). While we do have some limited information about areas where eulachon are present either through fisheries bycatch reports or fisheries-independent research, this information suggests only that eulachon are present in these areas. It does not shed light on a feature, such as a migratory pathway, that is essential to eulachon conservation. Additional contrasting examples include bull trout (*Salvelinus confluentus*) and Puget Sound Chinook (*Oncorhynchus tshawytscha*), which migrate in marine waters along the shoreline. Their critical habitat areas are delineated along a depth contour based on the penetration of light, which creates specific physical and biological conditions essential for their conservation. For Southern Resident killer whales (*Orcinus orca*) we also identified a passage feature in marine waters, among other features. The three specific areas designated as killer whale critical habitat in inland marine waters of Washington State contained all of the identified features. The one specific area primarily defined by the passage feature was the Strait of Juan de Fuca, a relatively narrow marine corridor through which killer whales pass on their migrations between coastal waters and inland waters.

Comment 2: One commenter believed that our reliance on evidence of spawning or spawning migration to designate critical habitat may be considered ''arbitrary,'' and they cited *Alliance for Wild Rockies* v. *Lyder,* 728 F. Supp. 1126, 1134 (D. Mont. 2010) in

support of their argument. The commenter stated that ''NMFS must consider other elements besides spawning when determining whether an area should be designated as critical habitat.''

Response: Eulachon are an anadromous species that spend 95–98 percent of their lives in the marine environment (Hay and McCarter, 2000). The best available scientific evidence suggests that adult eulachon are semelparous and enter freshwater and estuarine areas only to spawn, and after spawning the adult fish die (Hay *et al.,* 2002; Gustafson *et al.,* 2010). Eulachon eggs develop at or near the point they were spawned, and larval eulachon typically outmigrate via the same routes that adult spawners took to reach the spawning area. Because eulachon are semelparous and the best available evidence suggests that freshwater and estuarine areas are only used by eulachon for spawning activities (*i.e.* spawning migration, spawning, egg incubation and larval outmigration) we used spawning data to determine if essential features are present. Our approach was not the same as the approach used by the USFWS to designate critical habitat for the Canada lynx that is the subject of *Alliance for Wild Rockies* v. *Lyder.* The Canada lynx utilizes its habitat for a variety of life cycle activities beyond reproduction. There the USFWS used reproduction, one of several life functions, as the sole test to rule out the presence of essential features. In the *Alliance for Wild Rockies* decision, the court noted, ''[w]hile it is rational to conclude areas with evidence of reproduction contain the primary constituent elements and should be designated as critical habitat, the Service could not flip that logic and so it means that critical habitat only exists where there is evidence of reproduction.'' As a result, our reliance on evidence of spawning and spawning migration to identify critical habitat within freshwater and estuarine areas is not ''arbitrary'' according to the *Alliance for Wild Rockies* decision.

Comment 3: One commenter stated that in making our decision on which specific areas qualified as critical habitat, we relied on ''extremely limited sampling'' and, for some rivers and creeks, only ''opportunistic sightings'' and the ''best professional judgment of agency and Tribal biologists familiar with the area.'' The commenter believes that this is ''insufficient to satisfy the requirements of the ESA and may make it more difficult to recover this DPS.''

Response: Section 4(b)(2) of the ESA requires the Secretary of Commerce to designate critical habitat ''on the basis of the best scientific data available.'' In the proposed rule, and supporting Biological Report (NMFS, 2011b), we outlined the evidence that we used to identify specific areas as critical habitat. We stated in the proposed rule that we ''relied on data from published literature, field observations (including river sampling with a variety of net types), opportunistic sightings, commercial and recreational harvest, and anecdotal information.'' This final rule incorporates the findings in the proposed rule and the Biological Report, as well as peer review of the Biological Report and the Economic Analysis (NMFS, 2011c) and public comments on the proposed rule. Taken together, this information represents the best available scientific data available to inform our critical habitat decision.

We relied on the most recent scientific information available to us to determine which areas were eligible for designation. For a limited number of creeks and rivers, opportunistic sightings are the only information that is available to identify the distribution of the essential features. Where the only available information was opportunistic sightings, we consulted agency and Tribal biologists familiar with the area to confirm the information and identify the extent of the essential features. Where such information was the only information available, and was confirmed by the best professional judgment of biologists knowledgeable about the species and the area, we consider it the ''best available scientific information,'' and adequate to inform our decisions. Our actions are thus in accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR 424.12).

Specific Areas Within the Geographical Area Occupied by the Species

Comment 4: Two commenters agreed with our decision not to designate critical habitat in nearshore and offshore marine areas, and a third commenter recognized the problem in identifying critical habitat in these areas. In contrast, several commenters disagreed with our decision and some of these cited the availability of eulachon harvest and bycatch data as evidence of eulachon distribution in marine waters. One commenter questioned why we did not discuss in the proposed rule whether nearshore and marine waters may require special management considerations or protection. A separate commenter stated that there is a wide range of literature on the effects of trawling on seafloor habitat, and that the effects of trawling on eulachon foraging habitat need to be considered.

Response: Although some data are available on the ocean distribution of eulachon (from fisheries bycatch and fishery-independent surveys [summarized in Gustafson *et al.,* 2010]) we cannot identify specific marine foraging areas that meet the definition of critical habitat under the ESA. The ESA defines critical habitat as ''the specific areas within the geographical area occupied by the species, at the time it is listed on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection''. In the Pacific Ocean, we identified nearshore and offshore foraging habitat as an essential feature for the conservation of eulachon, and we determined that abundant forage species and suitable water quality are components of this habitat feature. Given the wide distribution of eulachon prey items, we could not associate them with ''specific areas'' within the marine environment occupied by eulachon. Moreover, these prey species move or drift great distances throughout the ocean and would be difficult to link to any ''specific'' areas as discussed in response to Comment 1. The concern is not that ''specific areas'' must be small, but rather in order to meet the definition of ''critical habitat'' under the ESA, they must be identifiable and connected to the essential feature found there. We could not discern such a linkage in marine areas occupied by eulachon. While we acknowledge that eulachon need foraging habitat in nearshore and offshore marine waters, we cannot identify any specific areas as required under section 3(5)(A) of the ESA.

Some activities (*e.g.* trawling), may occur in the marine environment that affect eulachon prey, such that the prey may require special management considerations or protections. However, the steps we follow in designating critical habitat include first identifying the essential features, then identifying the specific areas where those features occur, then considering whether the features in those areas may require special management consideration or protection. We did not discuss the second prong of the definition of critical habitat for marine foraging areas in the proposed rule because we did not identify any specific areas within the marine environment that meet the first prong of the definition of critical habitat (specific areas on which the features are found).

Comment 5: One commenter provided information documenting eulachon use of Redwood Creek, upstream of the area proposed.

Response: We proposed to designate approximately 6.1 km (3.8 mi) of critical habitat in Redwood Creek upstream to the confluence with Prairie Creek, based on reports from the California Department of Fish and Game (CDFG; Moyle *et al.,* 1995). However, the commenter provided a copy of a CDFG memorandum that describes an attempt by three experienced biologists familiar with eulachon who were purposely seeking to determine the upstream limit of eulachon spawning migration in Redwood Creek during April 1973. Eulachon were observed passing Tom McDonald Creek, a tributary located 19.4 km (12.5 mi) upstream from the mouth of Redwood Creek. The CDFG biologists also checked Redwood Creek for eulachon 6.4 km (4.0 mi) upstream of the confluence with Tom McDonald Creek but they did not find any eulachon at that location. This field observation documented fish at least as far upstream as Tom McDonald Creek and presents a credible observation of eulachon ascending Redwood Creek during the spawning run beyond the upstream limit that we proposed as critical habitat. As a result, we have extended critical habitat on Redwood Creek, upstream to the confluence with Tom McDonald Creek. Although the CDFG biologists speculated that eulachon ascended Redwood Creek beyond this point, we have no evidence to confirm that claim.

Comment 6: One commenter believed that eulachon may ascend beyond the specific areas identified and asserted that the upstream limits of critical habitat proposed for Ten Mile Creek, the Elochoman River, and the Kalama River appear to be established at points that were simply advantageous survey sites and not reflective of the species' actual distribution.

Response: The upstream limits of the proposed critical habitat were established using the best available information on eulachon distribution at the time of our proposed rule and informed by public and peer review. We relied on data from published literature, field observations (from a variety of agency and Tribal biologists), opportunistic sightings, commercial and recreational harvest, and anecdotal information. Information on eulachon distribution is limited for some creeks and rivers, particularly those that don't have a history of commercial or recreational harvest of eulachon. The upstream limit of proposed critical habitat for Ten Mile Creek, the Elochoman River, and the Kalama River were determined based on the most current information provided by ODFW for Ten Mile Creek and WDFW for the Elochoman and Kalama Rivers, which are the agencies responsible for eulachon management in the respective states. We do not know whether the information provided by the agencies was based on points that are advantageous survey sites. However, the commenter presents no credible information that would allow us to identify alternative end points of eulachon spawning areas.

Comment 7: One commenter questioned why the upstream limit of critical habitat on rivers where passage is blocked by hydropower dams is established at the point of blockage.

Response: We proposed as critical habitat four specific areas with an upstream limit that terminates at a passage barrier formed by a dam. Three of these dams are hydropower dams (Bonneville Dam on the Columbia River, Merwin Dam on the Lewis River, and Elwha Dam on the Elwha River) and one is a barrier dam for a salmon hatchery (Cowlitz River). Of the four dams, two were unlikely to have had eulachon above the dam site prior to dam construction due to natural barriers (Merwin and Elwha Dams); one may have had eulachon above the dam site before dam construction, but there is no evidence to support that conclusion (hatchery dam on the Cowlitz); and one has had confirmed eulachon presence upstream of the dam site both before and after construction (Bonneville Dam).

Both Merwin Dam and Elwha Dam were built in areas where the river is constrained, with high gradient and water velocities. Prior to dam construction these areas were likely a natural barrier for eulachon. In addition, we were unable to find information supporting eulachon presence above these dam sites prior to dam construction. We were unable to find any historical accounts of eulachon ascending the Cowlitz River beyond the site of the salmon hatchery barrier dam prior to dam construction in 1968, (Mark Larivie, personal communication, April 15, 2011). We did not propose critical habitat upstream of the Merwin Dam, Elwha Dam, or the Cowlitz River salmon hatchery dam because we could not find evidence that eulachon used these areas prior to dam construction.

There have been reports of adult eulachon ascending the Columbia River beyond the Bonneville Dam site, both before and after construction of the Bonneville Dam, with some runs large enough to support recreational harvest (OFC, 1953; Smith and Saalfeld, 1955; Stockley, 1981). Cascade Rapids (approximately 4 km [2.5 mi] upstream of the current Bonneville Dam site) was a natural barrier to eulachon migration in the Columbia River prior to the construction of Bonneville Dam (Oregon Fish Commission, 1953; Gustafson *et al.,* 2010). A ship lock constructed at Cascade Locks in 1896 allowed fish to circumvent the rapids and subsequently eulachon were reported as far upstream as Hood River, Oregon at river kilometer (RKm) 272 (river mile [RM] 169) (Smith and Saalfeld, 1955). Following completion of Bonneville Dam, both Cascade Rapids and Cascade Locks were submerged, removing the rapids as a passage barrier. Currently, passage for anadromous fish at Bonneville Dam is maintained via fish ladders, but it is highly unlikely that eulachon can ascend the ladders due to the high gradient and water velocities within. However, eulachon have been documented passing through the shipping locks at the dam (Oregon Fish Commission, 1953). Eulachon have been reported upstream of the dam in several years, including significant numbers in 1945 and 1953 (Oregon Fish Commission, 1953; Smith and Saalfeld, 1955) and more recently in 1988 (Johnsen *et al.,* 1988), 2003 (U.S. Army Corps of Engineers [USACE], 2003), and 2005 (Martinson *et al.,* 2010).

The area upstream of Bonneville Dam does not meet the definition of critical habitat because it does not contain the physical or biological features essential for conservation of eulachon. The physical and biological features essential for conservation of eulachon in freshwater and estuarine areas include: (1) Spawning and incubation sites with water flow, quality and temperature conditions and substrate supporting spawning and incubation; and (2) migration corridors free of obstruction and with water flow, quality and temperature conditions supporting larval and adult mobility, and with abundant prey items supporting larval feeding. Although they are separate features, spawning and incubation sites for eulachon cannot functionally exist without a migratory corridor to access them. In the proposed rule we acknowledged this relationship between the essential features when we stated that the migration corridor features are ''essential to [eulachon] conservation because they allow adult fish to swim upstream to reach spawning areas''. However, in the proposed rule we identified specific areas in freshwater and estuarine areas for designation as critical habitat ''which contain one or more of the essential physical or biological features'' without making it clear that spawning and incubation sites require a migration corridor to provide

access to the sites. The commenters' question allows us to further explain the functional relationship between the essential features.

Bonneville Dam is a major obstruction to eulachon passage. Eulachon access to the area upstream of Bonneville Dam is limited to opportunistic transport through the ship locks. Due to this passage barrier, the migration corridor essential feature in the Columbia River does not extend beyond Bonneville Dam. In order for the spawning and incubation site essential feature to exist upstream of Bonneville Dam, the migration corridor essential feature would have to extend upstream of Bonneville Dam as well. Due to the lack of a migration corridor to access the area upstream of Bonneville Dam, the spawning and incubation essential feature cannot exist upstream of the dam. Because neither the migration corridor nor spawning and incubation essential features occur upstream of Bonneville Dam, this area does not meet the ESA section 3(5)(A) definition of critical habitat.

Comment 8: One commenter did not agree with the use of the COLREGS line (or equivalent) to demarcate the downstream boundary of critical habitat for rivers that directly enter the ocean. The commenter believes that this boundary was established as a convenient management tool but does not make sense as an ecologically-based boundary. The commenter suggested that if freshwater delivery to the ocean is the key feature, then the boundary could be established at the edge of the river plume.

Response: As we stated previously, our regulations require that ''Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area'' (50 CFR 424.12(c)). In order for critical habitat to be a useful tool for conservation and management of the species, Federal agencies that are proposing actions in the vicinity of critical habitat need to be able to identify where critical habitat occurs. An ephemeral boundary, such as the maximum extent of freshwater delivery into the marine environment from a creek or river, would be difficult to identify. The COLREGS lines (where defined) were chosen as the downstream extent of freshwater and estuarine critical habitat because they are a clearly defined federal standard which incorporates landmarks that are found on standard topographic maps to uniformly depict an area of transition between freshwater and marine areas.

Comment 9: One commenter stated that it was unclear if smaller secondary or tertiary streams within watersheds assessed in the proposed rule are included or excluded from critical habitat.

Response: We used watersheds containing stream reaches occupied by eulachon as a basis for conducting our analysis of economic impacts associated with critical habitat designation. However, the specific areas identified as critical habitat were limited to the portions of individual creeks and rivers that contain the physical and biological features essential for eulachon conservation. The specific areas that are being designated as critical habitat are listed in this final rule (including the accompanying maps) and will appear in part 226, title 50 of the Code of Federal Regulations. Secondary or tertiary streams within the watersheds used for the economic analysis are not designated as critical habitat unless they are specifically described in this rule and in part 226, title 50 of the Code of Federal Regulations.

Comment 10: One commenter proposed that two locations in Washington State (the Toutle River in the Cowlitz Basin and Skamokawa Creek in the Elochoman Basin) be included in the critical habitat designation.

Response: In our proposed rule we identified criteria to determine if a specific area contained either one of the essential features of freshwater spawning and incubation sites and freshwater and estuarine migration corridors (76 FR 515; January 5, 2011). These criteria are sites that contain: (1) Larval fish or pre-/post-spawn adults that have been positively identified and documented; or (2) commercial or recreational catches that have been documented over multiple years. Prior to publishing the proposed rule, we were unable to identify information that would satisfy these criteria for either the Toutle River or Skamokawa Creek.

In the proposed rule we acknowledged that many areas within the geographical area occupied by the southern DPS have not been surveyed to determine the extent of eulachon spawning and migration (76 FR 515; January 5, 2011). To address this information need we funded several eulachon monitoring studies and surveys currently being undertaken by ODFW, WDFW, the Cowlitz Indian Tribe, and the Yurok Indian Tribe. During April 2011 biologists from the Cowlitz Indian Tribe documented the presence of eulachon larvae in the Toutle River and Skamokawa Creek, confirming eulachon spawning in these two systems (Cowlitz Indian Tribe, 2011). This information satisfies the criteria we used in our proposed rule to identify specific areas where the essential physical and biological features occur. As a result, these specific areas meet the statutory definition of critical habitat and we have included them in this final rule. Additional information on these two areas can be found below.

Comment 11: One commenter questioned the proposed designation of the lower Elwha River as critical habitat on several points. First, the commenter noted that although eulachon have been captured in the lower Elwha River in small numbers, this may be consistent with straying. Second, the commenter asserted that there is a likely velocity barrier for eulachon located at approximately RKm 0.8 (RM 0.5). And finally, the commenter reasoned that once the Lower Elwha Tribal land is excluded from critical habitat designation, very little of the remaining river below the Elwha Dam that is accessible to eulachon would be eligible for designation as critical habitat.

Response: Eulachon were documented in the Elwha River in 2005, although anecdotal observations suggest that eulachon ''were a regular, predictable feature in the Elwha until the mid 1970s'' (Shaffer *et al.,* 2007, p. 80). Other Olympic Peninsula rivers draining into the Strait of Juan de Fuca have been extensively surveyed over many years for salmonid migrations; however, eulachon have not been observed in any of these other systems (Shaffer *et al.,* 2007; Peter Toppings, WDFW, 2011; Lower Elwha Tribe, 2011). Since 2005, eulachon in spawning condition have been observed nearly every year in the Elwha River by Lower Elwha Tribe Fishery Biologists (Lower Elwha Tribe, 2011). After only one year of catch data, Shaffer *et al.* (2007; p. 80) concluded that ''observations of eulachon in the Elwha lead us to surmise that the Elwha eulachon are likely a remnant stock of the Elwha River rather than stray.'' We believe that the consistent spawning returns to the Elwha River in subsequent years supports the conclusion of Shaffer *et al.* (2007) that eulachon in the Elwha River are a self-sustaining population and not stray fish from nearby rivers.

Mike McHenry (Fishery Biologist, Lower Elwha Tribe, personal communication April 4, 2011) has confirmed reports that eulachon have ascended the Elwha River to at least RKm 4.0 (RM 2.5). This would place eulachon well upstream of the potential velocity barrier at RKm 0.9 (RM 0.5) that the commenter believes may limit their upstream movement. Studies from the

Kemano River indicate that many eulachon are unable to maintain long-term position in the river at flow velocities greater than 0.3 m/s (1.0 ft/s; Lewis *et al.,* 2002). However, when water velocities were high in the mid-channel, eulachon travelled near the shore (Lewis *et al.,* 2002) where water velocities are likely lower. Research conducted in the lower Elwha River has shown that water velocities can be significantly lower nearshore and along the bottom of the river, when compared to the mid-channel (USGS, 2008). It is likely that eulachon ascend beyond RKm 0.8 (RM 0.5) in the Elwha River by migrating in the lower velocity water of the nearshore or river bottom.

The Lower Elwha Tribe controls over 1,000 acres of land in the lower Elwha River watershed that are eligible for exclusion from this critical habitat designation. From the mouth of the river, upstream to the Elwha Dam at RKm 7.6 (RM 4.7), the Lower Elwha Tribe lands include approximately 2.3 km (1.4 mi) of this area. This leaves approximately 5.3 km (3.3 mi) of river that does not overlap Tribal land and thus is not excluded from critical habitat. Although federal actions conducted on Lower Elwha Tribe land would not require section 7 consultation to determine the effects on critical habitat, federal activities on non-Tribal lands would.

Special Management Considerations

Comment 12: One commenter wanted to know why dams and water diversions were listed as an activity that may require special management considerations in Redwood Creek given that there are no dams or surface water diversions on Redwood Creek.

Response: Although summer seasonal dams have existed on the mainstem of Redwood Creek in the past, they have been removed and are no longer allowed. The commenter rightly points out that dams and water diversions are not activities in Redwood Creek that may require special management considerations and we have removed them from the list of special management considerations for Redwood Creek.

Comment 13: One commenter suggested that the construction and maintenance of the Redwood Creek Flood Control Project levees (that line the lower 5.5 km [3.4 miles] of Redwood Creek), should be considered in-water construction or alteration and listed as an activity that may require special management consideration.

Response: We agree and have updated our report to include this category of activity.

Unoccupied Areas

Comment 14: One commenter suggested that we should give greater consideration to the potential designation of unoccupied habitats. The commenter stated that NMFS ''must consider physical and biological features of historically occupied areas, not just presence and production, before determining that these areas are not essential for the conservation of the species.''

Response: Section 3(5)(A)(ii) of the ESA authorizes the Secretary of Commerce to designate ''specific areas outside the geographical area occupied at the time [the species] is listed'' if the Secretary determines that these areas are essential for the conservation of the species. Section 4(b)(2) of the ESA directs the Secretary to designate critical habitat ''on the basis of the best scientific data available'' Regulations at 50 CFR 424.12(e) emphasize that the agency ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

The commenter states that NMFS must base its decision to designate critical habitat in unoccupied areas on whether those areas might contain the physical or biological features essential to the conservation of the species. However, the ESA's definition of critical habitat in unoccupied areas does not rely on the presence of physical or biological features, but on the determination that the area is essential for the conservation of the species. Our implementing regulations provide that we may only designate unoccupied areas if we determine that currently occupied areas are not adequate for conservation (50 CFR 424.12(e)). In the case of the southern DPS of eulachon, we are unable to make such a determination at this time. In the process of recovery planning we may determine that additional areas are necessary for conservation and revise the designation.

In addition, the commenter incorrectly states that we based our decision to not designate critical habitat in unoccupied areas ''on a lack of documentation of the presence of eulachon in those areas.'' Based on the best available science, we determined that nearly all of the historical and current presence and production of the southern DPS of eulachon comes from within the geographical area occupied at the time the species was listed (and particularly the Klamath, Umpqua, Columbia and Fraser Rivers). Sightings of southern DPS eulachon from creeks or rivers outside of the geographical area occupied by the species have been extremely infrequent, and have consisted of very few fish (Gustafson *et al.,* 2010). Due to such an overwhelming proportion of the historical and current abundance and production of the southern DPS of eulachon occurring within the geographical area occupied by the species, we could not determine that currently occupied areas are inadequate to conserve the species. We received no new information on this subject during the comment and peer review process of the Proposed Critical Habitat Designation (76 FR 515; January 5, 2011). Therefore, we are not designating any unoccupied areas as critical habitat for the DPS. This is an issue that we will continue to investigate during the recovery planning process and we will update the critical habitat designation if needed.

Economic Impacts of Critical Habitat Designation

Comment 15: One commenter put forth the argument that contemporary forest management activities have little impact on aquatic organisms such as eulachon. The commenter also believes that ''it is troubling that forest management is listed as the activity likely to have the second most section 7 actions as a result of the critical habitat designation.''

Response: In the proposed rule we identified a number of activities that may affect the physical and biological features essential to conservation of the southern DPS of eulachon (76 FR 515; January 5, 2011). One of the major types of activity was pollution and runoff from point and non-point sources including industrial activities, urbanization, grazing, agriculture, and forestry operations. Nearly all of the watersheds that contain specific areas proposed as critical habitat for eulachon have been or are still subject to forest management activities. While we acknowledge that modern forest practice rules have greatly reduced the impact of forest management activities on aquatic environments (Cafferata and Spittler, 1998), there is a large body of information demonstrating that such activities continue to require special management considerations to ensure they do not impair eulachon habitat. For example, Rashin *et al.* (2006) state that ''[t]imber harvest activities have the potential to increase sediment loading to streams from harvest site erosion and to cause direct physical disturbance of stream channels and riparian zones.'' Gomi *et al.* (2005) report that ''[f]orest management practices can increase fine

sediment supply though soil disturbance and accelerated landsliding.'' These authors go on to state ''[s]oil disturbance and sediment delivery to streams are commonly associated with construction of roads and landings, slash burning, and log skidding (Reid and Dunne, 1984; Christie and Fletcher, 1999; Jordan, 2001; Kreutzwiser *et al.,* 2001). The hydrologic and geomorphic effects of forest roads in particular have been the focus of many studies, given their demonstrated potential for negative impacts (Luce and Wemple, 2001).''

As part of our estimate of the potential economic impact of critical habitat designation for the southern DPS of eulachon we projected the future administrative costs of engaging in ESA section 7 consultations. In our Draft Economic Analysis (NMFS, 2010b), we provided a forecast of the annual number of future section 7 actions, organized by affected watershed and activity, that may require consultation with NMFS. Forest management was one of the ten broad activity groups that were identified that may require some form of section 7 consultation in the future. We have an extensive consultation history for other anadromous species (including West Coast salmon and steelhead) in the watersheds that we proposed as eulachon critical habitat. Estimates of the future annual number of section 7 actions related to eulachon were based on the average number of past actions that required consultation for these species in these watersheds between 2000 and 2009.

While forest management is the activity that we forecast to have the second-most section 7 actions as a result of eulachon critical habitat designation, it is important to keep the estimates in perspective. We chose the individual watersheds that encompass each stream reach proposed as eulachon critical habitat as our assessment area for economic impacts (specifically, we used 5th field hydrologic units as designated by the U.S. Geological Survey). The total land area included in our assessment area is approximately 9,500 km^2 (2.3 million acres). We estimate that forest management activities will result in approximately seven ESA section 7 consultations per year as a result of eulachon critical habitat designation, and of these, only one will require formal consultation. Given that forest management is one of the most dominant land uses across our assessment area, the estimated number of related consultations that may need to address eulachon critical habitat is comparatively small for an area so large.

Comment 16: One commenter believed designating ocean areas as critical habitat would have an adverse economic impact on shrimp fisheries off the Pacific Coast.

Response: We did not propose to designate critical habitat in marine waters because we were unable to identify specific areas in the marine environment that meet the definition of critical habitat under section 3(5)(A). Therefore we did not assess the economic impact of designating marine areas as critical habitat, including any economic impacts to ocean shrimp fisheries.

Comment 17: One commenter expressed concern that the designation of critical habitat in the Elwha River could lead to changes in the timing of the upcoming removal of the Elwha and Glines Canyon Dams. The commenter believes that any changes in the timing of dam removal could potentially have high associated costs that were not factored into NMFS' economic analysis.

Response: In 2010, we completed our consultation with the National Park Service on removal of the Elwha and Glines Canyon Dams and their effects on eulachon (NMFS, 2010c). Removal of the dams will result in the release of accumulated sediment that is likely to harm eulachon and their habitat. In our consultation we considered the direct effects to eulachon as well as the indirect effects that would result from habitat alteration. The Biological Opinion contains terms and conditions that require the Park Service to maintain consistent sediment loads during March through May to minimize impacts to spawning eulachon. Designation of critical habitat in the Elwha River will require reinitiation of consultation with the Park Service. It is possible that during the course of the consultation our analysis may lead to additional terms and conditions, but at this time there are none that we can reasonably anticipate (NMFS 2010c; Zach Hughes, NMFS, Washington State Habitat Office, personal communication, 9/12/2011). Our economic analysis therefore includes as a cost of designation only the added administrative cost of completing a new consultation.

Indian Lands Exclusions

Comment 18: One commenter believed that Tribal lands should not be excluded from critical habitat because doing so would diminish the conservation value of the designation. A separate commenter believed that Tribal lands should only be excluded if the affected Tribes agree to address eulachon protections in their conservation plans.

Response: Section 4(b)(2) of the ESA provides the Secretary with discretion to exclude areas from the designation of critical habitat if the Secretary determines that the benefits of exclusion outweigh the benefits of designation, and the Secretary finds that exclusion of the area will not result in extinction of the species. Tribal lands are managed by Indian Tribes in accordance with Tribal goals and objectives within the framework of applicable treaties and laws. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the policies and responsibilities of the Federal Government in matters affecting Tribal interests (recently confirmed by Presidential Memorandum; 74 FR 57879; November 9, 2009). In addition to Executive Order 13175, we have Department of Commerce policy direction, via Secretarial Order 3206, stating that Indian lands shall not be designated as critical habitat, nor areas where the ''Tribal trust resources * * * or the exercise of Tribal rights'' will be impacted, unless such lands or areas are determined ''essential to conserve a listed species.'' In such cases we ''shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by designating only other lands.''

In our proposed rule, we determined that excluding Tribal lands from critical habitat designation would have the benefit of promoting federal policies regarding Tribal sovereignty and self-governance (*e.g.,* Executive Order 13175). In addition, we determined that exclusion of Tribal lands would have the benefit of promoting a positive working relationship between NMFS and the Tribes (in accordance with Secretarial Order 3206), with a very small reduction in the benefits of designation (primarily the loss of section 7 consultation to consider adverse modification of critical habitat). Although these specific areas have a high conservation value for eulachon, their extent is relatively small (approximately 5% of the total area designated). In the decision *Center for Biological Diversity,* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003), the court held that a positive working relationship with Indian Tribes is a relevant impact that can be considered when weighing the relative benefits of a critical habitat designation.

The Tribes affected by this critical habitat designation have played and continue to play an active role in the conservation and management of this species. These Tribal governments are also co-managers of a variety of other freshwater and marine species and

resources throughout the region. The co-manager relationship crosses Tribal, Federal, and state boundaries, due to the migratory characteristics of these species. As we move forward with eulachon recovery planning, a positive working relationship with the Tribes will be crucial to the management and recovery of eulachon.

While it is possible that exclusion of Indian lands may result in a small reduction in the conservation benefits of the designation, the species is still protected under the jeopardy standard of ESA section 7, and activities that occur on non-Tribal lands near or adjacent to excluded Tribal lands will still be subject to section 7 consultation for adverse modification of critical habitat. In addition, there are several management plans that guide Tribal activities in the affected watersheds (*e.g.,* the Quinault Reservation Forest Management Plan, Elwha River Fish Restoration Plan, and the Lower Klamath River Sub-Basin Watershed Restoration Plan) and provide protection to eulachon habitat.

Comment 19: One commenter believed that we should not exclude lands covered by a Habitat Conservation Plan (HCP) unless the plan contains adequate protections for eulachon.

Response: We agree that adequate protections for eulachon within an existing HCP should be a requirement for any landowner seeking to have land excluded from critical habitat designation. There are two existing HCPs that overlap areas that were proposed as critical habitat for the southern DPS of eulachon; the Green Diamond Timber HCP (covering the company's operations in northern California, including portions of the Klamath River), and the Humboldt Bay Municipal Water District HCP (covering their operations in the Mad River, California). Neither of these HCPs address conservation of eulachon, and it is unclear what, if any, conservation benefits they might provide to eulachon. In addition, neither of the HCP holders requested that their lands be excluded from critical habitat. Therefore, we have decided not to exclude any land covered by these HCPs from this critical habitat designation.

Summary of Revisions

We evaluated the comments and new information received on the proposed rule to ensure that they represented the best scientific data available and made a number of changes to the critical habitat designations, including:

(1) We revised the number of specific areas included in our critical habitat designation based on comments received and new scientific information that became available following publication of the proposed rule. Specifically, we added Skamokawa Creek, and the Toutle River (both in Washington State) to the list of specific areas.

(2) We extended the upstream extent of critical habitat for three specific areas based on comments received and new scientific information. Critical habitat was extended on Redwood Creek, California, and the Elochoman and Kalama Rivers in Washington. In addition we revised the Lewis River specific area to include the East Fork of the Lewis River.

(3) We further explained and clarified the functional relationship between the spawning and incubation essential feature and the migration corridor essential feature based on comments received.

(4) We revised our economic analysis based on additions to the specific areas included in the critical habitat designation. Specifically, we added a new 5th field hydrologic unit to our analysis (HUC 1708000205: East Fork Lewis River).

(5) We have designated critical habitat in the Quinault River, Washington, and the Klamath River, California. These specific areas were excluded entirely from the proposed critical habitat rule. Upon further review, based on more complete information on land ownership, we determined that only the portions of these rivers that overlap with Indian lands are eligible for exclusion. Critical habitat does not include any Tribal lands of the Lower Elwha Tribe, Quinault Tribe, Resighini Rancheria, or Yurok Tribe.

Methods and Criteria Used To Identify Critical Habitat

In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR 424.12), this final rule is based on the best scientific information available concerning the southern DPS's present and historical range, habitat, and biology, as well as threats to its habitat. In preparing this rule, we reviewed and summarized current information on eulachon, including recent biological surveys and reports, peer-reviewed literature, NMFS status reviews for the southern DPS of eulachon (Gustafson *et al.,* 2010), the proposed rule to list eulachon (74 FR 10857; March 13, 2009), and the final listing determination for eulachon (75 FR 13012; March 18, 2010) and information provided during the comment process. All of the information gathered to create this final rule has been collated and analyzed in three supporting documents: The Eulachon Biological Report (NMFS, 2011b); the Eulachon Economic Analysis (NMFS, 2011c); and, the Eulachon Section 4(b)(2) Report (NMFS, 2011a).

We used this information to identify specific areas that qualify as critical habitat for the southern DPS. We followed a five-step process in order to identify these specific areas: (1) Determine the geographical area occupied by the species, (2) identify physical or biological habitat features essential to the conservation of the species, (3) delineate specific areas within the geographical area occupied by the species on which are found the physical or biological features, (4) determine whether the features in a specific area may require special management considerations or protections, and (5) determine whether any unoccupied areas are essential for conservation. Our evaluation and conclusions are described in detail in the following sections.

Geographical Area Occupied by the Species

As described in the proposed rule, the first step in designating critical habitat is to identify the geographical area occupied by the species at the time of listing. In our proposed critical habitat designation we interpreted the ''geographical area occupied'' in ESA section 3(3) as equivalent to the range of the species at the time of listing. In our March 2010 final ESA listing rule, and in the proposed critical habitat designation, we identified the range of the southern DPS of eulachon as extending from the Skeena River in British Columbia, Canada, to the Mad River in California (Gustafson *et al.,* 2010). We cannot designate areas outside U.S. jurisdiction as critical habitat (see above), thus, we limited our consideration of the range of the southern DPS of eulachon to the geographical area from the international border with Canada to the Mad River in California. We did not attempt to further refine our identification of the ''geographical area occupied by the species'' at the time of listing because of the process we followed in the subsequent steps of our designation. As explained more fully below, we identified freshwater spawning and incubation sites as a ''physical or biological feature essential to conservation'' of the species. In determining the ''specific areas'' that contain those sites, we confirmed that eulachon were documented using the sites for spawning. Thus our process of confirming that a specific area contains the essential features also allowed us to

confirm that the area was indeed occupied. Given the highly migratory nature of eulachon and limited marine sampling, we do not know how far offshore the southern DPS of eulachon are distributed and thus how far offshore the geographical area occupied by the species extends. We consider the marine extent of the geographical area occupied by the species as undeterminable at this time.

Physical or Biological Features Essential for Conservation

Joint NMFS–USFWS regulations at 50 CFR 424.12(b) state that in determining what areas are critical habitat, the agencies ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.'' These physical and biological features include, but are not limited to: ''(1) Space for individual and population growth, and for normal behavior; (2) Food, water, air, light, minerals, or other nutritional or physiological requirements; (3) Cover or shelter; (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.''

Based on the best available scientific information, we developed a list of physical and biological features essential to the conservation of eulachon and relevant to determining whether occupied areas are consistent with the above regulations and the ESA section (3)(5)(A) definition of ''critical habitat.'' The physical or biological features essential to the conservation of the southern DPS fall into three major categories reflecting key life history phases of eulachon:

(1) Freshwater spawning and incubation sites with water flow, quality and temperature conditions and substrate supporting spawning and incubation, and with migratory access for adults and juveniles. These features are essential to conservation because without them the species cannot successfully spawn and produce offspring.

(2) Freshwater and estuarine migration corridors associated with spawning and incubation sites that are free of obstruction and with water flow, quality and temperature conditions supporting larval and adult mobility, and with abundant prey items supporting larval feeding after the yolk sac is depleted. These features are essential to conservation because they allow adult fish to swim upstream to reach spawning areas and they allow larval fish to proceed downstream and reach the ocean.

(3) Nearshore and offshore marine foraging habitat with water quality and available prey, supporting juveniles and adult survival. Eulachon prey on a wide variety of species including crustaceans such as copepods and euphausiids (Hay and McCarter, 2000; WDFW and ODFW, 2001), unidentified malacostracans (Sturdevant, 1999), cumaceans (Smith and Saalfeld, 1955) mysids, barnacle larvae, and worm larvae (WDFW and ODFW, 2001). These features are essential to conservation because they allow juvenile fish to survive, grow, and reach maturity, and they allow adult fish to survive and return to freshwater systems to spawn.

The components of the freshwater spawning and incubation sites include:

Flow: A flow regime (*i.e.,* the magnitude, frequency, duration, seasonality, and rate-of-change of freshwater discharge over time) that supports spawning, and survival of all life stages. Most spawning rivers experience a spring freshet characteristic of rivers draining large snow packs or glaciers (Hay and McCarter, 2000). In general, eulachon spawn at lower water levels before spring freshets (Lewis *et al.,* 2002). In the Kemano River, British Columbia, eulachon preferred water velocities from 0.1 to 0.7 m/s (Lewis *et al.,* 2002). Sufficient flow may also be needed to flush silt and debris from spawning substrate surfaces to prevent suffocation of developing eggs.

Water Quality: Water quality suitable for spawning and viability of all eulachon life stages. Sublethal concentrations of contaminants affect the survival of aquatic species by increasing stress, predisposing organisms to disease, delaying development, and disrupting physiological processes, including reproduction. Adult eulachon can take up and store pollutants from their spawning rivers, despite the fact that they do not feed in fresh water and remain there only a few weeks (Rogers *et al.,* 1990; WDFW and ODFW, 2001). Eulachon have also been shown to avoid polluted waters when possible (Smith and Saalfeld, 1955).

Water Temperature: Suitable water temperatures, within natural ranges, in eulachon spawning reaches. Water temperature between 4 °C and 10 °C (39 °F and 50 °F) in the Columbia River is preferred for spawning (WDFW and ODFW, 2001) although temperatures during spawning can be much colder in northern rivers (*e.g.,* 0 °C to 2 °C [32 °F to 36 °F] in the Nass River; Willson *et al.,* 2006). High water temperatures can lead to adult mortality and spawning failure (Blahm and McConnell, 1971).

Substrate: Spawning substrates for eulachon egg deposition and development. Spawning substrates typically consist of silt, sand, gravel, cobble, or detritus (Gustafson *et al.,* 2010). However, pea-sized gravel (Smith and Saalfeld, 1955) and coarse sand (Langer *et al.,* 1977) are the most commonly used. Water depth for spawning can range from 8 cm (3 in) to at least 7.6 m (25 ft) (Willson *et al.,* 2006).

The components of the freshwater and estuarine migration corridor essential feature include:

Migratory Corridor: Safe and unobstructed migratory pathways for eulachon adults to pass from the ocean through estuarine areas to riverine habitats in order to spawn, and for larval eulachon to access rearing habitats within the estuaries and juvenile and adults to access habitats in the ocean. Lower reaches of larger river systems (*e.g.,* the Columbia River) are used as migration routes to upriver or tributary spawning areas. Out-migrating larval eulachon are distributed throughout the water column in some rivers (*e.g.,* the Fraser River) but are more abundant in mid-water and bottom portions of the water column in others (*e.g.,* the Columbia River; Smith and Saalfeld, 1955; Howell *et al.,* 2001).

Flow: A flow regime (*i.e.,* the magnitude, frequency, duration, seasonality, and rate-of-change of freshwater discharge over time) that supports spawning migration of adults and outmigration of larval eulachon from spawning sites. Most eulachon spawning rivers experience a spring freshet (Hay and McCarter, 2000) that may influence the timing of spawning adult migration. In general, eulachon spawn at low water levels before spring freshets (Lewis *et al.,* 2002). In the Kemano River water velocity greater than 0.4 m/s (1.3 ft/s) begins to limit upstream movements (Lewis *et al.,* 2002).

Water Quality: Water quality suitable for survival and migration of spawning adults and larval eulachon. Adult eulachon can take up and store pollutants from their spawning rivers, despite the fact that they do not feed in fresh water and remain there only a few weeks (Rogers *et al.,* 1990; WDFW and ODFW, 2001). Eulachon avoid polluted waters when possible (Smith and Saalfeld, 1955).

Water Temperature: Water temperature suitable for survival and migration. Eulachon run timing may be

influenced by water temperature (Willson *et al.,* 2006), and high water temperatures can increase adult mortality (Blahm and McConnell, 1971). Given the range of temperatures in which eulachon spawn, Langer *et al.* (1977) suggested that the contrast between ocean and river temperatures might be more critical than absolute river or ocean temperatures.

Food: Prey resources to support larval eulachon survival. Eulachon larvae need abundant prey items (especially copepod larvae; Hart, 1973) when they begin exogenous feeding after the yolk sac is depleted. The eulachon yolk sac can be depleted between 6 and 21 days after hatching (Howell, 2001), and larvae may be retained in low salinity, surface waters of the natal estuary for several weeks or longer (Hay and McCarter, 2000), making this an important component in migratory corridor habitat.

The components of the nearshore and offshore marine foraging essential feature include:

Food: Prey items, in a concentration that supports foraging leading to adequate growth and reproductive development for juveniles and adults in the marine environment. Eulachon larvae and juveniles eat a variety of prey items, including phytoplankton, copepods, copepod eggs, mysids, barnacle larvae, and worm larvae (Barraclough, 1967; Barraclough and Fulton, 1967; Robinson *et al.,* 1968a, 1968b). Eulachon adults feed on zooplankton, chiefly eating crustaceans such as copepods and euphausiids (Hart, 1973; Scott and Crossman, 1973; Hay, 2002; Yang *et al.,* 2006), unidentified malacostracans (Sturdevant, 1999), and cumaceans (Smith and Saalfeld, 1955).

Water Quality: Water quality suitable for adequate growth and reproductive development. The water quality requirements for eulachon in marine habitats are largely unknown, but they would likely include adequate dissolved oxygen levels, adequate temperature, and lack of contaminants (such as pesticides, organochlorines, elevated levels of heavy metals) that may disrupt behavior, growth, and viability of eulachon and their prey.

Specific Areas Within the Geographical Area Occupied by the Species

After determining the geographical area occupied by the southern DPS of eulachon, and identifying the physical and biological features essential to their conservation, we next identified the specific areas that meet the statutory definition of critical habitat. Critical habitat is defined in Section 3(5)(A)(i) of the ESA as the ''specific areas within the geographical area occupied by the species * * * on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection''. All of the essential physical and biological features we identified for freshwater and estuarine habitat occur within either spawning and incubation areas, or migratory corridors. In order to identify specific areas where the essential features occur, we developed criteria to determine if an area contained either spawning and incubation sites, or a migratory corridor. These criteria are areas that contain: (1) Larval fish or pre-/post-spawn adults that have been positively identified and documented; or (2) commercial or recreational eulachon fishery that has been documented over multiple years. There are 42 creeks and rivers with known or possible eulachon spawning within the U.S. range of the southern DPS of eulachon (Gustafson *et al.,* 2010; NMFS, 2011b). Of these, we identified 16 that meet at least one of the criteria for the presence of the physical or biological features essential for eulachon conservation. We then determined the distribution of the essential features within these creeks or rivers. We relied on evidence of adult and larval eulachon presence to delineate the extent of the specific areas where the spawning and incubation sites and migration corridors are found.

We used the most recent scientific information available to us (including data from published literature, field observations, opportunistic sightings, commercial and recreational harvest, and anecdotal information) to determine the presence and distribution of the essential features within the creeks and rivers with known or possible presence of eulachon. For a limited number of areas, opportunistic sightings are the only information that is available to identify the presence and distribution of the essential features. Where the only available information was opportunistic sightings, we consulted agency and Tribal biologists familiar with the area to confirm the information and identify the presence and extent of the essential features. For these areas we consider this the ''best available scientific information,'' necessary to inform our decisions.

The 16 specific freshwater and estuarine areas which contain one or more of the essential physical or biological features are described below and summarized in Table 1, which appears at the end of the Special Management Considerations section. The Eulachon Biological Report (NMFS, 2011b) provides more detailed information on each specific area, including a description of the essential physical and biological features, special management considerations or protection that may be needed, and the presence and distribution of the southern DPS of eulachon.

(1) *Mad River, CA:* The Mad River is located in northwestern California. It flows for approximately 150 km (95 mi) in a roughly northwest direction through Trinity and Humboldt Counties, draining a 1,290 km^2 (497 mi^2) basin into the Pacific Ocean near McKinleyville, California. The river's headwaters are in the Coast Range mountains near South Kelsey Ridge.

Eulachon consistently spawned in large numbers in the Mad River as recently as the 1960s and 1970s (Moyle *et al.,* 1995; Moyle, 2002; Gustafson *et al.,* 2010). However, in recent years eulachon numbers have declined, and they are now considered rare (Sweetnam *et al.,* 2001). Based on observations by the California Department of Fish and Game (CDFG), spawning occurs as far upstream as the confluence with the North Fork of the Mad River (CDFG, 2009). The river below this point contains overlapping spawning and incubation sites and migration corridor features.

(2) *Redwood Creek, CA:* Redwood Creek is located entirely in Humboldt County, in northwestern California. The basin is approximately 105 km (65 mi) long, and drains approximately 738 km^2 (285 mi^2), most of which is forested and mountainous terrain (Cannata *et al.,* 2006).

Eulachon have been reported from Redwood Creek by a variety of sources (Young, 1984; Ridenhour and Hofstra, 1994; Moyle *et al.,* 1995; Larson and Belchik, 1998), and runs large enough to be noted in available local newspaper accounts occurred in 1963 and 1967. Eulachon returns to Redwood Creek have declined drastically in recent years, and they are now considered rare (Sweetnam *et al.,* 2001). CDFG reported that during the early 1970s eulachon regularly spawned between the ocean and the mouth of Prairie Creek (the first major tributary on Redwood Creek; Moyle *et al.,* 1995). During April 1973, a spawning run of eulachon were observed passing Tom McDonald Creek (CDFG, 1973), a tributary located approximately 19.7 km (12.2 miles) upstream from the mouth of Redwood Creek, indicating that this area contains the essential features of spawning and incubation, and a migration corridor. Spawning also occurred in the lower 0.5

km (0.3 mi) of Prairie Creek (Moyle *et al.,* 1995), sporadically up to the 1970s.

The lower reach of Redwood Creek alternates between an open estuary and a closed coastal lagoon depending on the season. During early summer a sand bar typically forms across the river mouth creating a lagoon. Rains during the fall typically clear the sand bar away and open up the river mouth to the ocean (Cannata *et al.,* 2006).

(3) *Klamath River, CA:* The Klamath River basin drains approximately 25,100 km² (9,690 mi²) in southern Oregon and northern California, making it the second largest river in California (after the Sacramento River). Historically, the Klamath River has been a major producer of anadromous fish, and once was the third most productive salmon and steelhead fishery in the continental United States, prior to recent significant declines (Powers *et al.,* 2005).

Historically, large aggregations of eulachon consistently spawned in the Klamath River (Fry, 1979; Moyle *et al.,* 1995; Larson and Belchik, 1998; Moyle, 2002; Hamilton *et al.,* 2005), and a commercial fishery occurred there in 1963 (Odemar, 1964). During the spawning run, fish were regularly caught from the mouth of the river upstream to Brooks Riffle, near the confluence with Omogar Creek (Larson and Belchik, 1998), indicating that this area contains the spawning and incubation, and migration corridor essential features.

The only reported commercial catch of eulachon in Northern California occurred in 1963 when a combined total of 25 metric tons (56,000 lbs) was landed from the Klamath River, the Mad River, and Redwood Creek (Odemar, 1964). Since 1963, the run size has declined to the point that only a few individual fish have been caught in recent years. According to accounts of Yurok Tribal elders, the last noticeable runs of eulachon were observed in the Klamath River in 1988 and 1989 by Tribal fishers (Larson and Belchik, 1998). However, in January 2007, and again in February 2011, a small number of eulachon were reportedly caught by Tribal fishers on the Klamath River (Yurok Tribe, 2008; McCovey, 2011). Larson and Belchik (1998) report that eulachon have not been of commercial importance in the Klamath in recent years and are unstudied as to their current run strengths.

Approximately 68 km (42 mi) of the lower Klamath River is bordered by the Yurok Indian Reservation. The lower Klamath River is listed as a National Wild and Scenic River from the mouth, upstream to just below Iron Gate Dam, for a total of 460 km (286 mi). Of these, 19 km (12 mi) are designated Wild, 39 km (24 mi) are designated Scenic, and 402 km (250 mi) are designated Recreational.

(4) *Umpqua River/Winchester Bay, OR:* The Umpqua River Basin consists of a 10,925 km² (4,220 mi²) drainage area comprised of the main Umpqua River, the North Umpqua River, the South Umpqua River, and associated tributary streams (Snyder *et al.,* 2006). The Umpqua River drains a varied landscape, from steep-sloped uplands, to low gradient broad floodplains. Upstream, the Umpqua River collects water from tributaries as far east as the Cascade Mountains.

Historically, a large and consistent run of eulachon returned to the Umpqua River, and both recreational and commercial fisheries occurred. The Umpqua River eulachon sport fishery was active for many years during the 1970s and 1980s, with the majority of fishing activity centered near the town of Scottsburg. A commercial fishery also harvested eulachon during that time. Approximately 1,800 to 2,300 kg (4,000 to 5,000 lbs) of eulachon were landed by two commercial fishermen in the Umpqua River during 31 days of drift gill net fishing from late December 1966 to mid-March 1967 (OFC, 1970). Numbers of fish returning to the Umpqua seem to have declined in the 1980s and do not appear to have rebounded to previous levels. Johnson *et al.* (1986) list eulachon as occurring in trace amounts in their trawl and beach-seine samples from April 1977 to January 1986. Williams (2009) reported on the results of seine collections conducted during March to November from 1995 to 2003 in Winchester Bay estuary on the Lower Umpqua River, which confirmed the presence of eulachon in four of the years in which sampling occurred.

Eulachon have been documented in the lower Umpqua River during spawning, from the mouth upstream to the confluence of Mill Creek, just below Scottsburg (Williams, 2009). This indicates that the area downstream from this confluence contains the spawning and incubation, and migration corridor essential features.

(5) *Tenmile Creek, OR:* The Tenmile Creek watershed lies entirely within Lane County, Oregon and encompasses approximately 60 km² (23 mi²) on the central Oregon Coast (Johnson, 1999). The watershed is in a unique location, between the Cummins Creek and Rock Creek wilderness areas, which are protected from development.

Eulachon are regularly caught in salmonid smolt traps operated in the lower reaches of Tenmile Creek by ODFW. During previous sampling efforts, 80–90 percent of the eulachon captured in the traps were spawned out and several fish were found dead (Williams, 2009). Given the timing of the sampling (February to May), it is very likely that spawning occurs regularly in Tenmile Creek. It is not known how far adult eulachon ascend the creek to spawn, but the location of the ODFW trap (just upstream of the Highway 101 bridge) is the confirmed upstream extent of adult eulachon in spawning condition, and we conclude that the specific area containing spawning and incubation sites extends upstream at least to this point (ODFW, 2009).

(6) *Sandy River, OR:* The Sandy River and its tributaries drain 1,316 km² (508 mi²). Most of the headwaters of the Sandy River are within Clackamas County, while the lower mainstem of the river lies within Multnomah County. The Sandy River originates from glaciers on Mount Hood and flows for 90 km (56 mi) to join the Columbia River near the City of Troutdale (Sandy River Basin Watershed Council, 1999). The segment of the Sandy River from Dodge Park to Dabney State Park was designated as a National Wild and Scenic River in October 1988.

Large commercial and recreational fisheries have occurred in the Sandy River in the past. The most recent commercial harvest in the Sandy River was in 2003 and resulted in a catch of 10,400 kg (23,000 lbs) (Joint Columbia River Management Staff [JCRMS], 2009). During spawning, eulachon extent in the Sandy River is typically upstream to the confluence with Gordon Creek (Anderson, 2009), indicating that this area contains the spawning and incubation, and migration corridor essential features.

(7) *Lower Columbia River, OR and WA:* The lower Columbia River and its tributaries support the largest known spawning run of eulachon. The mainstem of the lower Columbia River provides spawning and incubation sites, and a large migratory corridor to spawning areas in the tributaries. Major tributaries of the Columbia River that have supported eulachon runs in the past include the Grays, Elochoman, Cowlitz, Kalama and Lewis Rivers in Washington and the Sandy River in Oregon (WDFW and ODFW, 2001; Gustafson *et al.,* 2010; the Columbia River tributaries in Washington State are discussed below as separate specific areas).

Although direct estimates of adult spawning stock abundance in the Columbia River are unavailable, records of commercial fishery landings begin in

1888 and continue as a nearly uninterrupted data set to 2010 (Gustafson *et al.,* 2010). A large recreational dipnet fishery, for which catch records have not been maintained, has taken place concurrent with the commercial fishery (WDFW and ODFW, 2001). However, the dipnet fishery took place almost entirely within the tributaries. During spawning, adult eulachon are found in the lower Columbia River from the mouth of the river to immediately downstream of Bonneville Dam (WDFW and ODFW, 2008), indicating that the area contains the essential feature of migration corridors. Eulachon eggs have been collected, and spawning presumed, from river km 56 (river mi 35) to river km 117 (river mi 73) (Romano *et al.,* 2002) indicating that this area contains the spawning and incubation essential feature. However, due to the limited range of the study, the entire range of eulachon spawning in the mainstem of the Columbia River remains unknown (Romano *et al.,* 2002). As noted above in response to Comment 7, eulachon have historically been reported as far upstream as Hood River but have rarely passed Bonneville Dam since its completion in 1937.

The Columbia River, estimated to have historically represented half of the species' abundance, experienced a sudden decline in its commercial eulachon fishery landings in 1993–1994 (WDFW and ODFW, 2001; JCRMS, 2009). Commercial catch levels were consistently high (usually greater than 500 metric tons [550 tons] and often greater than 1,000 metric tons [1,100 tons]) for the three quarters of a century from about 1915 to 1992. In 1993, catches declined greatly to 233 metric tons (257 tons) and to an average of less than 40 metric tons (44 tons) between 1994 and 2000. From 2001 to 2004, the catches increased to an average of 266 metric tons (293 tons), before falling to an average of less than 5 metric tons (5.5 tons) from 2005 to 2008. Some of this pattern is due to fishery restrictions put in place in response to the apparent sharp declines in the species abundance. Persistent low returns and landings of eulachon in the Columbia River from 1993 to 2000 prompted the states of Oregon and Washington to adopt a Joint State Eulachon Management Plan in 2001 that provides for restricted harvest management when parental run strength, juvenile production, and ocean productivity forecast a poor return (WDFW and ODFW, 2001). Despite a brief period of improved returns in 2001–2003, the returns and associated commercial landings declined to the very low levels observed in the mid-1990s (JCRMS, 2009), and the fishery operated at the most conservative level allowed in the Joint State Eulachon Management Plan from 2005 to 2010 (JCRMS, 2009). All commercial and recreational fisheries for eulachon were closed in Oregon and Washington for 2011.

(8) *Grays River, WA:* The Grays River watershed is located in Pacific and Wahkiakum counties, in Washington State. The Grays River is a tributary of the Columbia River, which it enters near the town of Oneida, Washington. The Grays River watershed encompasses 322 km^2 (124 mi^2) (May and Geist, 2007).

From 1980 to 1989 the annual commercial harvest of eulachon in the Grays River varied from 0 to 16 metric tons (0 to 35,000 lbs.). No commercial harvest has been recorded for the Grays River from 1990 to the present, but larval sampling has confirmed successful spawning in recent years (JCRMS, 2009). During spawning, eulachon typically ascend the river as far as the covered bridge near the unincorporated town of Grays River, WA (Anderson, 2009), indicating that this area contains the spawning and incubation, and migration corridor essential features.

(9) *Skamokawa Creek, WA:* Skamokawa Creek is a tributary of the Columbia River located in southwest Washington. Skamokawa Creek drains a relatively small (161 km^2 [63 mi^2]) watershed that lies entirely within Wahkiakum County.

During April 2011, biologists from the Cowlitz Indian Tribe documented the presence of eulachon larvae in Skamokawa Creek, confirming eulachon spawning in this system (Cowlitz Indian Tribe, 2011). These biologists used a systematic sampling protocol to determine that the bridge crossing at Petersen was the likely upstream limit of spawning. We consider this recent information as the best available indicating that this area contains the spawning and incubation, and migration corridor essential features for eulachon.

(10) *Elochoman River, WA:* The Elochoman River is a tributary of the Columbia River in southwest Washington and it originates in the Willapa Hills. The watershed lies within Lewis, Cowlitz, and Wahkiakum counties and flows generally south to the Columbia River. The Elochoman watershed area is approximately 261 km^2 (101 mi^2) (Lower Columbia Fish Recovery Board [LCFRB], 2004a).

Eulachon spawn occasionally in the Elochoman River, although there is no history of commercial or recreational harvest of eulachon for the Elochoman River. Sampling of outmigrating larval eulachon by WDFW has confirmed spawning in the river 7 times in the last 15 years (JCRMS, 2011), most recently in 2011 (Chris Wagemann, WDFW, personal communication, 4/18/2011). In the past, WDFW has observed spawning eulachon in the Elochoman River as far the Washington State Highway 4 bridge crossing (Anderson, 2009). However, in April 2011, biologists from the Cowlitz Indian Tribe documented the presence of larval eulachon in the Elochoman River to the Monroe Drive bridge crossing (Cowlitz Tribe, 2011), indicating that a more extensive area contains the spawning and incubation, and migration corridor essential features. If eulachon ascend the river beyond this point, the water intake dam at the old Beaver Creek Hatchery (located on the Elochoman River at river km 11.5 [river mi 7.1]) may be a barrier to any further upstream migration of eulachon (Wade, 2002).

(11) *Cowlitz River, WA:* The Cowlitz River flows from its source on the west slope of the Cascade Mountains through the towns of Kelso and Longview, Washington, and empties into the Columbia River about 109 km (68 mi) upstream from the Pacific Ocean. The Cowlitz River drains approximately 6,400 km^2 (2,480 mi^2) over a distance of 243 km (151 mi) (Dammers *et al.,* 2002). Principal tributaries to the Cowlitz River include the Coweeman, Toutle, Tilton, and Cispus Rivers.

The Cowlitz River is likely the most productive and important spawning river for eulachon within the Columbia River system (Wydoski and Whitney, 2003). Spawning adults typically move upstream about 26 km (16 mi) to the town of Castle Rock, WA or beyond to the confluence with the Toutle River. Adults are regularly sighted from the mouth of the river to 55 km (34 mi) upstream (near the town of Toledo, WA). Eulachon are occasionally sighted as far as 80 km (50 mi) upstream, to the barrier dam at the Cowlitz Salmon Hatchery (WDFW and ODFW, 2008; Anderson, 2009), indicating that this area contains the spawning and incubation, and migration corridor essential features.

The Cowlitz River currently has 3 major hydroelectric dams and several small-scale hydropower and sediment retention structures located on tributaries within the Cowlitz Basin. Mayfield Dam is located at river km 84 (river mi 52) and is a complete barrier to upstream migration of anadromous fishes (LCFRB, 2004b) (although the salmon hatchery barrier dam at river km 80 (river mi 50) may also be a complete barrier to eulachon).

(12) *Toutle River, WA:* The Toutle River is a tributary of the Cowlitz River, and it occurs in portions of Lewis, Cowlitz, and Skamania Counties in southwestern Washington State. The Toutle River is one of the major tributaries of the lower Cowlitz River and their confluence occurs 32 km (20 mi) upstream of the mouth of the Cowlitz River, just north of the town of Castle Rock, Washington. The basin encompasses approximately 1,329 km² (513 mi²) of mostly forested land. The Toutle River drains the north and west sides of Mount St. Helens and elevations in the watershed range from near sea level at the mouth to 2,550 m (8,365 ft) at the summit of Mount St. Helens. The watershed contains three main drainages: The North Fork Toutle, the South Fork Toutle, and the Green River. Most of the North and South Fork were impacted severely by the 1980 eruption of Mount St. Helens and the resulting massive debris torrents and mudflows (LCFRB, 2004b).

During April 2011, biologists from the Cowlitz Indian Tribe documented the presence of eulachon larvae in the Toutle River, confirming eulachon spawning in this system (Craig Olds, Cowlitz Indian Tribe, personal communication, April 22, 2011). In the past, spawned out eulachon adults have been collected in the Cowlitz River near the mouth of the Toutle River. But the recent surveys provide the first evidence of spawning in the Toutle River. The Cowlitz Tribe biologists captured eulachon larvae in the Toutle River up to the bridge crossing at Tower Road, which is 10.5 km (6.6 mi) upstream from the confluence with the Cowlitz River. We consider this recent information as the best available indicating that this area contains the spawning and incubation, and migration corridor essential features for eulachon.

(13) *Kalama River, WA:* The Kalama River basin is a 531 km² (205 mi²) watershed extending from the southwest slopes of Mount St. Helens to the Columbia River (LCFRB, 2004e). The headwaters of the Kalama River begin in Skamania County, WA, but the majority of the 72 km (45 mi) of river flows within Cowlitz County. At river km 16 (river mi 10), a concrete barrier dam and fish ladder prevent upstream movement of all anadromous fishes with the exception of summer steelhead and spring Chinook salmon (LCFRB, 2004c).

The extent of spawning within the Kalama River is from the confluence with the Columbia River to the confluence with Indian Creek (Cowlitz Indian Tribe, 2011), indicating that this area contains the spawning and incubation, and migration corridor essential features. Although the last commercial harvest of eulachon in the Kalama River occurred in 1993, sampling for larval eulachon has confirmed spawning in the Kalama River as recently as 2011 (Cowlitz Indian Tribe, 2011).

(14) *Lewis River, WA:* The Lewis River enters the Columbia River 104 km (87 mi) upstream from the mouth of the Columbia River, a few kilometers north of the town of Ridgefield, Washington. The majority of the 1,893 km² (731 mi²) watershed lies within Clark, Cowlitz and Skamania Counties (LCFRB, 2004d). Although generally not considered as large a eulachon run as the Cowlitz River, the Lewis River has produced very large runs periodically. Nearly half of the total commercial eulachon catch for the Columbia River Basin in 2002 and 2003 came from the Lewis River. Larval eulachon have been caught in the Lewis River during sampling efforts by WDFW and the Cowlitz Indian Tribe, (JCRMS, 2009; Cowlitz Indian Tribe, 2011). During spawning, eulachon typically move upstream in the Lewis River about 16 km (10 mi; to Eagle Island), but they have been observed upstream to the Merwin Dam (WDFW and ODFW, 2008; Anderson, 2009). Larval eulachon have also been caught in the East Fork of the Lewis River, up to the confluence with Mason Creek, 9.2 km (5.7 mi) from the confluence with the mainstem of the Lewis River (Cowlitz Indian Tribe, 2011). The capture of larval eulachon in the mainstem and east fork of the Lewis River indicates that these areas contain the spawning and incubation, and migration corridor essential features.

Merwin Dam, completed in 1931, is 240 feet high and currently presents a passage barrier to all anadromous fish, including eulachon (LCFRB, 2004d). We are unable to find information to determine whether eulachon ascended the river beyond river km 31.4 (river mi 19.5) prior to construction of the dam. However, Merwin Dam was built in an area where the Lewis River became constricted, with increased gradient and higher water velocities. Prior to dam construction this area was likely a natural passage barrier for eulachon. For this reason, the area upstream of the current Merwin Dam site was not considered for inclusion as critical habitat.

(15) *Quinault River, WA:* The headwaters of the Quinault River originate in the Olympic Mountains within Olympic National Park. The river then crosses into the Quinault Indian Reservation where it flows into Lake Quinault. Downstream of the lake, the Quinault River remains within the Quinault Indian Reservation for another 53 km (33 mi) to the Pacific Ocean. The total watershed area is 1,190 km² (460 mi²) (Smith and Caldwell, 2001).

Although there is currently no monitoring for eulachon in the Quinault River, WDFW and ODFW (2001) reported that eulachon ''were noted in large abundance in the Quinault'' River in 1993. A noticeable number of eulachon make an appearance in the Quinault River, and to a lesser extent the Queets River, at 5 to 6 year intervals and were last observed in the Quinault River in the winter of 2004–2005 (Quinault Indian Nation, 2008). There is very little information on eulachon spawning distribution in the Quinault River, but Tribal fishermen targeting eulachon typically catch fish in the lower three miles of the river (Quinault Indian Nation, 2008). It is reasonable to conclude that this area contains the spawning and incubation, and migration corridor essential features.

Although eulachon are currently only occasionally recorded in the Quinault River, during the late 19th and early 20th century eulachon were regularly caught by members of the Quinault Indian Tribe (Willoughby, 1889; Olson, 1936). Fish were typically taken in the ocean surf but often ascended the river for several miles (Olson, 1936). Olson (1936) reported that there was usually a large run of eulachon in the Quinault River every three or four years, and the run timing varied, usually occurring between January and April. The Washington Department of Fisheries annual report for 1960 (Starlund, 1960) listed commercial eulachon landings in the Quinault River in 1936, 1940, 1953, 1958 and 1960. The commercial catches ranged from a low of 61 kg (135 lbs.) in 1960, to a high of 42,449 kg (93,387 lbs.) in 1953.

Nearly half of the watershed lies within Olympic National Park, under the jurisdiction of the National Park Service, while the Quinault Indian reservation comprises about one third (32 percent) of the watershed, including most of the area downstream of Lake Quinault (Quinault Indian Nation and U.S. Forest Service, 1999). The U.S. Forest Service manages 13 percent of the watershed, and private landholdings comprise only 4 percent of the lands in the watershed (Smith and Caldwell, 2001).

(16) *Elwha River, WA:* The Elwha River mainstem is approximately 72 km (45 mi) long, and it drains 831 km² (321 mi²) of the Olympic Peninsula. A majority of the drainage (83 percent) is within Olympic National Park (Elwha-Dungeness Planning Unit, 2005). The historical condition of the river has been

altered by two major hydroelectric developments: The Elwha Dam and the Glines Canyon Dam (located just upstream of the Elwha Dam).

In 2005, eulachon were observed in the Elwha River for the first time since the 1970s (Shaffer *et al.,* 2007). Since 2005, adult eulachon have been captured in the Elwha River every year (2006–2010) (Lower Elwha Tribe, 2010). Several of the fish captured in 2005 were ripe (egg-extruding) females, indicating that eulachon likely spawn in the Elwha River (Shaffer *et al.,* 2007). The Elwha Dam serves as a complete barrier to upstream fish migration, and thus it is reasonable to assume that the spawning and incubation, and migration corridor essential features only extend to that point in the Elwha River. It is not known if eulachon ascended the Elwha River beyond the present site of the Elwha Dam prior to construction. However, the dam was built in an area where the Elwha River became constricted, with increased gradient and higher water velocities. Prior to dam construction this area was likely a natural passage barrier for eulachon. For this reason, the area upstream of the current Elwha Dam site was not considered for inclusion as critical habitat. As part of a comprehensive restoration of the watershed's ecosystem and its fisheries, the Elwha and Glines Canyon dams were acquired by the Federal Government in 2000 and their removal began in September 2011.

All Areas: We delineated each specific area as extending from the mouth of the river or creek (or its associated estuary when applicable) upstream to a fixed location. We delineated the upstream extent based on evidence of eulachon spawning or presence, or the presence of an impassable barrier. The boundary at the mouth of each specific area that flows directly into marine waters was defined by the demarcation lines which delineate ''those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those waters upon which mariners shall comply with the Inland Navigation Rules'' (33 CFR 80.01). For those specific areas that do not have a COLREGS line delineated, the boundary at the mouth of those specific areas was defined as a line drawn from the northernmost seaward extremity of the mouth of the creek or river to the southernmost seaward extremity of the mouth (with the exception of the boundary at the mouth of the Elwha River, which was defined as a line drawn from the easternmost seaward extremity of the mouth of the river to the westernmost seaward extremity of the mouth). Our regulations state that ''[e]ach critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area'' (50 CFR 424.12 (c)). The COLREGS lines (where defined) were chosen as the downstream extent of freshwater and estuarine critical habitat because they are a clearly defined federal standard, separating marine and inland waters, which incorporates landmarks that are found on standard topographic maps.

Occupied Areas Not Designated at This Time

In the Pacific Ocean, we identified nearshore and offshore foraging sites as an essential habitat feature for the conservation of eulachon, and we determined that abundant forage species and suitable water quality are specific components of this habitat feature. However, we were unable to identify any specific areas in marine waters that meet the definition of critical habitat under section 3(5)(A)(i) of the ESA. Given the unknown, but potentially wide, distribution of eulachon prey items, we could not identify ''specific areas'' where either component of the essential features is found within marine areas believed to be occupied by eulachon. Moreover, prey species move or drift great distances throughout the ocean and would be difficult to link to any ''specific'' areas.

Special Management Considerations

Physical or biological features meet the definition of critical habitat if they ''may require special management considerations or protection.'' Joint NMFS and USFWS regulations at 50 CFR 424.02(j) define ''special management considerations or protection'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' We identified a number of activities that may affect the physical and biological features essential to the southern DPS of eulachon such that special management considerations or protection may be required. Major categories of such activities include: (1) Dams and water diversions; (2) dredging and disposal of dredged material; (3) in-water construction or alterations; (4) pollution and runoff from point and non-point sources; (5) tidal, wind, or wave energy projects; (6) port and shipping terminals; and (7) habitat restoration projects. All of these activities may have an effect on one or more of the essential physical and biological features via their alteration of one or more of the following: Stream hydrology; water level and flow; water temperature; dissolved oxygen; erosion and sediment input/transport; physical habitat structure; vegetation; soils; nutrients and chemicals; fish passage; and estuarine/marine prey resources.

In the following paragraphs, we describe the potential effects of certain activities on essential physical or biological features, and we summarize the occurrence of these activities in the specific areas in Table 1 below (examples of activities that may require special management considerations for each of the specific areas are listed in the Eulachon Biological Report (NMFS, 2011b)). This is not an exhaustive list of potential effects, but rather a description of the primary concerns and potential effects that we are aware of at this time and that should be considered in the analysis of these activities under section 7 of the ESA.

(1) *Dams and Water Diversions:* Physical structures associated with dams and water diversions may impede or delay passage of eulachon. The operation of dams and water diversions may also affect water flow, water quality parameters, substrate quality, and depth, and further compromise the ability of adult eulachon to reproduce successfully. Optimum flow and temperature requirements for spawning and incubation are unclear, but effects on water flow and associated effects on water quality (*e.g.,* water temperature) and substrate composition may affect adult spawning activity, egg viability, and larval growth, development, and survival. Many uncertainties remain about how large-scale hydropower development (*e.g.,* the Federal Columbia River Power System) affects eulachon habitat.

(2) *Dredging:* Dredging activities, which include the disposal of dredged material, may affect depth, sediment quality, water quality, and prey resources for eulachon. Dredging and the in-river disposal of dredged material may remove, and/or alter the composition of, substrate materials at the dredge site, as well as bury them at the disposal site (potentially altering the quality of substrate for use as a spawning site). In addition, dredging operations and disposal of dredged materials may result in the re-suspension and spread of contaminated sediments, which may adversely affect eulachon migration and spawning, as well as larval growth and development. The effects of dredging and disposal activities on critical habitat would depend on factors such as the location, seasonality, scale, frequency, and duration of these activities.

(3) *In-water Construction or Alterations:* This category consists of a broad range of activities associated with in-water structures or activities that alter habitat within rivers, estuaries, and coastal marine waters. The primary concerns are with activities that may affect water quality, water flow, sediment quality, substrate composition, or migratory corridors. Activities that may affect water quality include the installation of in-water structures (such as pilings) with protective coatings containing chemicals that may leach into the water. Activities that affect flow, sediment quality and substrate composition include those that result in increased erosion and sedimentation (such as road maintenance and construction, bridge construction, construction of levees and other flood control devices, construction or repair of breakwaters, docks, piers, pilings, bulkheads, and boat ramps) and those that directly alter substrates (such as sand and gravel mining or gravel augmentation). Activities that may affect migratory corridors include the construction of in-water structures, such as docks, piers, pilings, and ramps.

(4) *Pollution and Runoff:* The discharge of pollutants and runoff from point and non-point sources (including but not limited to: Industrial discharges, urbanization, grazing, agriculture, road surfaces, road construction, and forestry operations) may adversely affect the water quality, sediment quality, and substrate composition of eulachon critical habitat. Exposure to contaminants may disrupt eulachon spawning migration patterns, and high concentrations may be lethal to young fish (Smith and Saalfeld, 1955). Excessive runoff may increase turbidity and alter the quality of spawning substrates.

(5) *Tidal, Wind, or Wave Energy Projects:* Tidal, wind, or wave energy projects generally require energy generating equipment and supporting structures to be anchored on the bottom. However, there are a wide range of designs currently being tested and potential impacts of individual projects will vary depending on the type of unit being deployed. Projects are typically proposed for location in coastal marine waters or coastal estuaries. Some designs may result in physical structures that impede or delay passage of eulachon. In addition, construction and maintenance of these energy projects may require in-water construction or alterations, which would include the potential effects described above.

(6) *Port and Shipping Terminals:* The operation of port and shipping terminals poses the risk of leaks, spills, or pipeline breakage and may affect water quality. Vessel ballast water management (including the introduction of competitors or parasites) may also affect water quality. In addition, activities associated with the construction, operation, and maintenance of port and shipping terminals may affect water quality, sediment quality, and prey resources for larval eulachon. For example, dredging operations and in-water and shoreline construction activities associated with the construction and operation of port and shipping terminals may result in increased erosion and sedimentation, increased turbidity, and the re-suspension of contaminated sediments.

(7) *Habitat Restoration Projects:* Habitat restoration activities are efforts undertaken to improve habitat, and can include the installation of fish passage structures and fish screens, in-stream barrier modification, bank stabilization, installation of instream structures (*e.g.,* engineered log jams), placement of gravel, planting of riparian vegetation, and many other habitat-related activities. Although the primary purpose of these activities is to improve natural habitats for the benefit of native species, these activities nonetheless modify the habitat and need to be evaluated to ensure that they do not adversely affect the habitat features essential to eulachon. While habitat restoration activities would be encouraged as long as they promote the conservation of the species, project modifications in the form of spatial and temporal restrictions may be required as a result of this designation.

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA authorizes the designation of ''specific areas outside the geographical area occupied at the time [the species] is listed'' if these areas are essential for the conservation of the species. Regulations at 50 CFR 424.12(e) emphasize that the agency ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Nearly all of the documented historical and current presence and production of the southern DPS of eulachon comes from within the geographical area occupied by the southern DPS at the time of listing, and no new information on this subject was received during the comment and peer review process of the Proposed Critical Habitat Designation (76 FR 515; January 5, 2011). Sightings of southern DPS eulachon from creeks or rivers outside of this area have been extremely infrequent, and have consisted of very few fish (Gustafson *et al.,* 2010). Therefore, we are not considering any unoccupied areas as critical habitat for the DPS.

TABLE 1—SUMMARY OF OCCUPIED SPECIFIC AREAS THAT CONTAIN THE PHYSICAL OR BIOLOGICAL FEATURES ESSENTIAL TO THE CONSERVATION OF THE SOUTHERN DPS OF EULACHON

[The river miles containing the essential physical and biological features present, and activities that may affect the essential features and necessitate the need for special management considerations or protection within each area are listed. DAM = dams and water diversions; DR = dredging and disposal of dredged material; CON = in-water construction or alterations, including channel modifications/diking; POLL = pollution and runoff from point and non-point sources; ENER = tidal energy or wave energy projects; PORT = operation of port and shipping terminals; REST = habitat restoration projects.]

Specific area	River kilometers/ miles	Physical or biological features	Activities
(1) Mad River, CA	21.0/13.0	Migration, Spawning	DAM, CON, POLL
(2) Redwood Creek, CA	19.7/12.2	Migration, Spawning	CON, POLL
(3) Klamath River, CA	17.2/10.7	Migration, Spawning	DAM, DR, CON, POLL
(4) Umpqua River, OR	39.0/24.2	Migration, Spawning	DAM, DR, POLL
(5) Tenmile Creek, OR	0.4/0.2	Migration, Spawning	CON, POLL
(6) Sandy River, OR	20.0/12.4	Migration, Spawning	DAM, CON, POLL
(7) Columbia River, OR and WA	230.5/143.2	Migration, Spawning	DAM, DR, CON, POLL, ENER, PORT, REST
(8) Skamokawa Creek	7.8/4.8	Migration, Spawning	CON, POLL

TABLE 1—SUMMARY OF OCCUPIED SPECIFIC AREAS THAT CONTAIN THE PHYSICAL OR BIOLOGICAL FEATURES ESSENTIAL TO THE CONSERVATION OF THE SOUTHERN DPS OF EULACHON—Continued

[The river miles containing the essential physical and biological features present, and activities that may affect the essential features and necessitate the need for special management considerations or protection within each area are listed. DAM = dams and water diversions; DR = dredging and disposal of dredged material; CON = in-water construction or alterations, including channel modifications/diking; POLL = pollution and runoff from point and non-point sources; ENER = tidal energy or wave energy projects; PORT = operation of port and shipping terminals; REST = habitat restoration projects.]

Specific area	River kilometers/ miles	Physical or biological features	Activities
(9) Grays River, WA	17.9/11.1	Migration, Spawning	DAM, DR, CON, POLL
(10) Elochoman River, WA	8.4/5.2	Migration, Spawning	CON, POLL
(11) Cowlitz River, WA	80.8/50.2	Migration, Spawning	DAM, DR, CON, POLL, PORT, REST
(12) Toutle River	10.5/6.6	Migration, Spawning	DAM, CON, POLL
(13) Kalama River, WA	12.6/7.8	Migration, Spawning	DAM, CON, POLL
(14) Lewis River, WA	31.1/19.3	Migration, Spawning	DAM, CON, POLL
East Fork, Lewis River, WA	9.2/5.7	Migration, Spawning	CON, POLL
(15) Quinault River, WA	4.8/3.0	Migration, Spawning	CON, POLL
(16) Elwha River, WA	7.6/4.7	Migration, Spawning	DAM, CON, POLL, REST

Military Lands

The ESA was amended by the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) to address the designation of military lands as critical habitat. ESA section 4(a)(3)(B)(i) states: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' Department of Defense lands do not overlap with, nor are adjacent to, any areas that we proposed for designation as critical habitat for the southern DPS so there are no known potential areas that would be removed from this final designation under ESA Section 4(a)(3)(B)(i).

Application of ESA Section 4(b)(2)

The foregoing discussion describes the specific areas that fall within the ESA section 3(5) definition of critical habitat and are eligible for designation as critical habitat. Specific areas eligible for designation are not automatically designated as critical habitat. Section 4(b)(2) of the ESA requires the Secretary to first consider the economic impact, impact on national security, and any other relevant impact of designation. The Secretary has the discretion to exclude an area from designation if he determines the benefits of exclusion (that is, avoiding the impact that would result from designation) outweigh the benefits of designation based upon the best scientific and commercial data available. In adopting this provision, Congress explained that, ''[t]he consideration and weight given to any particular impact is completely within the Secretary's discretion.'' H. R. Rep. No. 95–1625, at 16–17 (1978). The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any area.

The first step in conducting an ESA section 4(b)(2) analysis is to identify the ''particular areas'' to be analyzed. Section 3(5) of the ESA defines critical habitat as ''specific areas,'' while section 4(b)(2) requires the agency to consider certain factors before designating any ''particular area.'' Depending on the biology of the species, the characteristics of its habitat, and the nature of the impacts of designation, ''specific'' areas might be different from, or the same as, ''particular'' areas. For this designation, we analyzed two types of ''particular'' areas. Where we considered economic impacts, and weighed the economic benefits of exclusion against the conservation benefits of designation, we used the same biologically based ''specific'' areas we had identified under section 3(5)(A). Specifically, these areas were the occupied freshwater and estuarine areas that contain the physical and biological features essential to the conservation of the southern DPS of eulachon. Because upslope and upstream activities may impact critical habitat, we chose to use the watershed (specifically, individual 5th field hydrologic units as designated by the U.S. Geological Survey) as our assessment area for economic impacts (see the Eulachon Economic Analysis Report [NMFS, 2011c] for definition of the 5th field hydrologic units and more information). Where we considered impacts on Indian lands, however, we instead used a delineation of ''particular'' areas based on ownership or control of the area. Specifically, these particular areas consisted of occupied freshwater and estuarine areas that overlap with Indian lands. (We defined Indian lands in accordance with our past practice, as described in the Eulachon Section 4(b)(2) Report [NMFS, 2011a].) This approach allowed us to consider impacts and benefits associated with Tribal land ownership and management by Indian Tribes.

Benefits of Designation

The primary benefit of designation is the protection afforded under the ESA section 7 requirement that all federal agencies ensure their actions are not likely to destroy or adversely modify designated critical habitat. This type of benefit is sometimes referred to as an incremental benefit because the protections afforded to the species from critical habitat designation are in addition to the requirement that all federal agencies ensure their actions are not likely to jeopardize the continued existence of the species. In addition, the designation may enhance the conservation of habitat by informing the public about areas and features important to species conservation. This may help focus and contribute to conservation efforts for eulachon and their habitats.

With sufficient information, it may be possible to monetize these benefits of designation by first quantifying the benefits expected from an ESA section 7 consultation and translating that into dollars. We are not aware, however, of any available data to monetize the benefits of designation (*e.g.,* estimates of

the monetary value of the physical and biological features within specific areas that meet the definition of critical habitat, or of the monetary value of general benefits such as education and outreach). In an alternative approach that we have commonly used in the past, we qualitatively assessed the benefit of designation for each of the specific areas identified as meeting the definition of critical habitat for the southern DPS. Our qualitative consideration began with an evaluation of the conservation value of each area. We considered a number of factors to determine the conservation value of an area, including the quantity and quality of physical or biological features, the relationship of the area to other areas within the DPS, and the significance to the DPS of the population occupying that area.

To evaluate the quantity and quality of features of the specific areas, we considered existing information on the consistency of spawning in each area, the typical size of runs in the area, and the amount of habitat available to and used by eulachon in the area. We found that eulachon habitat and habitat use varies widely among the areas, and may vary within the same area across different years. It is difficult to identify differences between the areas that could be driving variation in run size and frequency, and variation in habitat use. Eulachon spawn in systems as large as the Columbia River (the largest river in the Pacific Northwest), and as small as Tenmile Creek (a watershed of approximately 60 km^2 [23 mi^2]). While some rivers consistently produce large spawning runs of eulachon (*e.g.,* the Columbia and Cowlitz Rivers), spawning can be sporadic in others (*e.g.* Grays, Kalama, Sandy, and Quinault Rivers). Still other areas, either currently or in the past, produce small yet consistent runs of eulachon (*e.g.,* Tenmile Creek and Elwha River).

Another factor we considered in evaluating the conservation value of the specific areas is the geographic distribution of the areas. Nearly the entire production of eulachon in the conterminous United States originates in the 16 specific areas we have identified. These specific areas are widely distributed across the geographic extent of the DPS. Compared to salmon, steelhead, and other anadromous fishes, these relatively small areas historically produced a very large biomass of eulachon. The loss of any one of these areas could potentially leave a large gap in the spawning distribution of the DPS, and the loss to eulachon production could represent a significant impact on the ability of the southern DPS to survive and recover. Utilizing a diversity of stream/estuary sizes across a wide geographic area can be a useful strategy to buffer the species against localized environmental catastrophes (such as the Mount St. Helens eruption of May 18, 1980). For the above reasons, we conclude that all of the specific areas that we identified have a high conservation value.

There are many federal activities that occur within the specific areas that could impact the conservation value of these areas. Regardless of designation, federal agencies are required under section 7 of the ESA to ensure these activities are not likely to jeopardize the continued existence of the southern DPS of eulachon. For the specific areas designated as critical habitat, federal agencies are additionally required to ensure their actions are not likely to adversely modify the critical habitat. In order to conduct our economic analysis we grouped the potential federal activities that may be subject to this additional protection into several broad categories: Dams, water supply, agriculture, transportation, forest management, mining, in-water construction and restoration, water quality management/monitoring, and other activities. (The Eulachon Economic Analysis [NMFS, 2011c] includes a detailed description of the industry sectors associated with these activities).

The benefit of designating a particular area depends upon the likelihood of a section 7 consultation occurring in that area and the degree to which a consultation would yield conservation benefits for the species. Based on past consultations for other migratory fish species, we estimated that a total of 39 actions would require section 7 consultation annually within the particular areas designated as eulachon critical habitat (NMFS, 2011c). The most common activity type subject to consultation would be in-stream work (estimated 13.3 consultations annually), followed by transportation projects (estimated 6.9 consultations annually) and forest management (estimated 6.7 consultations annually). A complete list of the estimated annual actions, divided by particular area, is included in the Eulachon Economic Analysis (NMFS, 2011c). These activities have the potential to adversely affect water quality, sediment quality, substrate composition, or migratory corridors for eulachon. Consultation would yield conservation benefits for the species by preventing or ameliorating such habitat effects.

Impacts of Designation

Section 4(b)(2) of the ESA provides that the Secretary shall consider ''the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat.'' The primary impact of a critical habitat designation stems from the requirement under section 7(a)(2) of the ESA that federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining this impact is complicated by the fact that section 7(a)(2) contains the overlapping requirement that federal agencies must ensure their actions are not likely to jeopardize the species' continued existence. The true impact of designation is the extent to which federal agencies modify their actions to ensure their actions are not likely to destroy or adversely modify the critical habitat of the species, beyond any modifications they would make because of listing and the jeopardy requirement. Additional impacts of designation include state and local protections that may be triggered as a result of the designation.

In determining the impacts of designation, we predicted the incremental change in federal agency actions as a result of critical habitat designation and the adverse modification prohibition, beyond the changes predicted to occur as a result of listing and the jeopardy provision. In critical habitat designations for salmon and steelhead (70 FR 52630; September 2, 2005) we considered the ''coextensive'' impact of designation, in accordance with a Tenth Circuit Court decision (*New Mexico Cattle Growers Association* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277 (10th Cir. 2001)). More recently, however, several courts (including the 9th Circuit Court of Appeals in *Arizona Cattlegrowers* v. *Salazar,* 606 F.3d 1160 (9th Cir. 2010); *Homebuilders Association of Northern California* v. *U.S. Fish and Wildlife,* 616 F.3d 983 (9th Cir. 2010)) have approved an approach that examines only the incremental impact of designation (see also: *Cape Hatteras Access Preservation Alliance* v. *Norton,* 344 F. Supp. 2d 1080 (D.D.C. 2004)). In more recent critical habitat designations, both NMFS and the USFWS have considered the incremental impact of critical habitat designation (for example, NMFS' designation of critical habitat for the Southern DPS of green sturgeon (74 FR 52300; October 9, 2009); U.S. Fish and Wildlife's designation of critical habitat for the Oregon chub (75 FR 11031; March 10, 2010)). Consistent with this

more recent practice, we estimated the incremental impacts of designation, beyond the impacts that would result from the listing and jeopardy provision.

To determine the impact of designation, we examined what the state of the world would be with and without the designation of critical habitat for eulachon. The ''without critical habitat'' scenario represents the baseline for the analysis. It includes process requirements and habitat protections already afforded eulachon under its federal listing or under other Federal, state, and local regulations. Such regulations include protections afforded eulachon habitat from other co-occurring ESA listings and critical habitat designations, such as for Pacific salmon and steelhead (70 FR 52630; September 2, 2005), North American green sturgeon (74 FR 52300; October 9, 2009), and bull trout (75 FR 63898; October 18, 2010) (see the Eulachon Economic Analysis (NMFS, 2011c) for examples of protections for other species that would benefit eulachon). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for eulachon. The primary impacts of critical habitat designation we found were: (1) The additional administrative effort of including a eulachon critical habitat analysis in section 7 consultations, (2) the project modifications required solely to avoid destruction or adverse modification of eulachon critical habitat, and (3) the perception of Indian Tribes that designation of Indian lands is an unwarranted intrusion into Tribal sovereignty and self-governance.

Economic Impacts

To quantify the economic impact of designation, we employed the following three steps:

(1) Define the geographic study area for the analysis, and identify the units of analysis (the ''particular areas''). In this case, we defined 5th field hydrologic units that encompass occupied stream reaches as the study area.

(2) Identify potentially affected economic activities and determine how management costs may increase due to the designation of eulachon critical habitat, both in terms of project administration and project modification.

(3) Estimate the economic impacts associated with these changes in management.

We estimated a total annualized incremental administrative cost of approximately $512,000 for designating the 16 specific areas as eulachon critical habitat. The greatest costs are associated with water supply, mining, and forest management activities (see NMFS, 2011c for more details). The lower Mad River and Columbia River—Hayden Island 5th field hydrologic units have the largest estimated annual impacts ($63,500 and $32,200), due to mining activities and water supply activities, respectively (NMFS, 2011c). For 5th field hydrologic units other than the lower Mad River and Columbia River—Hayden Island, we estimate the incremental impacts of critical habitat designation would be less than $31,000/year.

For the second category of impacts, we identified three areas where critical habitat designation for eulachon might result in modifications to activities beyond those already resulting from the ESA listing of eulachon. Although we could not quantify the economic impacts, we anticipate these costs would be small, for the reasons described below.

(1) *Disposal of dredge material in the Lower Columbia River.* Eulachon spawning habitat has the potential to be modified by the disposal of dredge material in the Lower Columbia River, particularly if material is disposed in shallow water. If we conclude that disposing of dredge material in shallow water could destroy or adversely modify critical habitat, the USACE or the party seeking disposal may need to find alternative disposal sites, thereby incurring additional project costs. Because disposal of dredge material in shallow water is already quite limited in the Lower Columbia River and its cost is already relatively high, requiring another disposal method may have minimal added costs.

(2) *Elwha River Dam removal.* Removal of the Elwha and Glines Canyon dams on the Elwha River began in September 2011. Because protections are already in place (as a result of an ESA section 7 consultation) to reduce the impact of the project on salmonid habitat, consideration of eulachon critical habitat is unlikely to result in recommendations to change the project.

(3) *Mayfield Dam flow regime.* As outlined in the eulachon final listing determination (75 FR 13012; March 18, 2010), dams and water diversions are moderate threats to eulachon in the Columbia River Basin. To benefit salmon and steelhead species, Tacoma Power Company currently follows a flow regime for Mayfield Dam on the Cowlitz River. If we conclude the existing flow regime could destroy or adversely modify eulachon critical habitat, Tacoma Power Company may need to change the timing or amount of water releases. This could change the timing of energy production, with an associated decrease in revenue from energy sales. We would expect any such decreases to be small because the effect would be to change the timing of energy production and not the total amount of energy produced.

Without conducting a complete analysis on a specific project, it is difficult to evaluate the extent to which NMFS might recommend changes in any of these activities to avoid destroying or adversely modifying critical habitat. Any changes required solely to avoid destroying or adversely modifying critical habitat would be an impact of designation.

Impacts to National Security

Department of Defense lands or related activities do not overlap with, nor are adjacent to, any areas that we proposed for designation as critical habitat for the southern DPS. Thus, we did not identify any direct impacts to national security for any of the specific areas that we have designated as critical habitat.

Other Relevant Impacts—Impacts to Tribal Sovereignty and Self-Governance

We identified three rivers with areas under consideration for critical habitat designation that overlap with Indian lands—the Elwha and Quinault Rivers in Washington, and the Klamath River in California (eulachon do not ascend into the Oregon portion of the Klamath River). The federally-recognized Tribes (74 FR 40218; August 11, 2009) potentially affected are the Lower Elwha Tribe, the Quinault Tribe, the Yurok Tribe, and the Resighini Rancheria. In addition to the economic impacts described above, designating these Tribes' Indian lands would have an impact on federal policies promoting Tribal sovereignty and self-governance. The longstanding and distinctive relationship between the Federal and Tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate Tribal governments from the other entities that deal with, or are affected by, the U.S. Government. This relationship has given rise to a special federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes with respect to Indian lands, Tribal trust resources, and the exercise of Tribal rights. Pursuant to these authorities, lands have been retained by Indian Tribes or have been set aside for Tribal use. These lands are managed by Indian Tribes in accordance with Tribal goals and objectives within

the framework of applicable treaties and laws. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the policies and the responsibilities of the Federal Government in matters affecting Tribal interests (recently confirmed by Presidential Memorandum; 74 FR 57879; November 9, 2009). In addition to Executive Order 13175, we have Department of Commerce policy direction, via Secretarial Order 3206, stating that Indian lands shall not be designated as critical habitat, nor areas where the ''Tribal trust resources * * * or the exercise of Tribal rights'' will be impacted, unless such lands or areas are determined ''essential to conserve a listed species.'' In such cases we ''shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by designating only other lands.''

Designation would also have impacts to NMFS' relationship with the affected Tribes. In the decision *Center for Biological Diversity,* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003), the court held that a positive working relationship with Indian Tribes is a relevant impact that can be considered when weighing the relative benefits of a critical habitat designation. We contacted the governments of each of the potentially affected Tribes to determine what impact a critical habitat designation on Indian lands would have on the working relationship between NMFS and the Tribes. All four advised us via e-mail that they would view critical habitat designation on their lands as an unwanted intrusion, which would have a negative impact on Tribal sovereignty and self-governance and on the relationship between the Tribe and the agency. This response was consistent with responses NMFS has received from Indian Tribes in past designations (for example, the designation of critical habitat for 12 ESUs of West Coast salmon and steelhead (70 FR 52630; September 2, 2005)).

Other Relevant Impacts—Impacts to Landowners With Contractual Commitments to Conservation

Conservation agreements with non-federal landowners (*e.g.,* HCPs) enhance species conservation by extending species' protections beyond those available through section 7 consultations. We have encouraged non-federal landowners to enter into conservation agreements, based on a view that we can achieve greater species' conservation on non-federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

Section 10(a)(1)(B) of the ESA authorizes us to issue to non-federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The ESA specifies that an application for an incidental take permit must be accompanied by a conservation plan, and specifies the content of such a plan. The purpose of such an HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the likelihood of the survival and recovery of the species.

In previous critical habitat designations, we have exercised discretion to exclude some (but not all) lands covered by an HCP from designation (*e.g.,* for Pacific salmon (70 FR 52630; September 2, 2005)), after concluding that benefits of exclusion outweighed the benefits of designation. For lands covered by an HCP, the benefits of designation typically arise from section 7 protections as well as enhanced public awareness. The benefits of exclusion generally include relieving regulatory burdens on existing conservation partners, maintaining good working relationships with them (thus enhancing implementation of existing HCPs), and encouraging the development of new partnerships.

There are two landowners with conservation agreements that overlap areas we are designating as critical habitat for the southern DPS of eulachon; the Green Diamond Timber Company (covering the company's operations in northern California, including portions of the Klamath River), and the Humboldt Bay Municipal Water District (covering their operations in the Mad River, California).

Balancing Benefits of Designation Against Benefits of Exclusion

A final ESA section 4(b)(2) report (NMFS 2011a) describes in detail our approach to weighing the benefit of designation against the benefit of exclusion. The results of our analysis contained in this report are summarized below.

Economic Exclusions

As described above, the economic benefits of excluding particular areas are small, totaling about $512,000. For each particular area, estimated economic impacts range from $13,600 to $63,500. We consider all 16 particular areas meeting the definition of critical habitat to have a high conservation value and a high benefit of designation. When we listed eulachon as a threatened species we cited, among other reasons, the present or threatened destruction, modification, or curtailment of its habitat. Identified threats to eulachon habitat include climate-induced change to freshwater habitats; dams and water diversions (particularly in the Columbia and Klamath Rivers); and degraded water quality. Designating these areas as critical habitat enhances our ability to address some of these threats through section 7 consultations and through public outreach and education. We concluded that the economic benefits of excluding each particular area do not outweigh the conservation benefits of designating each particular area as critical habitat, given the following considerations: (1) The economic impact of designating all areas is small (not more than $63,500 for any particular area); (2) eulachon are likely to become endangered in the foreseeable future; (3) threats to freshwater habitat were a primary concern leading to our decision to list the species as threatened; (4) there are a limited number of spawning areas available throughout the coast-wide range of eulachon; (5) the conservation value of each area is high; and (6) designation enhances the ability of a section 7 consultation to protect the habitat through the identification of areas of particular concern and through the added protection of the adverse modification provision.

HCP Exclusions

The conservation benefits of designating lands covered by an HCP are the same as the benefits of designating other lands, which are public notice and the protection that arises from the ESA section 7 requirement that Federal agencies ensure their actions do not adversely modify that habitat. Where an HCP covers the species in question, or a species with similar distribution and habitat needs, these benefits might be reduced somewhat because the landowner is already aware of the importance of the habitat, and because the HCP might already protect the habitat beyond the section 7 requirements.

In the case of eulachon there are two HCPs that overlap with the proposed critical habitat in the Klamath and Mad Rivers. We estimate that annually, 0.3 forest management actions in the

Klamath River, and 0.2 water supply actions in the Mad River, will require ESA section 7 consultations as a result of this critical habitat designation. We rated these areas as having a high conservation value. The primary benefit of designation is thus the protection afforded these high conservation areas in a section 7 consultation.

Regarding the benefits of excluding these areas, we have considered two primary impacts of designating critical habitat on lands covered by an HCP. The first is the additional cost incurred in an ESA section 7 consultation, either an administrative cost or the cost of having to change the action to avoid adverse modification of the habitat. In this case the administrative costs are small for each specific area, and even smaller for the lands covered by the HCPs, which represent only a portion of two specific areas. The second potential impact of designation is the effect on our relationship with the landowner. In past designations, some landowners have indicated that they welcome designation, while others have opposed designation and expressed the view that designation will harm their relationship with us and affect implementation of the HCP. In the latter case, the benefit of exclusion may therefore be a conservation benefit to the species. In the present designation, we contacted both HCP holders. Neither requested that their lands be excluded from critical habitat or otherwise indicated that a designation of eulachon critical habitat on their land would affect our relationship or their implementation of the HCP. Given that fact, we determined that our working relationship with the HCP holders would not be significantly impacted by this critical habitat designation, thus the benefit of exclusion based on effects to a relationship do not outweigh the benefits of designation.

Indian Lands Exclusions

The eulachon critical habitat Section 4(b)(2) report (NMFS, 2011a) details our consideration of excluding Indian lands in this critical habitat designation. The discussion here summarizes that consideration.

The designation of critical habitat for eulachon on Indian lands would have an impact on federal policies promoting Tribal sovereignty and self-governance. It would also have an impact on the relationship between NMFS and each of the Tribes because of their perception that designation is an intrusion on Tribal sovereignty and self-governance. The benefit of excluding Indian lands would be to avoid these impacts.

Balanced against these benefits of exclusion, a benefit of designating the Indian lands would be to achieve the added protection from ESA section 7's critical habitat provisions for these specific areas, all of which have been determined to have a high conservation value. The benefit of designating a particular area depends on the likelihood of section 7 consultation occurring in the area and the degree to which consultation would yield conservation benefits for the species. This protection would apply to all federal activities, which we expect would include dam operations, water supply, forest management, instream construction, mining, agriculture, water quality, transportation projects, and habitat restoration. As described above, ESA section 7 consultations for Federal actions on Indian lands would still need to consider whether the action jeopardized the continued existence of the species, and Federal actions on non-Indian lands may still need to consider designated critical habitat elsewhere in the watershed, thus some of the benefits of a section 7 consultation could still apply even if the Indian lands were excluded.

Another benefit of designation would be to educate the public about the importance of these Indian lands to eulachon conservation. Because these are not public or private lands, and because the Tribes themselves are keenly aware of the importance of their lands to eulachon conservation, we consider the education benefit of designating these Indian lands to be low.

Quinault Indian Nation Lands. Although the lands of the Quinault Indian Nation encompass most of the area occupied by eulachon in the Quinault River, activities that occur on non-Indian lands would still require ESA section 7 consultation to consider adverse modification of critical habitat. The Quinault Tribe has completed a Forest Management Plan (FMP), on which the USFWS prepared a programmatic biological opinion. The FMP takes into account significant restrictions on in-water construction activities imposed by the State of Washington (USFWS, 2003; Washington State Law, Chapter 77.55). Project modifications included in the biological opinion for the FMP include requirements that in-water or near-stream activities may only be conducted during specific timeframes outlined in the FMP, construction of new roads is to be minimized ''to the maximum extent practicable,'' and construction of fill roads is allowable only when absolutely necessary. These project modifications would likely benefit eulachon habitat as well by limiting runoff which can adversely affect water quality, sediment quality, and substrate composition.

Exclusion of the portion of the Quinault River that runs through Tribal lands would have the benefit of promoting federal policies regarding Tribal sovereignty and self-governance (*e.g.,* Executive Order 13175). It would also have the benefit of promoting a positive relationship between NMFS and the Tribe (in accordance with Secretarial Order 3206), with a very small reduction in the benefits of designation (primarily the loss of section 7 consultation to consider adverse modification of critical habitat on 4.8 km (3 mi) of stream habitat). The current FMP provides some protection for eulachon habitat and will provide a structure for future coordination and communication between the Quinault Tribe, USFWS, and NMFS. For these reasons, we conclude that the benefits of exclusion outweigh the benefits of designation.

Lower Elwha Tribal Lands. Indian lands of the Lower Elwha Tribe overlap with approximately 2.3 km (1.4 mi), or 29 percent, of the areas occupied by eulachon in the Elwha River. As explained above, federal agencies would still need to consult on the effects of their actions on areas designated as critical habitat elsewhere in the basin. Exclusion of the portion of the lower Elwha River that runs through Tribal lands would have the benefit of promoting federal policies regarding Tribal sovereignty and self-governance (*e.g.,* Executive Order 13175). It would also have the benefit of promoting a positive relationship between NMFS and the Tribe (in accordance with Secretarial Order 3206), with a very small reduction in the benefits of designation (*i.e.,* primarily, the loss of section 7 consultation to consider adverse modification of critical habitat). For these reasons, we conclude that the benefits of exclusion outweigh the benefits of designation.

Resighini Rancheria Lands. Indian lands of the Resighini Rancheria overlap with approximately 0.5 km (0.3 mi), or 3 percent, of the areas occupied by eulachon in the Klamath River. Exclusion of these Rancheria lands would have the benefit of promoting federal policies regarding Tribal sovereignty and self-governance. It would also foster a positive relationship between NMFS and the Tribe, with a very small reduction in the benefits of designation (primarily the loss of ESA section 7 consultation to consider adverse modification of critical habitat).

For these reasons, we conclude that the benefits of exclusion outweigh the benefits of designation.

Yurok Tribal Lands. The boundaries of the Yurok Indian Reservation encompass the entire 17.5 km (10.9 mi) of the areas occupied by eulachon in the Klamath River. However, land ownership within the reservation boundary includes a mixture of Federal, state, Tribal, and private ownerships. Exclusion from critical habitat designation would only apply to Indian lands. Federal agencies would still need to consult on the effects of their actions on areas designated as critical habitat elsewhere in the basin.

As managers of the Klamath River fisheries and their resources, the Tribe oversees and protects fish and fish habitat through various land and water management practices, plans, and cooperative efforts. Tribal forest practices and land management are guided by a Forest Management Plan (FMP), a primary objective of which is to protect and enhance Tribal trust fisheries. The Tribe has an established water quality control plan on the Reservation (Yurok Tribe, 2004) with standards that have been approved by the Environmental Protection Agency (EPA). In conjunction with Federal, state, and private partners, the Yurok Tribe has initiated a large-scale, coordinated watershed restoration effort in the Lower Klamath sub-basin to protect and improve instream, intertidal, and floodplain habitats that support viable, self-sustaining populations of native fishes. More recently, the Yurok Tribe fisheries program has started monitoring eulachon to determine their current abundance and distribution in the Klamath River.

Exclusion of Yurok Tribal lands in the Klamath River basin from critical habitat designation would have the benefit of promoting federal policies regarding Tribal sovereignty and self-governance. It would also have the benefit of promoting a positive relationship between NMFS and the Tribe. The current forest management and water quality control plans provide some protection for eulachon habitat and will provide a structure for future coordination and communication between the Yurok Tribe and NMFS. For these reasons, we conclude that the benefits of exclusion outweigh the benefits of designation.

All Indian lands. Although economic impacts were not considered in our decision to exclude Indian lands from critical habitat designation, designation of these lands would have economic impacts, and exclusion would therefore have economic benefits. It is difficult to quantify those impacts (and corresponding benefits) for Indian lands on the Elwha River and the Klamath River because Tribal lands do not encompass the entire area that is being considered for designation for these two rivers. Some types of actions on non-Indian lands in these watersheds could affect areas that are not excluded from designation. Therefore, an ESA section 7 consultation for non-Indian lands would still need to consider the effects on critical habitat. Administrative costs of designation would still be incurred, along with any costs associated with project modifications. The Quinault Tribe's lands encompass nearly the entire watershed of the specific area identified as critical habitat on the Quinault River, thus exclusion would relieve nearly all of the administrative costs of considering effects of actions on the specific area. We estimated a total annualized incremental administrative cost of approximately $512,000 for designating all 16 specific areas as eulachon critical habitat. The exclusion of Indian Lands from critical habitat designation would decrease the total annualized incremental administrative cost by at least $24,700. With Indian Lands excluded, the total annualized incremental administrative cost of designating eulachon critical habitat would be no greater than $487,300.

Extinction Risk Due to Exclusions

Section 4(b)(2) of the ESA limits our discretion to exclude areas from designation if exclusion will result in extinction of the species. The overwhelming majority of production for the southern DPS of eulachon occurs in the Columbia River (and tributaries) and the Fraser River in Canada (Gustafson *et al.,* 2010). While abundance estimates are not available for the three rivers (Quinault, Elwha, and Klamath) that overlap Indian lands, the runs on these rivers are believed to be very small (Gustafson *et al.,* 2010) and likely contribute only a small fraction to the total DPS abundance. Because the overall percentage of critical habitat on Indian lands is small and the likelihood that eulachon production on these lands represents a very small percent of the total annual production for the DPS, we conclude that exclusion will not result in extinction of the southern DPS of eulachon.

Critical Habitat Designation

We are designating approximately 539 km (335 mi) of riverine and estuarine habitat in California, Oregon, and Washington within the geographical area occupied by the southern DPS of eulachon. The designated critical habitat areas contain one or more of the physical or biological features essential to the conservation of the species that may require special management considerations or protection. We are excluding from designation all lands of the Lower Elwha Tribe, Quinault Tribe, Yurok Tribe and Reshigini Rancheria, upon a determination that the benefits of exclusion outweigh the benefits of designation (NMFS, 2011a). We conclude that the exclusion of these areas will not result in the extinction of the southern DPS because the overall percentage of critical habitat on Indian lands is so small (approximately 5% of the total are designated), and it is likely that eulachon production on these lands represents a very small percent of the total annual production for the DPS. We have not identified any unoccupied areas that are essential to conservation, and thus we have not designated any unoccupied areas as critical habitat at this time.

Lateral Extent of Critical Habitat

We describe the lateral extent of critical habitat as the width of the stream channel defined by the ordinary high water line, as defined by the USACE in 33 CFR 329.11. The ordinary high water line on non-tidal rivers is defined as ''the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas'' (33 CFR 329.11(a)(1)). In areas for which the ordinary high-water line has not been defined pursuant to 33 CFR 329.11, we define the width of the stream channel by its bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain (Rosgen, 1996) and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series (Leopold *et al.,* 1992).

As discussed in previous critical habitat designations for Pacific salmon and steelhead (70 FR 52630; September 2, 2005) and North American green sturgeon (74 FR 52300; October 9, 2009), the quality of aquatic and estuarine habitats within stream channels and bays and estuaries is intrinsically related to the adjacent riparian zones and floodplain, to surrounding wetlands and uplands, and to non-fish-bearing streams above occupied stream reaches.

Human activities that occur outside of designated critical habitat can destroy or adversely modify the essential physical and biological features within these areas. In addition, human activities occurring within and adjacent to reaches upstream or downstream of designated stream reaches or estuaries can also destroy or adversely modify the essential physical and biological features of these areas. This designation will help to ensure that federal agencies are aware of these important habitat linkages.

Effects of Critical Habitat Designation

Section 7(a)(2) of the ESA requires federal agencies to insure that any action authorized, funded, or carried out by the agency (agency action) does not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. When a species is listed or critical habitat is designated, federal agencies must consult with NMFS on any agency actions to be conducted in an area where the species is present and that may affect the species or its critical habitat. During consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue our findings in a biological opinion or concurrence letter. If we conclude in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, we would also recommend any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives (defined in 50 CFR 402.02) are alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some federal agencies may request re-initiation of a consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat.

Activities subject to the ESA section 7 consultation process include activities on federal lands and activities on private or state lands requiring a permit from a federal agency (*e.g.,* a Clean Water Act, Section 404 dredge or fill permit from USACE) or some other federal action, including funding (*e.g.,* Federal Highway Administration funding for transportation projects). ESA section 7 consultation is not required for federal actions that do not affect listed species or critical habitat and for actions on non-Federal and private lands that are not federally funded, authorized, or carried out.

Activities That May Be Affected

ESA section 4(b)(8) requires in any final regulation to designate critical habitat an evaluation and brief description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect the designated critical habitat and may be subject to the ESA section 7 consultation process when carried out, funded, or authorized by a federal agency. These include water and land management actions of federal agencies (*e.g.,* U.S. Forest Service (USFS), Bureau of Land Management (BLM), USACE, U.S. Bureau of Reclamation (BOR), Natural Resource Conservation Service (NRCS), National Park Service (NPS), Bureau of Indian Affairs (BIA), the Federal Energy Regulatory Commission (FERC), and the Nuclear Regulatory Commission (NRC)) and related or similar federally-regulated projects and activities on federal lands, including hydropower sites licensed by the FERC; nuclear power sites licensed by the NRC; dams built or operated by the USACE or BOR; timber sales and other vegetation management activities conducted by the USFS, BLM and BIA; irrigation diversions authorized by the USFS and BLM; and road building and maintenance activities authorized by the USFS, BLM, NPS, and BIA. Other actions of concern include dredging and filling, mining, diking, and bank stabilization activities authorized or conducted by the USACE, habitat modifications authorized by the Federal Emergency Management Agency, and approval of water quality standards and pesticide labeling and use restrictions administered by the EPA.

Private entities may also be affected by this critical habitat designation if a federal permit is required, if federal funding is received, or the entity is involved in or receives benefits from a federal project. For example, private entities may have special use permits to convey water or build access roads across federal land; they may require federal permits to construct irrigation withdrawal facilities, or build or repair docks; they may obtain water from federally funded and operated irrigation projects; or they may apply pesticides that are only available with federal agency approval. These activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat for eulachon. Changes to some activities, such as the operations of dams and dredging activities, may be necessary to minimize or avoid destruction or adverse modification of designated critical habitat. Transportation and utilities sectors may need to modify the placement of culverts, bridges, and utility conveyances (*e.g.,* water, sewer, and power lines) to avoid barriers to fish migration. Developments (*e.g.,* marinas, residential, or industrial facilities) occurring in or near streams, estuaries, or marine waters designated as critical habitat that require federal authorization or funding may need to be altered or built in a manner to ensure that critical habitat is not destroyed or adversely modified as a result of the construction or subsequent operation of the facility. Questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat should be directed to NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Information Quality Act and Peer Review

The data and analyses supporting this action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (IQA) (Section 515 of Pub. L. 106–554). In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the IQA. The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on

or after June 16, 2005. Two documents supporting this designation of critical habitat for the southern DPS of eulachon are considered influential scientific information and subject to peer review. These documents are the Eulachon Biological Report (NMFS, 2011b) and Eulachon Economic Analysis (NMFS, 2011c). We distributed drafts of the Biological Report and Economic Analysis for independent peer review and have addressed comments received in developing the final drafts of the two reports. Both documents are available on our Web site at *http://www.nwr.noaa.gov/,* or upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking it must prepare and make available for public comment a regulatory flexibility analysis describing the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). We have prepared a final regulatory flexibility analysis (FRFA), which is part of the Economic Analysis (NMFS, 2011c). The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), which was part of the draft economic analysis that accompanied the proposed rule to designate critical habitat. The FRFA also incorporates comments received on the IRFA and on the economic impacts of the rule generally. The results of the IRFA are summarized below.

A statement of the need for and objectives of this final rule is provided earlier in the preamble and is not repeated here. This final rule will not impose any recordkeeping or reporting requirements.

At the present time, little information exists regarding the cost structure and operational procedures and strategies in the sectors that may be directly affected by the critical habitat designation. In addition, given the short consultation history for eulachon, there is significant uncertainty regarding the activities that may trigger an ESA section 7 consultation or how those activities may be modified as a result of consultation. In order to estimate the number and activity type of future ESA section 7 consultations for eulachon, we relied on the past consultation history for other anadromous fish species in watersheds being designated as critical habitat. While this provides a reasonable estimate of future activities that may require section 7 consultation, differences in life history between eulachon and other listed anadromous fish species will likely result in differences in the number and type of activities that trigger consultation for eulachon. With these limitations in mind, we considered which of the potential economic impacts we analyzed might affect small entities. These estimates should not be considered exact estimates of the impacts of potential critical habitat to individual businesses.

The impacts to small businesses were assessed for the following eight broad categories of activities: Dams and water supply, agriculture and grazing, transportation, forest management, mining, in-water construction and restoration, water quality management/monitoring (and other activities resulting in non-point pollution), and other activities. Small entities were defined by the Small Business Administration size standards for each activity type. The majority (approximately 97 percent) of entities affected within each specific area would be considered a small entity. A total of approximately 607 small businesses involved in the activities listed above would most likely be affected by the critical habitat designation. Total annualized impacts to small entities are conservatively assumed to be $510,000, or approximately 99.6 percent of total incremental impacts anticipated as a result of this rule.

We estimated the annualized costs associated with section 7 consultations incurred per small business under two different scenarios. These scenarios are intended to provide a measure of the range of potential impacts to small entities given the level of uncertainty referred to above. Under the first scenario the analysis estimated the number of small entities located within areas affected by this critical habitat designation (approximately 607), and assumes that incremental impacts are distributed evenly across all entities in each affected industry. Under this scenario, a small entity may bear costs up to $3,372, representing between <0.01 and 0.10 percent of average revenues (depending on the industry). Under the second scenario, the analysis assumes the costs of each anticipated future consultation are borne by a distinct small business most likely to be involved in a section 7 consultation (approximately 39 entities). Under this scenario, each small entity may bear costs of between $1,900 and $158,200, representing between 0.01 and 4.57 percent of average annual revenues, depending on the industry.

In accordance with the requirements of the RFA (as amended by SBREFA of 1996) this analysis considered various alternatives to the critical habitat designation for the southern DPS. The alternative of not designating critical habitat for the southern DPS of eulachon was considered and rejected because such an approach does not meet the legal requirements of the ESA and would not provide for the conservation of the southern DPS of eulachon. A second alternative of designating all potential critical habitat areas (*i.e.,* no areas excluded) also was considered and rejected because for some areas the benefits of exclusion from designation outweighed the benefits of inclusion (NMFS, 2011a).

As an alternative to designating all potential critical habitat areas, NMFS considered the alternative of designating critical habitat within a subset of these areas (preferred alternative). Under section 4(b)(2) of the ESA, NMFS must consider the economic impact, impacts on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary has the discretion to exclude an area from designation as critical habitat if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to the southern DPS of eulachon if an area were designated), as long as exclusion of the area will not result in extinction of the species. We prepared an analysis describing our exercise of discretion, which is contained in our Final Section 4(b)(2) Report (NMFS, 2011a). Under this preferred alternative we have excluded Indian lands in California and Washington from designation as critical habitat. This preferred alternative reduces the number of small businesses potentially affected from 607 to approximately 591, and the total potential annualized economic impact to small businesses would be reduced from $510,000 to approximately $485,300.

Executive Order 12866

This rule has been determined to be not significant under E.O. 12866.

Executive Order 13211

On May 18, 2001, the President issued an executive order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any

action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

We have considered the potential impacts of this action on the supply, distribution, or use of energy and find the designation of critical habitat will not have impacts that exceed the thresholds identified above (NMFS, 2011a).

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, NMFS makes the following findings:

(a) This final rule will not produce a federal mandate. In general, a federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon state, local, Tribal governments, or the private sector and includes both ''federal intergovernmental mandates'' and ''federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary federal program,'' unless the regulation ''relates to a then-existing federal program under which $500,000,000 or more is provided annually to state, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the state, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.)

''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of federal assistance; or (ii) a duty arising from participation in a voluntary federal program.'' The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the ESA, the only regulatory effect is that federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-federal entities which receive federal funding, assistance, permits or otherwise require approval or authorization from a federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the federal agency. Furthermore, to the extent that non-federal entities are indirectly impacted because they receive federal assistance or participate in a voluntary federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above to state governments.

(b) Due to the existing protection afforded to the critical habitat from existing critical habitat designations for salmon and steelhead (70 FR 52630; September 2, 2005), Southern DPS of green sturgeon (74 FR 52300; October 9, 2009), and/or bull trout (70 FR 56212; September 26, 2005), we do not anticipate that this final rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

Under Executive Order 12630, federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this final rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only federal agency actions. We do not expect the critical habitat designation to impose additional burdens on land use or affect property values. Additionally, the critical habitat designation does not preclude the development of Habitat Conservation Plans and issuance of incidental take permits for non-federal actions. Owners of areas included within the critical habitat designation will continue to have the opportunity to use their property in ways consistent with the survival of the southern DPS of eulachon.

Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1456) requires that all federal activities that affect the land or water use or natural resource of the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. We have determined that this designation of critical habitat is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of California, Oregon, and Washington.

Federalism

In accordance with Executive Order 13132, we determined that this final rule does not have significant federalism effects and that a federalism assessment is not required. In keeping with Department of Commerce policies, we will continue to coordinate with appropriate state resource agencies in California, Oregon, and Washington regarding this critical habitat designation. The designation may have some benefit to state and local resource agencies in that the areas and habitat features essential to the conservation of the southern DPS of eulachon are specifically identified. It may also assist local governments in long-range planning (rather than waiting for case-by-case ESA section 7 consultations to occur).

Civil Justice Reform

The Department of Commerce has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. We are designating critical habitat in accordance with the provisions of the ESA. This final rule uses standard property descriptions and identifies the essential features within the designated areas to assist the public in understanding the habitat needs of the southern DPS of eulachon.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain new or revised information collection requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. Notwithstanding any other provision of the law, no person is

required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act of 1969 (NEPA)

We have determined that an environmental analysis as provided for under NEPA is not required for critical habitat designations made pursuant to the ESA. See *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Government-to-Government Relationship With Tribes

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting Tribal interests. If NMFS issues a regulation with Tribal implications (defined as having a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes) we must consult with those governments or the Federal Government must provide funds necessary to pay direct compliance costs incurred by Tribal governments.

Pursuant to Executive Order 13175 and Secretarial Order 3206, we consulted with the affected Indian Tribes when considering the designation of critical habitat in an area that may impact Tribal trust resources, Tribally owned fee lands or the exercise of Tribal rights. All of the Tribes we consulted expressed concern about the intrusion into Tribal sovereignty that critical habitat designation represents. The Secretarial Order defines Indian lands as ''any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian Tribe or (2) held by an Indian Tribe or individual subject to restrictions by the United States against alienation.'' Our conversations with the Tribes indicate that they view the designation of Indian lands as an unwanted intrusion into Tribal self-governance, compromising the government-to-government relationship that is essential to achieving our mutual goal of conserving eulachon and other anadromous species.

For the general reasons described in the Other Relevant Impacts—Impacts to Tribal Sovereignty and Self-Governance section above, the ESA section 4(b)(2) analysis has led us to exclude all Indian lands from designation as critical habitat for the southern DPS of eulachon.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at *http://www.nwr.noaa.gov/* and is available upon request from the NMFS office in Portland, Oregon (see **ADDRESSES.**)

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: October 12, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, part 226, title 50 of the Code of Federal Regulations is amended to read as follows:

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Add § 226.222, to read as follows:

§ 226.222 Critical habitat for the southern Distinct Population Segment of eulachon (Thaleichthys pacificus).

Critical habitat is designated for the southern Distinct Population Segment of eulachon (southern DPS) as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance only and not as a definitive source for determining critical habitat boundaries. In freshwater areas, critical habitat includes the stream channel and a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. In estuarine areas, critical habitat includes tidally influenced areas as defined by the elevation of mean higher high water.

(a) *Critical habitat boundaries.* Critical habitat is designated to include the following areas in California, Oregon, and Washington:

(1) Mad River, California. From the mouth of the Mad River (40°57′37″ N./124°7′36″ W.) upstream to the confluence with the North Fork Mad River (40°52′32″ N./123°59′30″ W.).

(2) Redwood Creek, California. From the mouth of Redwood Creek (41°17′35″ N./124°5′30″ W.) upstream to the confluence with Tom McDonald Creek (41°12′25″ N./124°0′39″ W.).

(3) Klamath River, California. From the mouth of the Klamath River (41°32′52″ N./124°4′58″ W.) upstream to the confluence with Omogar Creek (41°29′13″ N./123°57′39″ W.)

(4) Umpqua River, Oregon. From the mouth of the Umpqua River (43°40′7″ N./124°13′6″ W.) upstream to the confluence with Mill Creek (43°39′20″ N./123°52′35″ W.).

(5) Tenmile Creek, Oregon. From the mouth of Tenmile Creek (44°13′34″ N./124°6′45″ W.) upstream to the Highway 101 bridge crossing (44°13′27″ N./124°6′35″ W.).

(6) Sandy River, Oregon. From the confluence with the Columbia River upstream to the confluence with Gordon Creek (45°29′45″ N./122°16′41″ W.).

(7) Columbia River, Oregon and Washington. From the mouth of the Columbia River (46°14′48″ N./124°4′33″ W.) upstream to Bonneville Dam (45°38′40″ N./121°56′28″ W.).

(8) Grays River, Washington. From the confluence with the Columbia River upstream to Covered Bridge Road (46°21′18″ N./123°34′52″ W.).

(9) Skamokawa Creek, Washington. From the confluence with the Columbia River upstream to Peterson Road Bridge (46°18′52″ N./123°27′10″ W.).

(10) Elochoman River, Washington. From the confluence with the Columbia River upstream to Monroe Road bridge crossing (46°13′33″ N./123°21′34″ W.).

(11) Cowlitz River, Washington. From the confluence with the Columbia River upstream to the Cowlitz Salmon Hatchery barrier dam (46°30′45″ N./122°38′0″ W.).

(12) Toutle River, Washington. From the confluence with the Cowlitz River upstream to Tower Road Bridge (46°20′4″ N./122°50′26″ W.).

(13) Kalama River, Washington. From the confluence with the Columbia River upstream to the confluence with Indian Creek (46°2′22″ N./122°46′7″ W.).

(14) Lewis River, Washington. Lewis River mainstem, from the confluence with the Columbia River upstream to Merwin Dam (45°57′24″ N./122°33′22″ W.); East Fork of the Lewis River, from the confluence with the mainstem of the Lewis River upstream to the confluence with Mason Creek (45°50′13″ N./122°38′37″ W.).

(15) Quinault River, Washington. From the mouth of the Quinault River (47°20′58″ N./124°18′2″ W.) upstream to 47°19′58″ N./124°15′1″ W.

(16) Elwha River, Washington. From the mouth of the Elwha River (48°8′51″ N./123°34′1″ W.) upstream to Elwha Dam (48°5′42″ N./123°33′22″ W.).

(b) Physical or biological features essential for conservation. The physical or biological features essential for conservation of the southern DPS of eulachon are:

(1) Freshwater spawning and incubation sites with water flow, quality and temperature conditions and substrate supporting spawning and incubation.

(2) Freshwater and estuarine migration corridors free of obstruction and with water flow, quality and temperature conditions supporting larval and adult mobility, and with abundant prey items supporting larval feeding after the yolk sac is depleted.

(3) Nearshore and offshore marine foraging habitat with water quality and available prey, supporting juveniles and adult survival.

(c) Indian lands. Critical habitat does not include any Indian lands of the following Federally-recognized Tribes in the States of California, Oregon, and Washington:

(1) Lower Elwha Tribe, Washington;

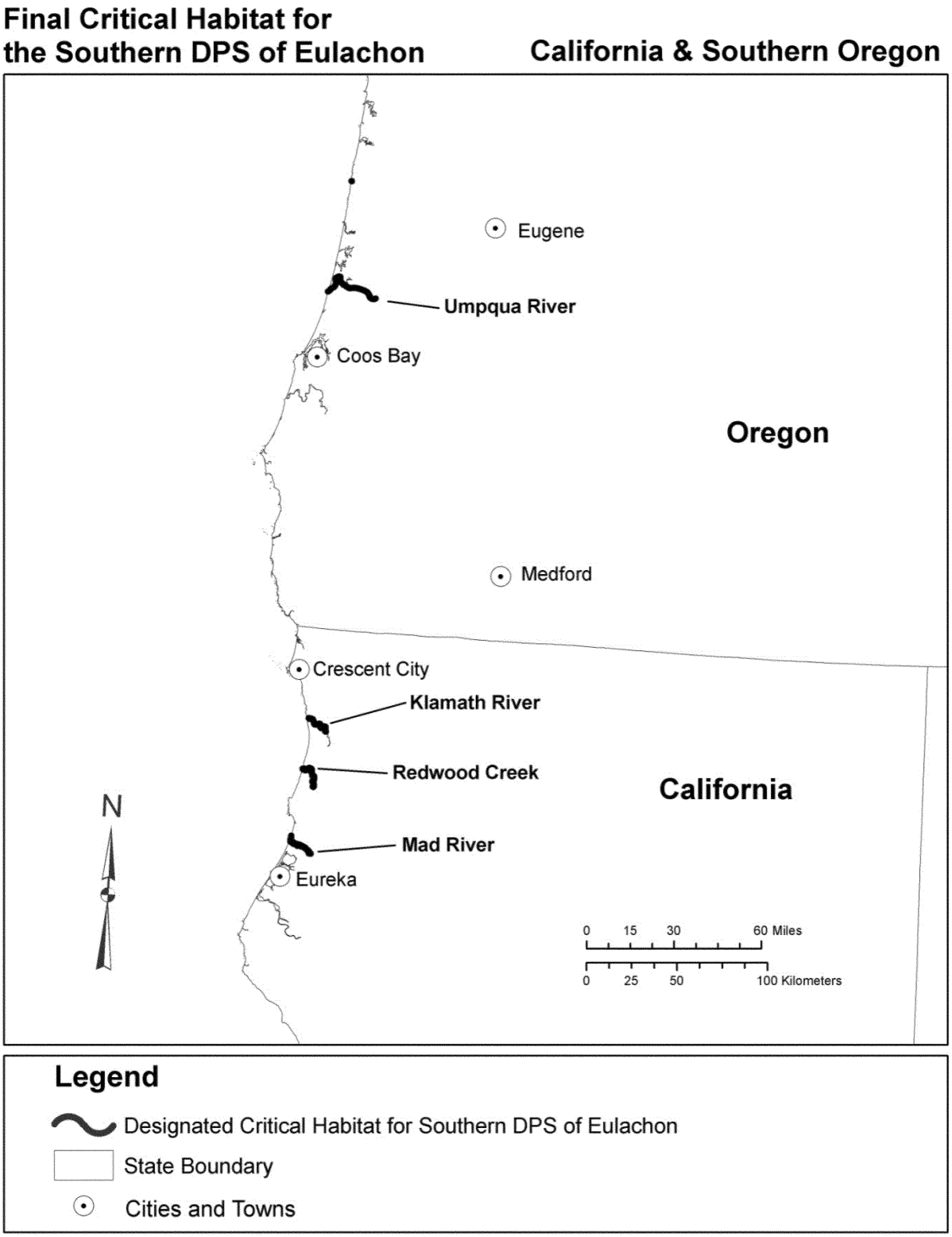
(2) Quinault Tribe, Washington;

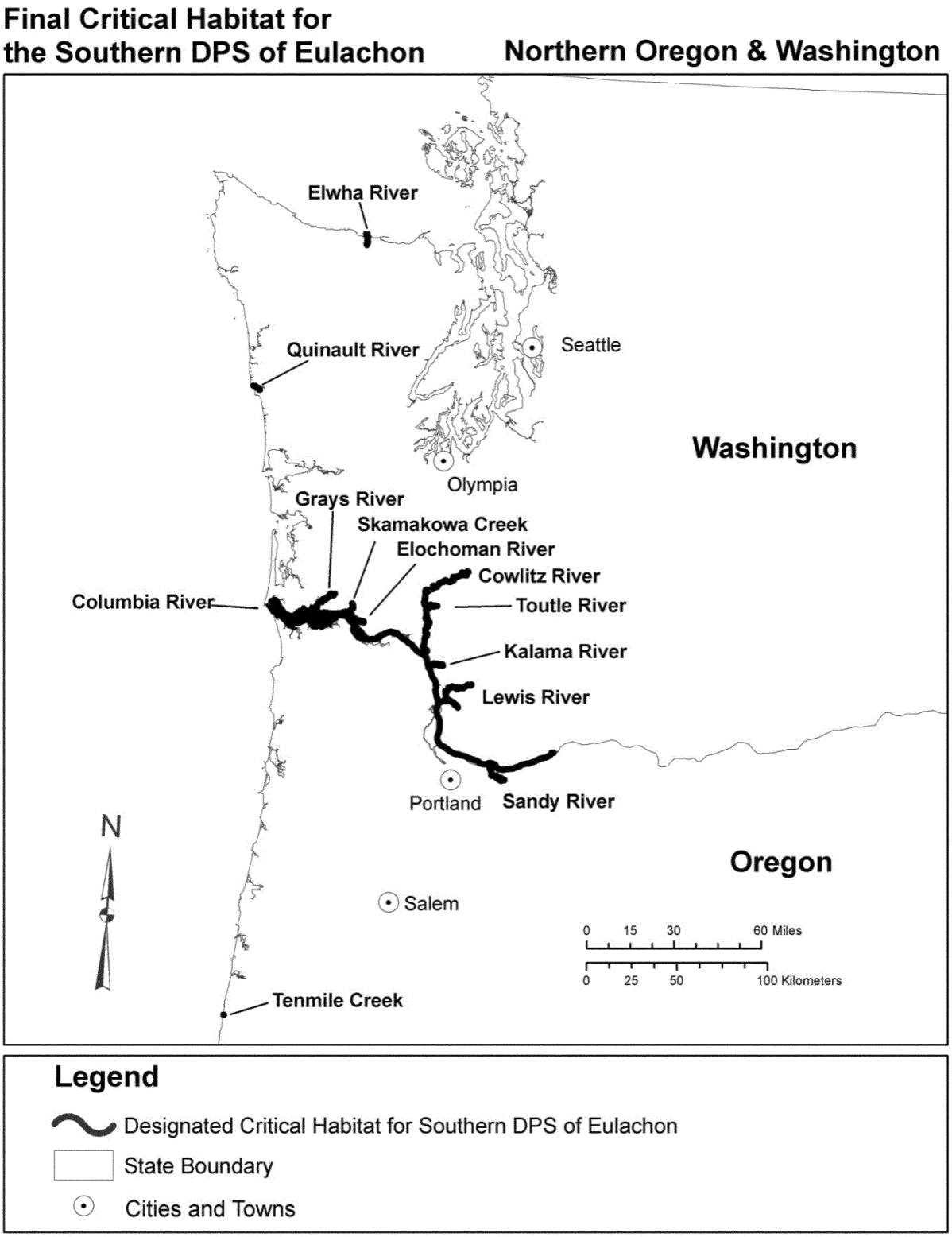
(3) Yurok Tribe, California; and

(4) Resighini Rancheria, California.

(d) Maps of critical habitat for the southern DPS of eulachon follow:

BILLING CODE 3510–22–P


Final Critical Habitat for
the Southern DPS of Eulachon
California & Southern Oregon
Eugene
Umpqua River
Coos Bay
Oregon
Medford
Crescent City
Klamath River
Redwood Creek
California
N
Mad River
Eureka
0 15 30 60 Miles
0 25 50 100 Kilometers
Legend
Designated Critical Habitat for Southern DPS of Eulachon
State Boundary
Cities and Towns



[FR Doc. 2011–26950 Filed 10–19–11; 8:45 am]
BILLING CODE 3510–22–C

FEDERAL REGISTER

Vol. 76 Thursday,

No. 203 October 20, 2011

Part III

The President

Notice of October 19, 2011—Continuation of the National Emergency With Respect To Significant Narcotics Traffickers Centered In Colombia

Federal Register
Vol. 76, No. 203
Thursday, October 20, 2011

Presidential Documents

Title 3—

The President

Notice of October 19, 2011

Continuation of the National Emergency With Respect To Significant Narcotics Traffickers Centered In Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and cause an extreme level of violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2011. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
October 19, 2011.

[FR Doc. 2011–27422
Filed 10–19–11; 2:00 pm]
Billing code 3295–F2–P

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Thursday, October 20, 2011

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H.R. 771/P.L. 112–38
To designate the facility of the United States Postal Service located at 1081 Elbel Road in Schertz, Texas, as the "Schertz Veterans Post Office". (Oct. 12, 2011; 125 Stat. 399)

H.R. 1632/P.L. 112–39
To designate the facility of the United States Postal Service located at 5014 Gary Avenue in Lubbock, Texas, as the "Sergeant Chris Davis Post Office". (Oct. 12, 2011; 125 Stat. 400)

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