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Rules and Regulations

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

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 97

[Docket No. 30752; Amdt. No. 3398]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 12, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 2010.

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

For Examination—

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

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

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

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

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

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

The Rule

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

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

Conclusion

The FAA has determined that this regulation only involves an established

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on October 29, 2010.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective 16 DEC 2010*

Louisville, KY, Bowman Field, Takeoff Minimums and Obstacle DP, Amdt 4
Missoula, MT, Missoula Intl, RNAV (RNP) Z RWY 11, Orig-A
Oak Island, NC, Cape Fear Regional Jetport at Howie Franklin Field, RNAV (GPS) RWY 5, Amdt 1A
Oak Island, NC, Cape Fear Regional Jetport at Howie Franklin Field, RNAV (GPS) RWY 23, Orig, CANCELLED
Columbus, OH, Port Columbus Intl, RNAV (RNP) Z RWY 10L, Orig-A
St. Clairsville, OH, Alderman, Takeoff Minimums and Obstacle DP, Amdt 3
El Reno, OK, El Reno Rgnl, RNAV (GPS) RWY 17, Orig-A
Houston, TX, Ellington Field, ILS or LOC RWY 17R, Amdt 5A

** * * Effective 13 JAN 2011*

Bakersfield, CA, Meadows Field, RNAV (GPS) RWY 12L, Amdt 1A
San Jose, CA, San Jose, ILS OR LOC RWY 12R, Amdt 7
Santa Rosa, CA, Charles M. Schulz-Sonoma County, RNAV (GPS) RWY 14, Amdt 1A
Susanville, CA, Susanville Muni, RNAV (GPS) RWY 29, Amdt 1
Merritt Island, FL, Merritt Island, NDB RWY 11, Orig, CANCELLED
Minneapolis, MN, Airlake, ILS OR LOC RWY 30, Orig-F
Pittsburgh, PA, Pittsburgh Intl, ILS OR LOC RWY 28L, Amdt 10
Loris, SC, Twin City, VOR/DME–A, Amdt 2A, CANCELLED
Saint George, UT, St. George Muni, JITKA ONE Graphic Obstacle DP
Saint George, UT, St. George Muni, RNAV (GPS) RWY 1, Orig
Saint George, UT, St. George Muni, RNAV (GPS) RWY 19, Orig
Saint George, UT, St. George Muni, RNAV (GPS) RWY 34, Amdt 1, CANCELLED
Saint George, UT, St. George Muni, Takeoff Minimums and Obstacle DP, Orig
Saint George, UT, St. George Muni, Takeoff Minimums and Obstacle DP, Amdt 3, CANCELLED
Saint George, UT, St. George Muni, VOR–C, Amdt 2A, CANCELLED
Saint George, UT, St. George Muni, VOR/DME RWY 34, Amdt 3A, CANCELLED
Saint George, UT, St. George Muni, VOR OR GPS–B, Amdt 2A, CANCELLED

[FR Doc. 2010–28190 Filed 11–10–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30753; Amdt. No. 3399]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 12, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 2010.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Availability*—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:
1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR part 97

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

Issued in Washington, DC, on October 29, 2010.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
16–Dec–10	NE	Wayne	Wayne Muni	0/0205	10/15/10	NDB Rwy 22, Orig-A.
16–Dec–10	CO	Colorado Springs	City of Colorado Springs Muni	0/0367	10/15/10	RNAV (RNP) Z Rwy 17R, Orig.
16–Dec–10	TX	Houston	George Bush Intercontinental/ Houston.	0/0678	10/15/10	ILS or LOC Rwy 8R, Amdt 23.
16–Dec–10	TX	Houston	George Bush Intercontinental/ Houston.	0/0679	10/15/10	ILS OR LOC Rwy 9, Amdt 8.
16–Dec–10	TX	Houston	George Bush Intercontinental/ Houston.	0/0680	10/15/10	ILS or LOC Rwy 27, ILS Rwy 27 (CAT II), ILS Rwy 27 (CAT III), Amdt 8.
16–Dec–10	TX	Houston	George Bush Intercontinental/ Houston.	0/0681	10/15/10	ILS or LOC Rwy 8L, ILS Rwy 8L (CAT II), ILS Rwy 8L (CAT III), Amdt 2.
16–Dec–10	TX	Houston	George Bush Intercontinental/ Houston.	0/0682	10/15/10	ILS or LOC Rwy 26L, ILS Rwy 26L (CAT II), ILS Rwy 26L (CAT III), Amdt 19.
16–Dec–10	TX	Houston	George Bush Intercontinental/ Houston.	0/0683	10/15/10	ILS or LOC Rwy 26R, ILS Rwy 26R (CAT II), ILS Rwy 26R (CAT III), Amdt 2.
16–Dec–10	AR	Fayetteville/Springdale.	Northwest Arkansas Rgnl	0/0687	10/15/10	ILS or LOC/DME Rwy 16, Amdt 2.
16–Dec–10	AR	Fort Smith	Fort Smith Rgnl	0/0688	10/15/10	ILS or LOC Rwy 7, Orig-C.
16–Dec–10	AR	Fort Smith	Fort Smith Rgnl	0/0706	10/15/10	ILS or LOC Rwy 25, Amdt 21E.
16–Dec–10	IA	Bloomfield	Bloomfield Muni	0/0737	10/15/10	RNAV (GPS) Rwy 36, Orig.
16–Dec–10	IA	Bloomfield	Bloomfield Muni	0/0738	10/15/10	NDB Rwy 36, Amdt 3.
16–Dec–10	NE	Fremont	Fremont Muni	0/0741	10/15/10	RNAV (GPS) Rwy 14, Amdt 1.
16–Dec–10	AR	Fayetteville	Drake Field	0/0781	10/15/10	RNAV (GPS) Rwy 34, Orig.
16–Dec–10	FL	Gainesville	Gainesville Rgnl	0/0813	10/26/10	RNAV (GPS) Rwy 29, Amdt 1A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
16–Dec–10 ...	FL	Gainesville	Gainesville Rgnl	0/0814	10/26/10	RNAV (GPS) Rwy 11, Amdt 1A.
16–Dec–10 ...	FL	Gainesville	Gainesville Rgnl	0/0815	10/26/10	VOR 25, Orig-C.
16–Dec–10 ...	FL	Gainesville	Gainesville Rgnl	0/0816	10/26/10	VOR/DME Rwy 7, Orig-C.
16–Dec–10 ...	FL	Gainesville	Gainesville Rgnl	0/0817	10/26/10	VOR/DME Rwy 11, Orig-C.
16–Dec–10 ...	FL	Gainesville	Gainesville Rgnl	0/0818	10/26/10	VOR Rwy 29, Orig-D.
16–Dec–10 ...	FL	Gainesville	Gainesville Rgnl	0/0819	10/26/10	ILS or LOC Rwy 29, Amdt 12D.
16–Dec–10 ...	FL	Gainesville	Gainesville Rgnl	0/0821	10/26/10	RNAV (GPS) Rwy 7, Amdt 1.
16–Dec–10 ...	FL	Gainesville	Gainesville Rgnl	0/0859	10/26/10	RNAV (GPS) Rwy 25, Amdt 1.
16–Dec–10 ...	VT	Highgate	Franklin County	0/0975	10/26/10	VOR/DME Rwy 19, Amdt 4A.
16–Dec–10 ...	MT	Lewiston	Lewiston Muni	0/1366	10/15/10	VOR Rwy 7, Amdt 15.
16–Dec–10 ...	CA	Redding	Redding Muni	0/1706	10/26/10	ILS or LOC/DME Rwy 34, Amdt 11.
16–Dec–10 ...	VA	Petersburg	Dinwiddie County	0/1991	10/26/10	VOR Rwy 23, Amdt 6.
16–Dec–10 ...	VA	Petersburg	Dinwiddie County	0/1992	10/26/10	RNAV (GPS) Rwy 23, Amdt 1.
16–Dec–10 ...	VA	Petersburg	Dinwiddie County	0/1994	10/26/10	RNAV (GPS) Rwy 5, Amdt 1.
16–Dec–10 ...	VI	Christianstead, St. Croix.	Henry E Rohlsen	0/2690	10/26/10	ILS or LOC Rwy 10, Amdt 7.
16–Dec–10 ...	WI	Milwaukee	General Mitchell International	0/4836	10/15/10	RNAV (GPS) Rwy 7R, Orig.
16–Dec–10 ...	TX	Houston	Pearland Rgnl	0/6063	10/15/10	VOR B, Amdt 1.
16–Dec–10 ...	OK	Norman	University of Oklahoma Westheimer.	0/6104	10/15/10	NDB Rwy 3, Amdt 1.
16–Dec–10 ...	NE	Wayne	Wayne Muni	0/6395	10/15/10	RNAV (GPS) Rwy 17, Amdt 1.
16–Dec–10 ...	TX	Crosbyton	Crosbyton Municipal	0/6445	10/15/10	NDB Rwy 35, Orig-B.
16–Dec–10 ...	FL	Fort Pierce	St. Lucie County Intl	0/6759	10/26/10	VOR/DME Rwy 14, Amdt 8.
16–Dec–10 ...	IN	Nappanee	Nappanee Muni	0/6815	10/15/10	VOR or GPS B, Amdt 1.
16–Dec–10 ...	OH	Mansfield	Mansfield Lahm Rgnl	0/7144	10/15/10	RNAV (GPS) Rwy 5, Orig.
16–Dec–10 ...	GA	Vidalia	Vidalia Rgnl	0/8965	10/15/10	RNAV (GPS) Rwy 24, Amdt 1.
16–Dec–10 ...	TX	Houston	Ellington Field	0/9328	10/15/10	ILS Rwy 35L, Amdt 5.
16–Dec–10 ...	TX	Houston	Ellington Field	0/9329	10/15/10	ILS Rwy 22, Amdt 3C.
16–Dec–10 ...	TX	Palacios	Palacios Muni	0/9391	10/15/10	VOR Rwy 13, Amdt 10B.
16–Dec–10 ...	RI	Providence	Theodore Francis Green State	0/9592	10/15/10	RNAV (GPS) Rwy 34, Orig-B.
16–Dec–10 ...	RI	Providence	Theodore Francis Green State	0/9594	10/15/10	RNAV (GPS) Rwy 16, Orig-A.
16–Dec–10 ...	RI	Providence	Theodore Francis Green State	0/9595	10/15/10	RNAV (GPS) Rwy 23, Orig-C.
16–Dec–10 ...	AL	Huntsville	Huntsville Intl-Carl T Jones Field.	0/9615	10/15/10	ILS or LOC Rwy 18L, Amdt 4.
16–Dec–10 ...	WA	Moses Lake	Grant Co. Intl	0/9749	10/15/10	VOR Rwy 1, Rwy 14L, Amdt 1A.
16–Dec–10 ...	ME	Bangor	Bangor Intl	0/9945	10/15/10	VOR/DME Rwy 15, Amdt 4.
16–Dec–10 ...	ME	Bangor	Bangor Intl	0/9946	10/15/10	Radar-1, Amdt 4B.
16–Dec–10 ...	ME	Bangor	Bangor Intl	0/9947	10/15/10	ILS or LOC Rwy 15, Amdt 6.
16–Dec–10 ...	ME	Bangor	Bangor Intl	0/9948	10/15/10	RNAV (GPS) Rwy 15, Orig.
16–Dec–10 ...	OK	Ponca City	Ponca City Rgnl	0/9969	10/15/10	VOR A, Amdt 10A.
16–Dec–10 ...	ID	Idaho Falls	Idaho Falls Rgnl	0/9985	10/15/10	RNAV (GPS) Y Rwy 20, Amdt 1.

[FR Doc. 2010–28191 Filed 11–10–10; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 20

International Product and Price Changes

AGENCY: Postal Service ™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect the prices, product features, and classification changes to Competitive Services, as established by the Governors of the Postal Service.

DATES: *Effective Date:* January 2, 2011.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: This final rule describes the international price and classification changes and the corresponding mailing standards changes for the following Competitive Services:

- *Global Express Guaranteed® (GXG®).*
- *Express Mail International® (EMI).*
- *Priority Mail International® (PMI).*
- *International Priority Airmail ™ (IPA®).*
- *International Surface Air Lift® (ISAL®).*
- *Direct Sacks of Printed Matter to One Addressee (M-bags).*
- *International Extra Services:*
  - *International Postal Money Orders.*
  - *International Insurance for EMI and PMI service.*

New prices are located on the Postal Explorer® Web site at *http://pe.usps.com.*

Global Express Guaranteed

Global Express Guaranteed (GXG) is an international expedited delivery service provided through an alliance with FedEx Express®

The price increase for retail GXG service averages 3.7 percent. The commercial base price for customers who prepare and pay for shipments online at USPS.com® or by using an authorized PC Postage® vendor remains 10 percent below the retail price.

In addition, we are making the following product features and classification changes:

Permit Imprint

To provide additional payment options for customers we are authorizing permit imprint as a new postage payment option for GXG service. To use this payment option, customers must use USPS®-produced Global Shipping Software (GSS) and pay for postage with a permit imprint through an advance deposit account. The commercial base price is automatically applied to each shipment

but does not apply to any other charges or fees.

IBI Payment Method

We are eliminating the commercial base price for customers who pay for GXG shipments with information-based indicia (IBI) postage meters. The commercial base price will only apply for customers who pay with permit imprint (in conjunction with GSS or a functional equivalent), Click-N-Ship® service, or an authorized PC Postage vendor.

Express Mail International

Express Mail International (EMI) service provides reliable, high-speed service to over 190 countries with a money-back, date-certain delivery guarantee to select destinations.

The price increase for retail Express Mail International service averages 3.1 percent. The commercial base price for customers that prepare and pay for shipments via permit imprint when used in conjunction with GSS, online at USPS.com, or by using an authorized PC Postage vendor remains 8 percent below the retail price.

In addition, the following product features and classification changes are made:

Price Groups

We are expanding our price groups from 10 to 17. With this change, 9 of the 17 price groups will be assigned to a specific country. Previously, only two price groups were assigned to a specific country (Canada and Mexico). The other eight price groups will contain multiple countries. The seven new specific Express Mail International country price groups are:

Country	Price group
Great Britain & Northern Ireland	11
Japan	12
France	13
China	14
Brazil	15
Germany	16
Netherlands	17

Flat Rate Envelope Pricing for Mexico

For the Express Mail International Flat Rate Envelopes, the Postal Service is combining Mexico with the "All Other Countries" price tier. Previously, Mexico was combined with the Canada price tier. Only Canada will now have a unique price for Express Mail International Flat Rate Envelopes.

Legal-Size Flat Rate Envelope

To provide additional mailing options for customers, we are introducing a new legal-size Express Mail International Flat Rate Envelope. The new larger envelope, which measures 15 inches by 9½ inches, enables customers to pay a flat rate to ship legal-size documents without folding them. The Express Mail Legal Flat Rate Envelope will be the same price as the regular Express Mail Flat Rate Envelope.

IBI Payment Method

We are eliminating the commercial base price for customers who pay for Express Mail International shipments with IBI postage meters or with an Express Mail Corporate Account. With this change, the commercial base price will only apply for customers who pay with permit imprint (in conjunction with GSS or an approved functional equivalent), Click-N-Ship service, or an authorized PC Postage vendor.

Express Mail Corporate Account Payment Method

We are also eliminating the Express Mail Corporate Account commercial base volume prices under current IMM 223.231. Customers who currently receive these discounts for outbound Express Mail International shipments may qualify for lower prices by using a permit imprint in conjunction with GSS under new IMM 223.222.

Return Receipt

Due to minimal demand, we will no longer offer return receipt service with Express Mail International service.

Priority Mail International

Priority Mail International (PMI) offers economical prices for reliable delivery of documents and merchandise, usually within 6 to 10 business days to many major destinations.

The price increase for retail Priority Mail International service averages 3.8 percent. The commercial base price for customers that prepare and pay for shipments via permit imprint when used in conjunction with GSS, online at *http://www.usps.com,* or by using an authorized PC Postage vendor remains 5 percent below the retail price.

In addition, with this final rule, the following product features and classification changes:

Price Groups

Priority Mail International price groups expand from 10 to 17 groups. With this change, 9 of the 17 price groups will be assigned to a specific country. Previously, only two price groups were assigned to a specific country (Canada and Mexico). The other eight price groups will contain multiple countries. The seven new specific country price groups are:

Country	Price group
Great Britain & Northern Ireland	11
Japan	12
France	13
China	14
Brazil	15
Germany	16
Netherlands	17

Flat Rate Envelope Additions

We are introducing several new variations of the Priority Mail Flat Rate Envelope and expanding the items eligible for the Priority Mail Small Flat Rate Box Price. This includes a new legal-size Priority Mail International Flat Rate Envelope. The new larger envelope, which measures 15 inches by 9½ inches, enables customers to pay a flat rate to ship legal-size documents without folding them. The Priority Mail Legal Flat Rate Envelope will be the same price as the regular Priority Mail Flat Rate Envelope. These new variations of the Priority Mail Flat Rate Envelope and the Priority Mail Small Flat Rate box may not be insured but may be registered based on eligibility for the country destination.

Padded Flat Rate Envelope

A new padded Priority Mail International Flat Rate envelope is introduced which measures 12½ inches by 9½ inches and enables customers to ship lightweight merchandise at a flat rate. The Priority Mail Padded Flat Rate Envelope will be the same price as the regular Priority Mail Flat Rate Envelope. The Priority Mail Flat Rate Envelope may not be insured but may be registered based on country destination.

Incorporating Canada Into Insurance Tier

We are eliminating the separate price tier for Canada when optional insurance is purchased for Priority Mail International parcels. With this change, all insurance fees for Priority Mail International parcels will be the same. The current maximum insurance limit for Canada remains the same at $675.00.

IBI Payment Method

We are eliminating the commercial base price for customers who pay for Priority Mail International shipments with IBI postage meters. With this change, the commercial base price will only apply for customers who pay with permit imprint (in conjunction with GSS or an approved functional equivalent), Click-N-Ship service, or an authorized PC Postage vendor.

International Priority Airmail (IPA)

IPA service, including IPA M-bags, is a commercial service designed for business mailers for volume mailings of all First-Class Mail International postcards, letters, large envelopes (flats), and packages (small packets) weighing up to 4 pounds. The price increase for IPA service averages 3.3 percent. There is no price change for IPA M-bags.

International Surface Air Lift (ISAL)

ISAL service, including ISAL M-bags, is a commercial service, which provides expedited dispatch and transportation for mailers of volume mailings of all First-Class Mail International postcards, letters, large envelopes (flats), and packages (small packets) weighing up to 4 pounds. The price increase for ISAL service averages 6.4 percent. There is no price change for ISAL M-bags.

Direct Sacks of Printed Matter to One Addressee (M-Bags)

Airmail M-bags are direct sacks of printed matter sent to a single foreign addressee at a single address. The price increase for Airmail M-bags averages 5.8 percent.

International Extra Services

Depending on destination and mail type, customers may continue to add a variety of extra services to their outbound shipments.

For our competitive offerings, we revised the prices for the following international extra services: Express Mail International insurance, Priority Mail International insurance, and international postal money orders. The price increase for extra services averages 7.9 percent.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR Part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

* * * * *

1 International Mail Services

* * * * *

150 Postage

* * * * *

152 Payment Methods

* * * * *

152.4 Permit Imprint

152.41 Conditions of Use

* * * This postage payment method may be used for postage and extra service fees for the following services:

[Redesignate current items 152.41a through e as new items b through f and insert new item a as follows:]

a. Global Express Guaranteed service prepared under 213.8.

* * * * *

152.44 Required Format

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Exhibit 152.44

Indicia Formats

[Add two new sections, and two new examples each, with GXG and EMI as the top examples, that illustrate Global Express Guaranteed and Express Mail International permit imprints.]

Global Express Guaranteed

GLOBAL EXPRESS GUARANTEED
US POSTAGE PAID
NEW YORK NY
PERMIT NO. 1

GLOBAL EXPRESS GUARANTEED
US POSTAGE PAID
JOHN DOE COMPANY

Express Mail International

EXPRESS MAIL INTERNATIONAL
US POSTAGE PAID
NEW YORK NY
PERMIT NO. 1

EXPRESS MAIL INTERNATIONAL
US POSTAGE PAID
JOHN DOE COMPANY

* * * * *

2 Conditions for Mailing

210 Global Express Guaranteed

* * * * *

213 Prices and Postage Payment Methods

* * * * *

213.2 Postage Payment Methods—General

[Revise 213.2 as follows:]

Global Express Guaranteed shipments may be paid with postage stamps, postage validation imprinter (PVI) labels, postage meter stamps, information-based indicia (IBI), PC Postage service, or permit imprint under 213.8.

* * * * *

213.7 Online Postage Payment Method

213.71 Online Prices

[Revise 213.71 as follows:]

For selected destination countries, Global Express Guaranteed items receive a 10 percent discount below retail prices for the following online shipping methods:

a. Click-N-Ship service.

b. An authorized PC Postage vendor.

The commercial base price is automatically applied to each shipment. The discount applies only to the postage portion of the Global Express Guaranteed price. It does not apply to any other charges or fees, such as fees for Pickup on Demand service, insurance, or shipments made under a customized agreement.

* * * * *

[Redesignate current item 213.8 as new 213.9 and insert new 213.8 as follows:]

213.8 Permit Imprint

213.81 Permit Imprint—General

Payment for Global Express Guaranteed shipments paid with a permit imprint through an advance deposit account is allowed only when guidelines for commercial base prices (*see* 213.82) are followed. Postage paid with a permit imprint is subject to the general conditions in 152.4, and DMM 604 and 705.

213.82 Permit Imprint—Commercial Base Prices

Global Express Guaranteed commercial base postage prices are 10 percent below retail prices for all postage paid with a permit imprint. The commercial base price applies only to the postage portion of Global Express Guaranteed prices. In addition, customers must meet the following requirements:

a. Use USPS-produced Global Shipping Software (GSS). (To request information about GSS, send an e-mail to *GSSHelp@usps.gov*.)

b. Pay for postage with a permit imprint through an advance deposit account.

c. Meet manifesting and permit imprint requirements under IMM 152.4 and DMM 604 and the manifesting requirements under DMM 705.

Note: When using GSS, no extra services such as insurance are available.

* * * * *

220 Express Mail International

221 Description and Physical Characteristics

* * * * *

[Revise the heading and first sentence of 221.3 as follows:]

221.3 Express Mail International Flat Rate Envelopes

USPS-produced Flat Rate Envelopes are charged at a flat rate regardless of weight or destination. * * *

* * * * *

222 Eligibility

* * * * *

[Revise the heading and first sentence of 222.3 as follows:]

222.3 Express Mail International Flat Rate Envelopes

Mailers are eligible for the Flat Rate Envelope price only with the use of the USPS-produced Express Mail Flat Rate Envelope (Item EP13–F—12½ inches by 9½ inches), or the Express Mail Legal Flat Rate Envelope (Item EP13–L—15 inches by 9½ inches). * * *

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222.7 Extra Services

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[Delete section 222.72, Return Receipt Service, in its entirety.]

223 Prices and Postage Payment Methods

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223.2 Postage Payment Methods

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[Revise 223.22 as follows:]

223.22 Permit Imprint

223.221 Permit Imprint—General

Express Mail International shipments paid with a permit imprint through an advance deposit account are eligible for either the commercial base price under 223.222 or the retail price under 223.223. An Express Mail International shipment using a permit imprint does not qualify for postage-refund guarantees under 221.2 for Express Mail International With Guarantee service destination countries.

Customers capable of tendering at least 2,500 Express Mail International pieces or paying at least $50,000 in international postage on an annualized basis should contact the Postal Service to discuss customized agreements (*see* 297).

223.222 Permit Imprint—Commercial Base Prices

Express Mail International commercial base postage prices are 8 percent below retail prices for all postage paid with a permit imprint and using USPS-produced Global Shipping Software (GSS). The commercial base price applies only to the postage portion of Express Mail International prices. In addition, customers must meet the following requirements:

a. Use USPS-produced Global Shipping Software (GSS). (To request information about GSS, send an e-mail to *GSSHelp@usps.gov*.)

b. Pay for postage with a permit imprint through an advance deposit account.

c. Meet manifesting and permit imprint requirements under IMM 152.4 and DMM 604 and the manifesting requirements under DMM 705.

Note: When using GSS, no extra services such as insurance are available.

223.223 Permit Imprint—Retail Price

Express Mail International items paid with a permit imprint through an Express Mail corporate account (*see* 223.23) are charged the applicable retail price. In addition, customers must meet the permit imprint requirements under IMM 152.4 and DMM 604 and the manifesting requirements under DMM 705.

223.23 Express Mail Corporate Account

[Add the following text to 223.23 and delete 223.231 and 223.232 in their entirety.]

Mailers using an Express Mail Corporate Account under 223.21 must pay the applicable retail price for each mailpiece.

223.24 Online Postage Payment Method

223.241 Online Prices

[Revise 223.241 as follows:]

For selected destination countries, Express Mail International items receive an 8 percent discount below retail prices for the following online shipping methods:

a. Click-N-Ship service.

b. An authorized PC Postage vendor.

The commercial base price is automatically applied to each shipment. The discount applies only to the postage portion of the Express Mail International price. It does not apply to any other charges or fees, such as fees for Pickup on Demand service, insurance, or shipments made under a customized agreement.

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230 Priority Mail International

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232 Eligibility

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[Renumber current items 232.2 through 232.7 as new 232.3 through 232.8 and insert new 232.2 as follows:]

232.2 Eligible Priority Mail International Flat Rate Envelopes and Small Flat Rate Boxes

Only the following items qualify for the Priority Mail Flat Rate Envelope or Small Flat Rate Box pricing:

Priority mail flat rate envelopes	Priority mail boxes—eligible for the priority mail small flat rate price
Priority Mail Flat Rate Envelope, 12½″ x 9½″, Item EP 14–F	Priority Mail Small Flat Rate Box, 8⅝″ x 5⅜″ x 1⅝″, Item O–SMALL–FRBX.
Priority Mail Gift Card Flat Rate Envelope, 10″ x 7″, Item EP 14–GT	Priority Mail DVD Box, 7 9/16″ x 5 7/16″ x 1⅜″, Item ODVDS.
Priority Mail Small Flat Rate Envelope, 10″ x 6″, Item No: EP 14–B	Priority Mail Large Video Box, 9¼″ x 6¼″ x 2″, Item O–1096–L.
Priority Mail Window Flat Rate Envelope, 10″ x 5″, Item EP 14–H.	
Priority Mail Legal Flat Rate Envelope, 15″ x 9½″, Item EP 14–L.	
Priority Mail Padded Flat Rate Envelope, 12½″ x 9½″, Item EP 14–PE.	

* * * * *

232.7 Extra Services

232.74 Registered Mail Service

[Revise 232.74 as follows:]

Registered Mail service is available (for an additional fee) only for the following Priority Mail International items:

a. Flat Rate Envelopes listed in 232.2, (except for the Priority Mail Padded Flat Rate Envelope), including free matter for the blind items.

b. Small Flat Rate Boxes listed in 232.2, including free matter for the blind items.

233 Prices and Postage Payment Methods

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233.2 Prices and Postage Payment Methods

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233.22 Permit Imprint

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233.222 Permit Imprint—Commercial Base Prices

[Revise 233.222 as follows:]

Priority Mail International commercial base postage prices are 5 percent below retail prices for all postage paid with a permit imprint and using USPS-produced Global Shipping Software (GSS). The commercial base price applies only to the postage portion of Priority Mail International prices. In addition, customers must meet the following requirements:

a. Use USPS-produced Global Shipping Software (GSS). (To request information about GSS, send an e-mail to *GSSHelp@usps.gov.*)

b. Pay for postage with a permit imprint through an advance deposit account.

c. Meet manifesting and permit imprint requirements under IMM 152.4 and DMM 604 and the manifesting requirements under DMM 705.

Note: When using GSS, no extra services such as insurance are available.

* * * * *

233.23 Online Postage Payment Method

233.231 Online Prices

[Revise 233.231 as follows:]

For selected destination countries, Priority Mail International items receive a 5 percent discount below retail prices for the following online shipping methods:

a. Click-N-Ship service.

b. An authorized PC Postage vendor.

The commercial base price is automatically applied to each shipment. The discount applies only to the postage portion of the Priority Mail International price. It does not apply to any other charges or fees, such as Pickup on Demand service, insurance fees, or shipments made under a customized agreement.

* * * * *

3 Extra Services

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330 Registered Mail

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332 Availability

* * * Registered Mail service is available for the following types of mail:

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[Revise items 332a and b as follows:]

a. Flat Rate Envelopes listed in 232.2, (except for the Priority Mail Padded Flat Rate Envelope), including free matter for the blind items.

b. Small Flat Rate Boxes listed in 232.2, including free matter for the blind items.

* * * * *

Country Price Groups and Weight Limit

[Revise the Country Price Groups and Weight Limits for the following countries:]

Country	Global express guaranteed		Express mail international		Priority mail international [1]		First-class mail international	
	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt.[2] (ozs./lbs.)
*	*	*	*	*	*	*	*	
Brazil	8	70	15	66	15	66	9	3.5/4
*	*	*	*	*	*	*	*	
China	6	70	14	66	14	66	3	3.5/4
*	*	*	*	*	*	*	*	
France	3	70	13	66	13	66	5	3.5/4

Country	Global express guaranteed		Express mail international		Priority mail international [1]		First-class mail international	
	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt.[2] (ozs./lbs.)
* *	*	*		*		*		*
Germany	3	70	16	66	16	70	5	3.5/4
* *	*	*		*		*		*
Great Britain and Northern Ireland	3	70	11	66	11	66	5	3.5/4
* *	*	*		*		*		*
Japan	3	70	12	66	12	66	3	3.5/4
* *	*	*		*		*		*
Netherlands	3	70	17	66	17	44	5	3.5/4
* *	*	*		*		*		*

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Individual Country Listings

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Global Express Guaranteed (210)

[For each country for which a Global Express Guaranteed price table is provided, replace the Global Express Guaranteed price table with the appropriate Price Group table based on the prices below:]

BILLING CODE P

Weight Not Over (lb.)	Price Groups							
	1	2	3	4	5	6	7	8
0.5	$35.50	$36.50	$44.75	$97.75	$47.00	$47.95	$46.00	$66.50
1	$55.50	$58.00	$66.50	$114.50	$71.75	$71.75	$58.50	$82.50
2	$59.75	$65.25	$75.95	$133.25	$80.70	$81.60	$66.75	$101.25
3	$64.00	$72.50	$85.40	$152.00	$89.65	$91.45	$75.00	$120.00
4	$68.25	$79.75	$94.85	$170.75	$98.60	$101.30	$83.25	$138.75
5	$72.50	$87.00	$104.30	$189.50	$107.55	$111.15	$91.50	$157.50
6	$76.75	$94.25	$113.75	$208.25	$116.50	$121.00	$99.75	$176.25
7	$81.00	$101.50	$123.20	$227.00	$125.45	$130.85	$108.00	$195.00
8	$85.25	$108.75	$132.65	$245.75	$134.40	$140.70	$116.25	$213.75
9	$89.50	$116.00	$142.10	$264.50	$143.35	$150.55	$124.50	$232.50
10	$93.75	$123.25	$151.55	$283.25	$152.30	$160.40	$132.75	$251.25
11	$97.50	$127.50	$157.00	$298.00	$159.05	$170.25	$139.10	$264.00
12	$101.25	$131.75	$162.45	$312.75	$165.80	$180.10	$145.45	$276.75
13	$105.00	$136.00	$167.90	$327.50	$172.55	$189.95	$151.80	$289.50
14	$108.75	$140.25	$173.35	$342.25	$179.30	$199.80	$158.15	$302.25
15	$112.50	$144.50	$178.80	$357.00	$186.05	$209.65	$164.50	$315.00
16	$116.25	$148.75	$184.25	$371.75	$192.80	$219.50	$170.85	$327.75
17	$120.00	$153.00	$189.70	$386.50	$199.55	$229.35	$177.20	$340.50
18	$123.75	$157.25	$195.15	$401.25	$206.30	$239.20	$183.55	$353.25
19	$127.50	$161.50	$200.60	$416.00	$213.05	$249.05	$189.90	$366.00
20	$131.25	$165.75	$206.05	$430.75	$219.80	$258.90	$196.25	$378.75
21	$135.00	$170.00	$211.50	$445.50	$226.55	$268.75	$202.60	$391.50
22	$138.75	$174.25	$216.95	$460.25	$233.30	$278.60	$208.95	$404.25
23	$142.50	$178.50	$222.40	$475.00	$240.05	$286.35	$215.30	$417.00
24	$146.25	$182.75	$227.85	$489.75	$246.80	$294.10	$221.65	$429.75
25	$150.00	$187.00	$233.30	$504.50	$253.55	$301.85	$228.00	$442.50
26	$153.75	$190.50	$238.75	$519.25	$260.30	$309.60	$234.35	$455.25
27	$157.50	$194.00	$244.20	$534.00	$267.05	$317.35	$240.70	$468.00
28	$161.25	$197.50	$249.65	$548.75	$273.80	$325.10	$247.05	$480.75
29	$165.00	$201.00	$255.10	$563.50	$280.55	$332.85	$253.40	$493.50
30	$168.75	$204.50	$260.55	$578.25	$287.30	$340.60	$259.75	$506.25
31	$172.50	$208.00	$266.00	$593.00	$294.05	$348.35	$266.10	$519.00
32	$176.25	$211.50	$271.45	$607.75	$300.80	$356.10	$272.45	$531.75
33	$180.00	$215.00	$276.90	$622.50	$307.55	$363.85	$278.80	$544.50
34	$183.75	$218.50	$282.35	$637.25	$314.30	$371.60	$285.15	$557.25
35	$187.50	$222.00	$287.80	$652.00	$321.05	$379.35	$291.50	$570.00
36	$191.25	$225.50	$293.25	$666.75	$327.80	$387.10	$297.85	$582.75
37	$195.00	$229.00	$298.70	$681.50	$334.55	$394.85	$304.20	$595.50
38	$198.75	$232.50	$304.15	$696.25	$341.30	$402.60	$310.55	$608.25

39	$202.50	$236.00	$309.60	$711.00	$348.05	$410.35	$316.90	$621.00
40	$206.25	$239.50	$315.05	$725.75	$354.80	$418.10	$323.25	$633.75
41	$209.50	$243.00	$320.50	$736.50	$361.05	$425.85	$329.20	$643.50
42	$212.75	$246.50	$325.95	$747.25	$367.30	$433.60	$335.15	$653.25
43	$216.00	$250.00	$331.40	$758.00	$373.55	$441.35	$341.10	$663.00
44	$219.25	$253.50	$336.85	$768.75	$379.80	$449.10	$347.05	$672.75
45	$222.50	$257.00	$342.30	$779.50	$386.05	$456.85	$353.00	$682.50
46	$225.75	$260.50	$347.75	$790.25	$392.30	$464.60	$358.95	$692.25
47	$229.00	$264.00	$353.20	$801.00	$398.55	$472.35	$364.90	$702.00
48	$232.25	$267.50	$358.65	$811.75	$404.80	$480.10	$370.85	$711.75
49	$235.50	$271.00	$364.10	$822.50	$411.05	$487.85	$376.80	$721.50
50	$238.75	$274.50	$369.55	$833.25	$417.30	$495.60	$382.75	$731.25
51	$241.50	$277.25	$375.00	$844.00	$423.55	$503.35	$388.70	$741.00
52	$244.25	$280.00	$380.45	$854.75	$429.80	$511.10	$394.65	$750.75
53	$247.00	$282.75	$385.90	$865.50	$436.05	$518.85	$400.60	$760.50
54	$249.75	$285.50	$391.35	$876.25	$442.30	$526.60	$406.55	$770.25
55	$252.50	$288.25	$396.80	$887.00	$448.55	$534.35	$412.50	$780.00
56	$255.25	$291.00	$402.25	$897.75	$454.80	$542.10	$418.45	$789.75
57	$258.00	$293.75	$407.70	$908.50	$461.05	$549.85	$424.40	$799.50
58	$260.75	$296.50	$413.15	$919.25	$467.30	$557.60	$430.35	$809.25
59	$263.50	$299.25	$418.60	$930.00	$473.55	$565.35	$436.30	$819.00
60	$266.25	$302.00	$424.05	$940.75	$479.80	$573.10	$442.25	$828.75
61	$269.00	$304.75	$429.50	$951.50	$486.05	$580.85	$448.20	$838.50
62	$271.75	$307.50	$434.95	$962.25	$492.30	$588.60	$454.15	$848.25
63	$274.50	$310.25	$440.40	$973.00	$498.55	$596.35	$460.10	$858.00
64	$277.25	$313.00	$445.85	$983.75	$504.80	$604.10	$466.05	$867.75
65	$280.00	$315.75	$451.30	$994.50	$511.05	$611.85	$472.00	$877.50
66	$282.75	$318.50	$456.75	$1,005.25	$517.30	$619.60	$477.95	$887.25
67	$285.50	$321.25	$462.20	$1,016.00	$523.55	$627.35	$483.90	$897.00
68	$288.25	$324.00	$467.65	$1,026.75	$529.80	$635.10	$489.85	$906.75
69	$291.00	$326.75	$473.10	$1,037.50	$536.05	$642.85	$495.80	$916.50
70	$293.75	$329.50	$478.55	$1,048.25	$542.30	$650.60	$501.75	$926.25

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Express Mail International (220)

[Revise the following EMI price groups for the following countries.]

Country	Price group
Great Britain & Northern Ireland	11
Japan	12
France	13
China	14
Brazil	15
Germany	16
Netherlands	17

* * * * *

[For each country for which an Express Mail International price table is provided, replace the Express Mail International price table with the appropriate Price Group table based on the prices below:]

[Insert Express Mail International Price Table here.]

Express Mail International—Flat Rate (223.3)

[For each country that offers Express Mail International Flat Rate service, revise the Flat Rate section as follows:]

[For all countries except Canada:]

Flat-Rate Envelope: $29.95.

[For Canada:]

Flat-Rate Envelope: $26.95.

Insurance (222.71)

Available for Express Mail International merchandise shipments only.

[For each country that offers Express Mail International merchandise insurance, replace the fees to read as follows up to the maximum amount available for each country:]

Insured amount not over	Fee	Insured amount not over	Fee
$100	No Fee	For insurance coverage above $2,000, add $1.45 for each $500 or fraction thereof, up to a maximum of $5,000 per shipment.	
200	$0.80.		
500	2.25.		
1,000	3.70.		
1,500	5.15.		
2,000	6.60	$5,000 max	$15.30

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[For each country that offers Express Mail International service, delete the heading "Return Receipt Service (222.72)" and all associated text in its entirety.]

* * * * *

Priority Mail International (230)

[Revise PMI price groups for the following countries.]

Country	Price group
Great Britain & Northern Ireland	11
Japan	12
France	13
China	14
Brazil	15
Germany	16
Netherlands	17

[For each country, for which a Priority Mail International price table is provided, replace the Priority Mail International price table with the appropriate Price Group table based on the prices below:]

[Insert Priority Mail International Price Table here.]

Priority Mail International—Flat Rate (232.2)

[For each country that offers Priority Mail International Flat Rate service, revise the lines of text for the Flat Rate envelope and Flat Rate boxes as follows:]

[For all countries except Canada and Mexico:]

Flat-Rate Envelope or Small Flat-Rate Box: $13.95.

* * * * *

Flat-Rate Boxes: Medium—$45.50; Large—$58.50.

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[For Canada and Mexico:]

Flat-Rate Envelope or Small Flat-Rate Box: $11.95.

* * * * *

Flat-Rate Boxes: Medium—$27.95; Large—$35.50.

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[Insert new 232.82 (which replaces current 323) as follows. In addition, for each country that offers Priority Mail International parcel insurance, replace the fees to read as follows up to the maximum amount available for each country. For those countries that do not offer Priority Mail International insurance, insert "NOT Available" after the title:]

Insurance 232.82

Available for Priority Mail International merchandise parcels only (*see* 323.72 for markings).

Insured amount not over	Fee	Insured amount not over	Fee
$50	$2.30		
100	3.40	Add $1.10 for each additional $100 or fraction of insurance coverage.	
200	4.50		
300	5.60		
400	6.70		
500	7.80	$5,000 max	$57.30

First-Class Mail International

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Airmail M-Bags (260)—Direct Sack to One Addressee

[For each country listing that offers Airmail M-bags, replace the prices with the prices from the following table based on their appropriate price group:]

Price group	Weight not over 11 pounds	Additional per pound
1	$28.60	$2.60
2	29.70	2.70
3	59.95	5.45
4	48.40	4.40
5	37.95	3.45
6	59.40	5.40
7	48.95	4.45
8	48.95	4.45
9	46.20	4.20

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Extra Services

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[For each country listing that carries Priority Mail International Insurance (323) under the Extra Services section, delete the heading, associated text, and insurance table in its entirety. This section has been moved to 232.82 of each ICL where applicable.]

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International Postal Money Order (371)

[For each country that offers International Postal Money Orders, revise the fee as follows. In addition, for those countries that offer International Postal Money Orders, add the following new text directly below the line that indicates the maximum amount available: "Money Order Inquiry Fee: $5.40".]

Fee: $4.25.

Money Order Inquiry Fee: $5.40.

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

BILLING CODE P

Express Mail International Price Table

Weight Not Over (lb.)	Price Groups																
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
0.5	$26.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95	$29.95
1	32.50	33.75	34.50	34.00	34.75	34.00	36.75	36.25	35.25	35.50	34.75	34.50	34.75	34.50	35.25	34.75	34.75
2	36.15	37.60	39.45	38.35	39.50	38.75	41.60	41.20	40.10	40.95	39.55	39.45	39.50	39.35	40.00	39.55	39.45
3	39.80	41.45	44.40	42.70	44.25	43.50	46.45	46.15	44.95	46.40	44.35	44.40	44.25	44.20	44.75	44.35	44.15
4	43.45	45.30	49.35	47.05	49.00	48.25	51.30	51.10	49.80	51.85	49.15	49.35	49.00	49.05	49.50	49.15	48.85
5	47.10	49.15	54.30	51.40	53.75	53.00	56.15	56.05	54.65	57.70	53.95	54.30	53.75	53.90	54.25	53.95	53.55
6	50.85	52.30	59.25	55.75	58.30	58.45	61.80	61.80	60.00	63.55	58.30	59.25	58.10	58.75	59.50	58.25	57.90
7	54.60	55.45	64.20	60.10	62.85	63.90	67.45	67.55	65.35	69.40	62.65	64.20	62.45	63.60	64.75	62.55	62.25
8	58.35	58.60	69.15	64.45	67.40	69.35	73.10	73.30	70.70	75.25	67.00	69.15	66.80	68.45	70.00	66.85	66.60
9	62.10	61.75	74.10	68.80	71.95	74.80	78.75	79.05	76.05	81.10	71.35	74.10	71.15	73.30	75.25	71.15	70.95
10	65.85	64.90	79.05	73.15	76.50	80.25	84.40	84.80	81.40	86.95	75.70	79.05	75.50	78.15	80.50	75.45	75.30
11	69.40	67.55	84.30	77.40	81.05	85.80	90.05	90.55	86.65	92.80	80.05	84.10	79.85	83.40	85.65	79.75	79.65
12	72.95	70.20	89.55	81.65	85.60	91.35	95.70	96.30	91.90	98.65	84.40	89.15	84.20	88.65	90.80	84.05	84.00
13	76.50	72.85	94.80	85.90	90.15	96.90	101.35	102.05	97.15	104.50	88.75	94.20	88.55	93.90	95.95	88.35	88.35
14	80.05	75.50	100.05	90.15	94.70	102.45	107.00	107.80	102.40	110.35	93.10	99.25	92.90	99.15	101.10	92.65	92.70
15	83.60	78.15	105.30	94.40	99.25	108.00	112.65	113.55	107.65	116.20	97.45	104.30	97.25	104.40	106.25	96.95	97.05
16	87.15	80.80	111.05	98.65	103.80	113.55	118.30	119.30	112.90	122.25	101.80	109.95	101.60	110.05	111.40	101.25	101.40
17	90.70	83.45	116.80	102.90	108.35	119.10	123.95	125.05	118.15	128.30	106.15	115.60	105.95	115.70	116.55	105.55	105.75
18	94.25	86.10	122.55	107.15	112.90	124.65	129.60	130.80	123.40	134.35	110.50	121.25	110.30	121.35	121.70	109.85	110.10
19	97.80	88.75	128.30	111.40	117.45	130.20	135.25	136.55	128.65	140.40	114.85	126.90	114.65	127.00	126.85	114.15	114.45
20	101.35	91.40	134.05	115.65	122.00	135.75	140.90	142.30	133.90	146.45	119.20	132.55	119.00	132.65	132.00	118.45	118.80
21	104.90	94.05	139.80	119.90	126.55	141.30	146.55	148.05	139.15	152.50	123.55	138.20	123.35	138.30	137.15	122.75	123.15
22	108.45	96.70	145.55	124.15	131.10	146.85	152.20	153.80	144.40	158.55	127.90	143.85	127.70	143.95	142.30	127.05	127.50
23	112.00	99.35	151.30	128.40	135.65	152.40	157.85	159.55	149.65	164.60	132.25	149.50	132.05	149.60	147.45	131.35	131.85
24	115.55	102.00	157.05	132.65	140.20	157.95	163.50	165.30	154.90	170.65	136.60	155.15	136.40	155.25	152.60	135.65	136.20
25	119.10	104.65	162.80	136.90	144.75	163.50	169.15	171.05	160.15	176.70	140.95	160.80	140.75	160.90	157.75	139.95	140.55
26	122.65	107.30	168.55	141.15	149.30	169.05	174.80	176.80	165.40	182.75	145.30	166.45	145.10	166.55	162.90	144.25	144.90

27	126.20	109.95	174.30	145.40	153.85	174.60	180.45	182.55	170.65	188.80	149.65	172.10	149.45	172.20	168.05	148.55	149.25
28	129.75	112.60	180.05	149.65	158.40	180.15	186.10	188.30	175.90	194.85	154.00	177.75	153.80	177.85	173.20	152.85	153.60
29	133.30	115.25	185.80	153.90	162.95	185.70	191.75	194.05	181.15	200.90	158.35	183.40	158.15	183.50	178.35	157.15	157.95
30	136.85	117.90	191.55	158.15	167.50	191.25	197.40	199.80	186.40	206.95	162.70	189.05	162.50	189.15	183.50	161.45	162.30
31	140.40	120.55	197.30	162.40	172.05	196.80	203.05	205.55	191.65	213.00	167.05	194.70	166.85	194.80	188.65	165.75	166.65
32	143.95	123.20	203.05	166.65	176.60	202.35	208.70	211.30	196.90	219.05	171.40	200.35	171.20	200.45	193.80	170.05	171.00
33	147.50	125.85	208.80	170.90	181.15	207.90	214.35	217.05	202.15	225.10	175.75	206.00	175.55	206.10	198.95	174.35	175.35
34	151.05	128.50	214.55	175.15	185.70	213.45	220.00	222.80	207.40	231.15	180.10	211.65	179.90	211.75	204.10	178.65	179.70
35	154.60	131.15	220.30	179.40	190.25	219.00	225.65	228.55	212.65	237.20	184.45	217.30	184.25	217.40	209.25	182.95	184.05
36	158.15	133.80	226.05	183.65	194.80	224.55	231.30	234.30	217.90	243.25	188.80	222.95	188.60	223.05	214.40	187.25	188.40
37	161.70	136.45	231.80	187.90	199.35	230.10	236.95	240.05	223.15	249.30	193.15	228.60	192.95	228.70	219.55	191.55	192.75
38	165.25	139.10	237.55	192.15	203.90	235.65	242.60	245.80	228.40	255.35	197.50	234.25	197.30	234.35	224.70	195.85	197.10
39	168.80	141.75	243.30	196.40	208.45	241.20	248.25	251.55	233.65	261.40	201.85	239.90	201.65	240.00	229.85	200.15	201.45
40	172.35	144.40	249.05	200.65	213.00	246.75	253.90	257.30	238.90	267.45	206.20	245.55	206.00	245.65	235.00	204.45	205.80
41	175.90	147.05	254.80	204.90	217.55	252.20	259.55	263.05	244.15	273.50	210.55	251.20	210.35	251.30	240.15	208.75	210.15
42	179.45	149.70	260.55	209.15	222.10	257.65	265.20	268.80	249.40	279.55	214.90	256.85	214.70	256.95	245.30	213.05	214.50
43	183.00	152.35	266.30	213.40	226.65	263.10	270.85	274.55	254.65	285.60	219.25	262.50	219.05	262.60	250.45	217.35	218.85
44	186.55	155.00	272.05	217.65	231.20	268.55	276.50	280.30	259.90	291.65	223.60	268.15	223.40	268.25	255.60	221.65	223.20
45	190.10	-	277.80	221.90	235.75	274.00	282.15	286.05	265.15	297.70	227.95	273.80	227.75	273.90	260.75	225.95	227.55
46	193.65	-	283.55	226.15	240.30	279.45	287.80	291.80	270.40	303.75	232.30	279.45	232.10	279.55	265.90	230.25	231.90
47	197.20	-	289.30	230.40	244.85	284.90	293.45	297.55	275.65	309.80	236.65	285.10	236.45	285.20	271.05	234.55	236.25
48	200.75	-	295.05	234.65	249.40	290.35	299.10	303.30	280.90	315.85	241.00	290.75	240.80	290.85	276.20	238.85	240.60
49	204.30	-	300.80	238.90	253.95	295.80	304.75	309.05	286.15	321.90	245.35	296.40	245.15	296.50	281.35	243.15	244.95
50	207.85	-	306.55	243.15	258.50	301.25	310.40	314.80	291.40	327.95	249.70	302.05	249.50	302.15	286.50	247.45	249.30
51	211.40	-	312.30	247.40	263.05	306.70	316.05	320.55	296.65	334.00	254.05	307.70	253.85	307.80	291.65	251.75	253.65
52	214.95	-	318.05	251.65	267.60	312.15	321.70	326.30	301.90	340.05	258.40	313.35	258.20	313.45	296.80	256.05	258.00
53	218.50	-	323.80	255.90	272.15	317.60	327.35	332.05	307.15	346.10	262.75	319.00	262.55	319.10	301.95	260.35	262.35
54	222.05	-	329.55	260.15	276.70	323.05	333.00	337.80	312.40	352.15	267.10	324.65	266.90	324.75	307.10	264.65	266.70
55	225.60	-	335.30	264.40	281.25	328.50	338.65	343.55	317.65	358.20	271.45	330.30	271.25	330.40	312.25	268.95	271.05
56	229.15	-	341.05	268.65	285.80	333.95	344.30	349.30	322.90	364.25	275.80	335.95	275.60	336.05	317.40	273.25	275.40
57	232.70	-	346.80	272.90	290.35	339.40	349.95	355.05	328.15	370.30	280.15	341.60	279.95	341.70	322.55	277.55	279.75
58	236.25	-	352.55	277.15	294.90	344.85	355.60	360.80	333.40	376.35	284.50	347.25	284.30	347.35	327.70	281.85	284.10

59	239.80	-	358.30	281.40	299.45	350.30	361.25	366.55	338.65	382.40	288.85	352.90	288.65	353.00	332.85	286.15	288.45
60	243.35	-	364.05	285.65	304.00	355.75	366.90	372.30	343.90	388.45	293.20	358.55	293.00	358.65	338.00	290.45	292.80
61	246.90	-	369.80	289.90	308.55	361.20	372.55	378.05	349.15	394.50	297.55	364.20	297.35	364.30	343.15	294.75	297.15
62	250.45	-	375.55	294.15	313.10	366.65	378.20	383.80	354.40	400.55	301.90	369.85	301.70	369.95	348.30	299.05	301.50
63	254.00	-	381.30	298.40	317.65	372.10	383.85	389.55	359.65	406.60	306.25	375.50	306.05	375.60	353.45	303.35	305.85
64	257.55	-	387.05	302.65	322.20	377.55	389.50	395.30	364.90	412.65	310.60	381.15	310.40	381.25	358.60	307.65	310.20
65	261.10	-	392.80	306.90	326.75	383.00	395.15	401.05	370.15	418.70	314.95	386.80	314.75	386.90	363.75	311.95	314.55
66	264.65	-	398.55	311.15	331.30	388.45	400.80	406.80	375.40	424.75	319.30	392.45	319.10	392.55	368.90	316.25	318.90
67	-	-	404.30	315.40	335.85	393.90	406.45	412.55	380.65	-	-	-	-	-	-	-	-
68	-	-	410.05	319.65	340.40	399.35	412.10	418.30	385.90	-	-	-	-	-	-	-	-
69	-	-	415.80	323.90	344.95	404.80	417.75	424.05	391.15	-	-	-	-	-	-	-	-
70	-	-	421.55	328.15	349.50	410.25	423.40	429.80	396.40	-	-	-	-	-	-	-	-

Priority Mail International Price Table

Weight Not Over (lb.)	Price Groups																
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
1	$21.25	$21.25	$28.00	$26.25	$29.25	$27.75	$27.00	$26.00	$25.50	$28.75	$29.50	$27.75	$29.25	$27.75	$25.50	$29.25	$29.25
2	23.10	25.10	32.50	30.00	32.40	32.00	31.85	30.25	29.25	33.60	32.55	31.90	32.15	32.00	29.15	32.20	32.30
3	24.95	28.95	37.00	33.75	35.55	36.25	36.70	34.50	33.00	38.45	35.60	36.05	35.05	36.25	32.80	35.15	35.35
4	26.80	32.80	41.50	37.50	38.70	40.50	41.55	38.75	36.75	43.30	38.65	40.20	37.95	40.50	36.45	38.10	38.40
5	28.65	36.65	46.00	41.25	41.85	44.75	46.40	43.00	40.50	48.15	41.70	44.35	40.85	44.75	40.10	41.05	41.45
6	30.50	39.40	49.75	45.20	45.00	50.25	51.25	47.45	43.35	53.40	44.65	48.10	43.75	48.40	42.85	44.00	44.40
7	32.35	42.15	53.50	49.15	48.15	55.75	56.10	51.90	46.20	58.65	47.60	51.85	46.65	52.05	45.60	46.95	47.35
8	34.20	44.90	57.25	53.10	51.30	61.25	60.95	56.35	49.05	63.90	50.55	55.60	49.55	55.70	48.35	49.90	50.30
9	36.05	47.65	61.00	57.05	54.45	66.75	65.80	60.80	51.90	69.15	53.50	59.35	52.45	59.35	51.10	52.85	53.25
10	37.90	50.40	64.75	61.00	57.60	72.25	70.65	65.25	54.75	74.40	56.45	63.10	55.35	63.00	53.85	55.80	56.20
11	39.85	52.55	68.50	64.95	60.75	77.75	75.80	70.00	58.60	79.65	59.40	66.85	58.25	66.65	57.60	58.75	59.15
12	41.80	54.70	72.25	68.90	63.90	83.25	80.95	74.75	62.45	84.90	62.35	70.60	61.15	70.30	61.35	61.70	62.10
13	43.75	56.85	76.00	72.85	67.05	88.75	86.10	79.50	66.30	90.15	65.30	74.35	64.05	73.95	65.10	64.65	65.05
14	45.70	59.00	79.75	76.80	70.20	94.25	91.25	84.25	70.15	95.40	68.25	78.10	66.95	77.60	68.85	67.60	68.00
15	47.65	61.15	83.50	80.75	73.35	99.75	96.40	89.00	74.00	100.65	71.20	81.85	69.85	81.25	72.60	70.55	70.95
16	49.60	63.30	87.25	84.70	76.50	105.25	101.55	93.75	77.85	105.90	74.15	85.60	72.75	84.90	76.35	73.50	73.90
17	51.55	65.45	91.00	88.65	79.65	110.75	106.70	98.50	81.70	111.15	77.10	89.35	75.65	88.55	80.10	76.45	76.85
18	53.50	67.60	94.75	92.60	82.80	116.25	111.85	103.25	85.55	116.40	80.05	93.10	78.55	92.20	83.85	79.40	79.80
19	55.45	69.75	98.50	96.55	85.95	121.75	117.00	108.00	89.40	121.65	83.00	96.85	81.45	95.85	87.60	82.35	82.75
20	57.40	71.90	102.25	100.50	89.10	127.25	122.15	112.75	93.25	126.90	85.95	100.60	84.35	99.50	91.35	85.30	85.70
21	59.35	74.05	106.00	104.45	92.25	132.75	127.30	117.50	97.10	132.15	88.90	104.35	87.25	103.15	95.10	88.25	88.65
22	61.30	76.20	109.75	108.40	95.40	138.25	132.45	122.25	100.95	137.40	91.85	108.10	90.15	106.80	98.85	91.20	91.60
23	63.25	78.35	113.50	112.35	98.55	143.75	137.60	127.00	104.80	142.65	94.80	111.85	93.05	110.45	102.60	94.15	94.55
24	65.20	80.50	117.25	116.30	101.70	149.25	142.75	131.75	108.65	147.90	97.75	115.60	95.95	114.10	106.35	97.10	97.50
25	67.15	82.65	121.00	120.25	104.85	154.75	147.90	136.50	112.50	153.15	100.70	119.35	98.85	117.75	110.10	100.05	100.45
26	69.10	84.80	124.75	124.20	108.00	160.25	153.05	141.25	116.35	158.40	103.65	123.10	101.75	121.40	113.85	103.00	103.40
27	71.05	86.95	128.50	128.15	111.15	165.75	158.20	146.00	120.20	163.65	106.60	126.85	104.65	125.05	117.60	105.95	106.35
28	73.00	89.10	132.25	132.10	114.30	171.25	163.35	150.75	124.05	168.90	109.55	130.60	107.55	128.70	121.35	108.90	109.30
29	74.95	91.25	136.00	136.05	117.45	176.75	168.50	155.50	127.90	174.15	112.50	134.35	110.45	132.35	125.10	111.85	112.25
30	76.90	93.40	139.75	140.00	120.60	182.25	173.65	160.25	131.75	179.40	115.45	138.10	113.35	136.00	128.85	114.80	115.20
31	78.85	95.55	143.50	143.95	123.75	187.75	178.80	165.00	135.60	184.65	118.40	141.85	116.25	139.65	132.60	117.75	118.15
32	80.80	97.70	147.25	147.90	126.90	193.25	183.95	169.75	139.45	189.90	121.35	145.60	119.15	143.30	136.35	120.70	121.10
33	82.75	99.85	151.00	151.85	130.05	198.75	189.10	174.50	143.30	195.15	124.30	149.35	122.05	146.95	140.10	123.65	124.05
34	84.70	102.00	154.75	155.80	133.20	204.25	194.25	179.25	147.15	200.40	127.25	153.10	124.95	150.60	143.85	126.60	127.00
35	86.65	104.15	158.50	159.75	136.35	209.75	199.40	184.00	151.00	205.65	130.20	156.85	127.85	154.25	147.60	129.55	129.95

36	88.60	106.30	162.25	163.70	139.50	215.25	204.55	188.75	154.85	210.90	133.15	160.60	130.75	157.90	151.35	132.50	132.90
37	90.55	108.45	166.00	167.65	142.65	220.75	209.70	193.50	158.70	216.15	136.10	164.35	133.65	161.55	155.10	135.45	135.85
38	92.50	110.60	169.75	171.60	145.80	226.25	214.85	198.25	162.55	221.40	139.05	168.10	136.55	165.20	158.85	138.40	138.80
39	94.45	112.75	173.50	175.55	148.95	231.75	220.00	203.00	166.40	226.65	142.00	171.85	139.45	168.85	162.60	141.35	141.75
40	96.40	114.90	177.25	179.50	152.10	237.25	225.15	207.75	170.25	231.90	144.95	175.60	142.35	172.50	166.35	144.30	144.70
41	98.35	117.05	181.00	183.45	155.25	242.75	230.30	212.50	174.10	237.15	147.90	179.35	145.25	176.15	170.10	147.25	147.65
42	100.30	119.20	184.75	187.40	158.40	248.25	235.45	217.25	177.95	242.40	150.85	183.10	148.15	179.80	173.85	150.20	150.60
43	102.25	121.35	188.50	191.35	161.55	253.75	240.60	222.00	181.80	247.65	153.80	186.85	151.05	183.45	177.60	153.15	153.55
44	104.20	123.50	192.25	195.30	164.70	259.25	245.75	226.75	185.65	252.90	156.75	190.60	153.95	187.10	181.35	156.10	156.50
45	106.15	-	196.00	199.25	167.85	264.75	250.90	231.50	189.50	258.15	159.70	194.35	156.85	190.75	185.10	159.05	-
46	108.10	-	199.75	203.20	171.00	270.25	256.05	236.25	193.35	263.40	162.65	198.10	159.75	194.40	188.85	162.00	-
47	110.05	-	203.50	207.15	174.15	275.75	261.20	241.00	197.20	268.65	165.60	201.85	162.65	198.05	192.60	164.95	-
48	112.00	-	207.25	211.10	177.30	281.25	266.35	245.75	201.05	273.90	168.55	205.60	165.55	201.70	196.35	167.90	-
49	113.95	-	211.00	215.05	180.45	286.75	271.50	250.50	204.90	279.15	171.50	209.35	168.45	205.35	200.10	170.85	-
50	115.90	-	214.75	219.00	183.60	292.25	276.65	255.25	208.75	284.40	174.45	213.10	171.35	209.00	203.85	173.80	-
51	117.85	-	218.50	222.95	186.75	297.75	281.80	260.00	212.60	289.65	177.40	216.85	174.25	212.65	207.60	176.75	-
52	119.80	-	222.25	226.90	189.90	303.25	286.95	264.75	216.45	294.90	180.35	220.60	177.15	216.30	211.35	179.70	-
53	121.75	-	226.00	230.85	193.05	308.75	292.10	269.50	220.30	300.15	183.30	224.35	180.05	219.95	215.10	182.65	-
54	123.70	-	229.75	234.80	196.20	314.25	297.25	274.25	224.15	305.40	186.25	228.10	182.95	223.60	218.85	185.60	-
55	125.65	-	233.50	238.75	199.35	319.75	302.40	279.00	228.00	310.65	189.20	231.85	185.85	227.25	222.60	188.55	-
56	127.60	-	237.25	242.70	202.50	325.25	307.55	283.75	231.85	315.90	192.15	235.60	188.75	230.90	226.35	191.50	-
57	129.55	-	241.00	246.65	205.65	330.75	312.70	288.50	235.70	321.15	195.10	239.35	191.65	234.55	230.10	194.45	-
58	131.50	-	244.75	250.60	208.80	336.25	317.85	293.25	239.55	326.40	198.05	243.10	194.55	238.20	233.85	197.40	-
59	133.45	-	248.50	254.55	211.95	341.75	323.00	298.00	243.40	331.65	201.00	246.85	197.45	241.85	237.60	200.35	-
60	135.40	-	252.25	258.50	215.10	347.25	328.15	302.75	247.25	336.90	203.95	250.60	200.35	245.50	241.35	203.30	-
61	137.35	-	256.00	262.45	218.25	352.75	333.30	307.50	251.10	342.15	206.90	254.35	203.25	249.15	245.10	206.25	-
62	139.30	-	259.75	266.40	221.40	358.25	338.45	312.25	254.95	347.40	209.85	258.10	206.15	252.80	248.85	209.20	-
63	141.25	-	263.50	270.35	224.55	363.75	343.60	317.00	258.80	352.65	212.80	261.85	209.05	256.45	252.60	212.15	-
64	143.20	-	267.25	274.30	227.70	369.25	348.75	321.75	262.65	357.90	215.75	265.60	211.95	260.10	256.35	215.10	-
65	145.15	-	271.00	278.25	230.85	374.75	353.90	326.50	266.50	363.15	218.70	269.35	214.85	263.75	260.10	218.05	-
66	147.10	-	274.75	282.20	234.00	380.25	359.05	331.25	270.35	368.40	221.65	273.10	217.75	267.40	263.85	221.00	-
67	-	-	278.50	286.15	237.15	385.75	364.20	336.00	274.20	-	-	-	-	-	-	223.95	-
68	-	-	282.25	290.10	240.30	391.25	369.35	340.75	278.05	-	-	-	-	-	-	226.90	-
69	-	-	286.00	294.05	243.45	396.75	374.50	345.50	281.90	-	-	-	-	-	-	229.85	-
70	-	-	289.75	298.00	246.60	402.25	379.65	350.25	285.75	-	-	-	-	-	-	232.80	-

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BILLING CODE C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1, 21, 59, 60, 61, 62, 63, 65, 707, and 763

[FRL–9221–7]

Change of Addresses for Submission of Certain Reports; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is updating and correcting the addresses for both the EPA Region IX office and the EPA Region IX State and local agencies in certain EPA regulations related to air pollution, small businesses, chemical imports and exports, and asbestos. These regulations require submittal of notifications, reports and other documents to the applicable EPA regional office and, in some case, to the applicable State or local agency. The jurisdiction of EPA Region IX covers the States of Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. This technical amendment updates and corrects the addresses for submitting such information to the EPA Region IX office and the applicable State and local agency offices.

DATES: *Effective Date:* This rule will be effective on November 12, 2010.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, U.S. Environmental Protection Agency, Region IX, Rulemaking Office (Air-4), 75 Hawthorne Street, San Francisco, California 94105, (415) 947–4120, *allen.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we" or "our" is used, it means the EPA.

We are updating and correcting the address for the EPA Region IX office found in the following parts of title 40 of the Code of Federal Regulations (CFR):

- Part 1 ("Statement of organization and general information"),
- Part 21 ("Small business"),
- Part 59 ("National volatile organic compound emission standards for consumer and commercial products"),
- Part 60 ("Standards of performance for new stationary sources"),
- Part 61 ("National emission standards for hazardous air pollutants"),
- Part 62 ("Approval and promulgation of State plans for designated facilities and pollutants"),
- Part 63 ("National emission standards for hazardous air pollutants for source categories"),
- Part 65 ("Consolidated Federal air rule"),
- Part 707 ("Chemical imports and exports"), and
- Part 763 ("Asbestos").

Certain EPA regulations requiring submittal of notifications, reports and other documents to the EPA regional office must also be submitted to the appropriate authorized State and local agency. Thus, this technical amendment also updates and corrects the addresses for submitting such information to the EPA Region IX State and local agency offices.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting EPA Region IX's address, as well as those of certain EPA Region IX States and local agencies. Thus, notice and public procedures are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of this action, which updates and corrects the addresses for the EPA Region IX office, and for certain State and local agencies. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule simply updates and corrects the addresses for the EPA Region IX office and certain State and local air agencies. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355), May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48 (1995)). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898

(59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 12, 2010. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This series of corrections to the General Provisions of 40 CFR parts 1, 21, 59, 60, 61, 62, 63, 65, 707, and 763 is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 1, 21, 59, 60, 61, 62, 63, 65, 707, and 763

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 25, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 552.

Subpart (A)—Introduction

■ 2. Section 1.7 is amended by revising paragraph (b)(9) to read as follows:

§ 1.7 Location of principal offices.

* * * * *

(b) * * *

(9) Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. (Arizona, California, Hawaii, Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.)

* * * * *

PART 21—[AMENDED]

■ 3. The authority citation for part 21 continues to read as follows:

Authority: 15 U.S.C. 636, as amended by Pub. L. 92–500.

■ 4. Section 21.3 is amended by revising entry IX in the table in paragraph (a) to read as follows:

§ 21.3 Submission of applications.

(a) * * *

Region	Address	State
*	*	*
IX	Regional Administrator, Region IX, EPA, 75 Hawthorne St., San Francisco, CA 94105.	Arizona, California, Hawaii, Nevada, the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
*	*	*

* * * * *

PART 59—[AMENDED]

■ 5. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 7414 and 7511b(e).

Subpart B—National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

■ 6. Section 59.107 is amended by revising the address for EPA Region IX to read as follows:

§ 59.107 Addresses of EPA Regional Offices.

* * * * *

EPA Region IX (Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

Subpart C—National Volatile Organic Compound Emission Standards for Consumer Products

■ 7. Section 59.210 is amended by revising the address for EPA Region IX to read as follows:

§ 59.210 Addresses of EPA Regional Offices.

* * * * *

EPA Region IX (Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

PART 60—[AMENDED]

■ 8. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 9. Section 60.4 is amended as follows:
■ a. By revising the entry for Region IX in paragraph (a).
■ b. By revising paragraph (b)(D) except the note.
■ c. By revising paragraph (b)(F) except the note.
■ d. By revising paragraph (b)(M) except the note.
■ e. By revising paragraph (b)(DD) except the note.
■ f. By revising paragraph (b)(AAA) except the note.
■ g. By revising paragraph (b)(DDD) except the note.
■ h. By revising paragraph (b)(EEE) except the note.

§ 60.4 Address.

(a) * * *

Region IX (Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Air Quality Department, 1001 North Central Avenue, Suite 900, Phoenix, AZ 85004.

Pima County Department of Environmental Quality, 33 North Stone Avenue, Suite 700, Tucson, AZ 85701.

Pinal County Air Quality Control District, 31 North Pinal Street, Building F, Florence, AZ 85132.

* * * * *

(F) California:

Amador County Air Pollution Control District, 12200–B Airport Road, Jackson, CA 95642.

Antelope Valley Air Quality Management District, 43301 Division Street, Suite 206, Lancaster, CA 93535.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928.

Calaveras County Air Pollution Control District, 891 Mountain Ranch Road, San Andreas, CA 95249.

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite A–3, Colusa, CA 95932–3246.

El Dorado County Air Quality Management District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100.

Eastern Kern Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370.

Feather River Air Quality Management District, 1007 Live Oak Blvd., Suite B–3, Yuba City, CA 95991.

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405.

Lassen County Air Pollution Control District, 707 Nevada Street, Suite 1, Susanville, CA 96130.

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338.

Mendocino County Air Quality Management District, 306 E. Gobbi Street, Ukiah, CA 95482–5511.

Modoc County Air Pollution Control District, 619 North Main Street, Alturas, CA 96101.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.

Northern Sierra Air Quality Management District, 200 Litton Drive, Suite 320, P.O. Box 2509, Grass Valley, CA 95945–2509.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

Placer County Air Pollution Control District, 3091 County Center Drive, Suite 240, Auburn, CA 95603.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908.

San Diego County Air Pollution Control District, 10124 Old Grove Road, San Diego, CA 92131–1649.

San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.

Santa Barbara County Air Pollution Control District, 260 North San Antonio Road, Suite A, Santa Barbara, CA 93110–1315.

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036.

South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, CA 91765–4182.

Tehama County Air Pollution Control District, P.O. Box 8069 (1750 Walnut Street), Red Bluff, CA 96080–0038.

Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003–5417.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616–4882.

* * * * *

(M) Hawaii:

Clean Air Branch, Hawaii Department of Health, 919 Ala Moana Blvd., Suite 203, Honolulu, HI 96814.

* * * * *

(DD) Nevada:

Nevada Division of Environmental Protection, 901 South Stewart Street, Suite 4001, Carson City, NV 89701–5249.

Clark County Department of Air Quality and Environmental Management, 500 S. Grand Central Parkway, 1st Floor, P.O. Box 555210, Las Vegas, NV 89155–5210.

Washoe County Health District, Air Quality Management Division, 1001 E. 9th Street, Building A, Suite 115A, Reno, NV 89520.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921.

* * * * *

(DDD) American Samoa: American Samoa Environmental Protection Agency, P.O. Box PPA, Pago Pago, American Samoa 96799.

* * * * *

(EEE) Commonwealth of the Northern Mariana Islands: CNMI Division of Environmental Quality, P.O. Box 501304, Saipan, MP 96950.

* * * * *

PART 61—[AMENDED]

■ 10. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 11. Section 61.04 is amended as follows:

■ a. By revising the entry for Region IX in paragraph (a).

■ b. By revising paragraph (b)(D) except the note.

■ c. By revising paragraph (b)(F) except the note.

■ d. By revising paragraph (b)(M) except the note.

■ e. By revising paragraph (b)(DD) except the note.

■ f. By revising paragraph (b)(AAA) except the note.

■ g. By revising paragraph (b)(DDD) except the note.

■ h. By revising paragraph (b)(EEE) except the note.

§ 61.04 Address.

(a) * * *

Region IX (Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Air Quality Department, 1001 North Central Avenue, Suite 900, Phoenix, AZ 85004.

Pima County Department of Environmental Quality, 33 North Stone Avenue, Suite 700, Tucson, AZ 85701.

Pinal County Air Quality Control District, 31 North Pinal Street, Building F, Florence, AZ 85132.

* * * * *

(F) California:

Amador County Air Pollution Control District, 12200–B Airport Road, Jackson, CA 95642.

Antelope Valley Air Quality Management District, 43301 Division Street, Suite 206, Lancaster, CA 93535.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928.

Calaveras County Air Pollution Control District, 891 Mountain Ranch Road, San Andreas, CA 95249.

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite A–3, Colusa, CA 95932–3246.

El Dorado County Air Quality Management District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100.

Eastern Kern Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370.

Feather River Air Quality Management District, 1007 Live Oak Blvd., Suite B–3, Yuba City, CA 95991.

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405.

Lassen County Air Pollution Control District, 707 Nevada Street, Suite 1, Susanville, CA 96130.

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338.

Mendocino County Air Quality Management District, 306 E. Gobbi Street, Ukiah, CA 95482–5511.

Modoc County Air Pollution Control District, 619 North Main Street, Alturas, CA 96101.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.

Northern Sierra Air Quality Management District, 200 Litton Drive, Suite 320, P.O. Box 2509, Grass Valley, CA 95945–2509.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

Placer County Air Pollution Control District, 3091 County Center Drive, Suite 240, Auburn, CA 95603.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908.

San Diego County Air Pollution Control District, 10124 Old Grove Road, San Diego, CA 92131–1649.

San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.

Santa Barbara County Air Pollution Control District, 260 North San Antonio Road, Suite A, Santa Barbara, CA 93110–1315.

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036.

South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, CA 91765–4182.

Tehama County Air Pollution Control District, P.O. Box 8069 (1750 Walnut Street), Red Bluff, CA 96080–0038.

Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003–5417.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616–4882.

* * * * *

(M) Hawaii:

Clean Air Branch, Hawaii Department of Health, 919 Ala Moana Blvd., Suite 203, Honolulu, HI 96814.

* * * * *

(DD) Nevada:

Nevada Division of Environmental Protection, 901 South Stewart Street, Suite 4001, Carson City, NV 89701–5249.

Clark County Department of Air Quality and Environmental Management, 500 S. Grand Central Parkway, 1st Floor, P.O. Box 555210, Las Vegas, NV 89155–5210.

Washoe County Health District, Air Quality Management Division, 1001 E. 9th Street, Building A, Suite 115A, Reno, NV 89520.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921.

* * * * *

(DDD) American Samoa: American Samoa Environmental Protection Agency, P.O. Box PPA, Pago Pago, American Samoa 96799.

* * * * *

(EEE) Commonwealth of the Northern Mariana Islands: CNMI Division of Environmental Quality, P.O. Box 501304, Saipan, MP 96950.

* * * * *

PART 62—[AMENDED]

■ 12. The authority citation for part 62 continues to read as follows:

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

Subpart A—General Provisions

■ 13. Section 62.10 is amended in the table by revising the address for Region IX to read as follows:

§ 62.10 Submission to Administrator.

* * * * *

Region and jurisdiction covered	Address
* * * * *	* *
IX—Arizona, California, Hawaii, Nevada, the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.	75 Hawthorne Street, San Francisco, CA 94105.
* * * * *	* *

* * * * *

PART 63—[AMENDED]

■ 14. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 15. Section 63.13 is amended by revising the address for EPA Region IX in paragraph (a) to read as follows:

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) * * *

EPA Region IX (Arizona, California, Hawaii, Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

PART 65—[AMENDED]

■ 16. The authority citation for part 65 continues to read as follows:

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

Subpart A—General Provisions

■ 17. Section 65.14 is amended as follows:

■ a. By revising the address for Region IX in paragraph (a).

■ b. By revising paragraph (b)(3).

■ c. By revising paragraph (b)(5).

■ d. By revising paragraph (b)(11).

■ e. By revising paragraph (b)(28).

§ 65.14 Addresses.

(a) * * *

Region IX (Arizona, California, Hawaii, Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(3) Arizona. Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

* * * * *

(5) California.

(i) Amador County Air Pollution Control District, 12200–B Airport Road, Jackson, CA 95642.

(ii) Antelope Valley Air Quality Management District, 43301 Division Street, Suite 206, Lancaster, CA 93535.

(iii) Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

(iv) Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928.

(v) Calaveras County Air Pollution Control District, 891 Mountain Ranch Road, San Andreas, CA 95249.

(vi) Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite A–3, Colusa, CA 95932–3246.

(vii) El Dorado County Air Quality Management District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100.

(viii) Eastern Kern Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370.

(ix) Feather River Air Quality Management District, 1007 Live Oak Blvd., Suite B–3, Yuba City, CA 95991.

(x) Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351.

(xi) Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537.

(xii) Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

(xiii) Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405.

(xiv) Lassen County Air Pollution Control District, 707 Nevada Street, Suite 1, Susanville, CA 96130.

(xv) Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338.

(xvi) Mendocino County Air Quality Management District, 306 E. Gobbi Street, Ukiah, CA 95482–5511.

(xvii) Modoc County Air Pollution Control District, 619 North Main Street, Alturas, CA 96101.

(xviii) Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310.

(xix) Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

(xx) North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.

(xxi) Northern Sierra Air Quality Management District, 200 Litton Drive, Suite 320, P.O. Box 2509, Grass Valley, CA 95945–2509.

(xxii) Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

(xxiii) Placer County Air Pollution Control District, 3091 County Center Drive, Suite 240, Auburn, CA 95603.

(xxiv) Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908.

(xxv) San Diego County Air Pollution Control District, 10124 Old Grove Road, San Diego, CA 92131–1649.

(xxvi) San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

(xxvii) San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.

(xxviii) Santa Barbara County Air Pollution Control District, 260 North San Antonio Road, Suite A, Santa Barbara, CA 93110–1315.

(xxix) Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.

(xxx) Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036.

(xxxi) South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, CA 91765–4182.

(xxxii) Tehama County Air Pollution Control District, P.O. Box 8069 (1750 Walnut Street), Red Bluff, CA 96080–0038.

(xxxiii) Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310.

(xxxiv) Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003–5417.

(xxxv) Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616–4882.

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(11) Hawaii. Clean Air Branch, Hawaii Department of Health, 919 Ala Moana Blvd., Suite 203, Honolulu, HI 96814.

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(28) Nevada. Nevada Division of Environmental Protection, 901 South Stewart Street, Suite 4001, Carson City, NV 89701–5249.

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PART 707—[AMENDED]

■ 18. The authority citation for part 707 continues to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

Subpart B—General Import Requirements and Restrictions

■ 19. Section 707.20 is amended by revising the address for Region IX in paragraph (c)(2)(ii) to read as follows:

§ 707.20 Chemical substances import policy.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

Region IX

75 Hawthorne Street, San Francisco, CA 94105 (415) 947–4402.

* * * * *

PART 763—[AMENDED]

■ 20. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

■ 21. Appendix C to Subpart E is amended by revising the address for EPA Region IX under II.C.3 to read as follows:

Appendix C to Subpart E of Part 763—Asbestos Model Accreditation Plan

* * * * *

II. * * *

C. * * *

3. * * *

EPA, Region IX, Asbestos NESHAPs Contact, Air Division (A–5), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3989.

* * * * *

■ 22. Appendix D to Subpart E is amended by revising the address for Region IX to read as follows:

Appendix D to Subpart E of Part 763—Transport and Disposal of Asbestos Waste

* * * * *

Region IX

Asbestos NESHAPs Contact, Air Division, USEPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3989.

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[FR Doc. 2010–28134 Filed 11–10–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0504; FRL–8845–6]

Isoxaben; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of isoxaben in or on almond, hulls; grape; nut, tree, group 14; and pistachio. Dow AgroSciences requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 12, 2010. Objections and requests for hearings must be received on or before January 11, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see* also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0504. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–

4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0504 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 11, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2007–0504, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 1, 2007 (72 FR 42072) (FRL–8138–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7222) by Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by adding a section for the herbicide, isoxaben, and establishing tolerances therein for residues of isoxaben, N-[3-(1-ethyl-1-methylpropyl)-5-isoxazolyl]-2, 6-dimethoxybenzamide, in or on almond, hulls at 0.35 parts per million (ppm); grape; grape, juice; and grape, raisin at 0.01 ppm; and nut, tree, group 14 and pistachio at 0.03 ppm. That notice referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has reduced the tolerances for nut, tree, group 14 and pistachio from 0.03 ppm to 0.02 ppm and increased the tolerance for almond, hulls from 0.35 ppm to 0.40 ppm. EPA has also determined that the proposed tolerances for grape, juice and grape, raisin are not needed. Finally, EPA has revised the requested tolerance expression in accordance with current policy. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information

concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Isoxaben is of low acute toxicity when administered orally, dermally, or via inhalation. It is not a dermal sensitizer or skin irritant and causes only minor transient irritation to the eye.

The primary target organs identified for isoxaben in repeated-dose studies are the liver and kidney. Although liver effects were observed in all species tested (rat, dog, mouse), adverse changes were only observed in the mouse following chronic oral exposure. These effects included histopathology and increased blood alkaline phosphatase and alanine aminotransferase activities at high doses. In the dog and rat, liver effects were considered adaptive and consisted of enlargement, hepatocellular hypertrophy and induction of hepatic microsomal enzymes. Increased incidence and severity of nephropathy was observed in the rat following chronic (2-year) exposure. No adverse renal effects were reported in the dog or mouse. There was no indication of neurotoxicity or immunotoxicity in the available studies, which generally tested up to or above the limit dose.

No maternal or developmental effects were seen in the rabbit or rat developmental studies. In the rat reproductive toxicity study, two matings (a and b generations) per F0 and F1 parental generations were conducted, plus two additional matings ($F2_c$ and $F3_a$) to examine developmental effects on gestation day 20. Effects included a decrease in corpora lutea, resulting in a decrease in the mean number of implantations and mean live fetuses per litter. Nursing pups showed decreased body weight gain at the highest dose tested. An increase in the incidence of several malformations (exencephaly, microphthalmia/coloboma and hydroureter) was seen in the $F2_b$, $F2_c$ and $F3_a$ mating generations at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day highest dose tested (HDT)), but not in the $F1_a$, $F1_b$ or $F2_a$ offspring. The relationship of these findings to treatment is unclear because an examination of the genealogy of these offspring suggests a possible heritable component. A large percentage of the affected litters were the result of either cousin matings or had in common F0 progenitors derived from several F0 litters from the supplier. However, because the relationship to treatment could not be ruled out, the malformations were considered a possible treatment-related effect.

No effects of treatment were reported in a 21-day repeated-application dermal toxicity study in the rabbit. This is consistent with relatively low dermal absorption (≤11% of administered dose) observed in a dermal penetration study in the monkey and the low oral toxicity observed in subchronic oral studies in the rat, mouse and dog.

Isoxaben is classified as having "Suggestive Evidence of Carcinogenic Potential" based on an increased incidence of benign liver tumors observed in male and female mice at the high dose only. EPA has concluded that the chronic risk assessment, based on the chronic RfD/PAD, is protective of potential carcinogenicity for the following reasons. The liver tumors were observed only in one species (mice), were not malignant, and were observed in the presence of liver toxicity at dietary levels exceeding the limit dose (1,000 mg/kg/day). The chronic RfD/PAD is based on the chronic toxicity NOAEL of 5 mg/kg/day in the rat, which is more than 200-fold lower than the dose at which tumors were observed in the mouse and, therefore, protective of potential carcinogenicity.

Specific information on the studies received and the nature of the adverse effects caused by isoxaben as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "Isoxaben. Human Health Risk Assessment for the First Food Uses of the Herbicide on Grapes, Tree Nuts and Pistachio" at page 50 in docket ID number EPA–HQ–OPP–2007–0504.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for isoxaben used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ISOXABEN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All Populations, including Females 13–50 years of age, Infants and Children).	Not Applicable	Not Applicable	An appropriate endpoint was not identified that could occur following a single exposure.
Chronic dietary (All populations)	NOAEL= 5.0 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x.	Chronic RfD = 0.05 mg/kg/day cPAD = 0.05 mg/kg/day.	Chronic oral toxicity/carcinogenicity in the rat. LOAEL = 50.7 mg/kg/day based on renal toxicity in males.
Incidental oral short-term (1 to 30 days).	Not Applicable	Not Applicable	An appropriate endpoint was not identified for short-term oral exposures.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ISOXABEN FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Incidental oral intermediate-term (1 to 6 months).	NOAEL= 200 mg/kg/day UF_A= 10x. UF_H= 10x FQPA SF = 1x	LOC for MOE = 100	Reproductive toxicity in the rat (oral). Offspring LOAEL = 1,000 mg/kg/day based on decreased body weight gain in F1 females on Day 70. One year dietary study in the rat (co-critical supporting study). LOAEL = 625 mg/kg/day based on decreased body weight gain in females during the first six months with a NOAEL of 62.5 mg/kg/day.
Dermal short-term (1 to 30 days)	Not Applicable	Not Applicable	An appropriate endpoint was not identified for short-term dermal exposures.
Dermal intermediate-term (1 to 6 months).	Not Applicable	Not Applicable	An appropriate endpoint was not identified for intermediate-term dermal exposures.
Inhalation short-term (1 to 30 days).	Inhalation (or oral) study NOAEL= 200 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Reproductive toxicity in the rat (oral). LOAEL = 1,000 mg/kg/day based on increased incidence of malformations.
Inhalation intermediate-term (1 to 6 months).	Inhalation (or oral) study NOAEL = 200 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Reproductive toxicity in the rat (oral). LOAEL = 1,000 mg/kg/day based on decreased body weight gain in F1 females on Day 70, decreased F2 pup weights, gestation survival and live pups/litter, and increased incidence of malformations. One year dietary study in the rat (co-critical supporting study). LOAEL = 625 mg/kg/day based on decreased body weight gain in females during the first six months with a NOAEL of 62.5 mg/kg/day.
Cancer (Oral, dermal, inhalation)	Classification: Suggestive Evidence of Carcinogenic Potential, based on increased incidence of hepatocellular adenomas in male and female mice. The chronic risk assessment, based on the chronic RfD/PAD, is considered protective of potential carcinogenicity; a separate exposure assessment to evaluate cancer risk is unnecessary.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. LOAEL = lowest observed adverse effect level. NOAEL = no observed adverse effect level.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to isoxaben, EPA considered exposure under the petitioned-for tolerances. There are no tolerances currently established for isoxaben. EPA assessed dietary exposures from isoxaben in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for isoxaben; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that residues are present in all commodities at the tolerance level and that 100% of commodities are treated with isoxaben. DEEM™ 7.81 default concentration factors were used to estimate residues of isoxaben in processed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA classified isoxaben as having "Suggestive Evidence of Carcinogenic Potential" but determined that the chronic risk assessment will be protective of both non-cancer and cancer effects. Therefore, a separate exposure assessment to evaluate cancer risk is unnecessary.

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

2. *Dietary exposure from drinking water.* The residues of concern in drinking water following applications of isoxaben include isoxaben and its degradates hydroxyisoxaben (N-[3-(1-hydroxyl-1-methylpropyl)-5-isoxazoyl]-2,6-dimethoxy-benzamide); dimethoxybenzamide (2,6-dimethoxybenzamide); methoxyphenylpyrimidinol (6-(1-ethyl-1-methylpropyl)-2-(2-hydroxy-6-methoxyphenyl)-4-pyrimidinol); and AEM hexenoylisoxaben (N-[3-amino-4-ethyl-4-methyl-2-hexenoyl]-2,6-dimethoxybenzamide). The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for isoxaben and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of isoxaben and its degradates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of isoxaben and its degradates for chronic exposures for non-cancer assessments (the only dietary exposure scenario of concern for isoxaben) are estimated to be 120 parts per billion (ppb) for surface water and 43.6 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 120 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Isoxaben is currently registered for the following uses that could result in residential exposures: Home lawns, recreational turf areas and ornamental plantings. EPA assessed residential exposure using the following assumptions: There is a potential for exposure of homeowners applying products containing isoxaben on home lawns (i.e., residential handler exposure). There is also a potential for post-application exposure of adults and children entering lawn and recreation areas which have been treated with isoxaben and for bystander exposure of adults and children in areas adjacent to pesticide applications.

For residential handlers, dermal and inhalation exposures of short-term duration are expected. Since EPA did not identify an endpoint of concern for dermal exposures, only short-term inhalation exposures were assessed.

The following types of residential exposure may occur following applications of isoxaben on lawns and recreational turf areas: Short- and intermediate-term dermal and inhalation exposure of adults and children entering treated areas; short-term incidental oral hand-to-mouth and/or object-to-mouth exposure of children playing on treated turf; short- and intermediate-term incidental oral exposure of children ingesting soil from treated areas; and episodic oral exposure of children ingesting pesticide granules following applications of granular isoxaben formulations on lawns. Post-application inhalation exposures are expected to be negligible due to the low volatility of isoxaben, label recommendations for incorporation of the product (by rainfall or irrigation) after application, and the types of application equipment used to apply isoxaben (i.e., isoxaben is not applied using air blast or aerial equipment that would increase the potential for inhalation exposure). EPA did not identify an endpoint of concern for acute or short-term oral exposures or for short- or intermediate-term dermal exposures. Therefore, in its post-application exposure assessment for isoxaben, EPA assessed only intermediate-term oral exposure of children ingesting treated soil. EPA does not typically consider soil ingestion to occur over intermediate-term durations, i.e., from 1–6 months, largely due to use patterns and the fact that residues are removed by precipitation or through microbial degradation in soil. In the case of isoxaben, the Agency estimated incidental oral exposure from ingestion of soil because the use pattern calls for repeat applications and the environmental fate data indicate that isoxaben is persistent in the soil. EPA conducted a conservative assessment of potential intermediate-term oral risk from soil ingestion using an application rate of 3.0 lb ai/A, equivalent to 3X the maximum single rate of 1.0 lb ai/A. The higher rate was assumed to account for build-up in the soil due to the pesticide's persistence.

Bystander exposure of adults and children is possible on areas adjacent to application sites. EPA's concern for bystander exposures is low based on several considerations:

i. Low acute toxicity of isoxaben via the inhalation route of exposure;

ii. Label recommendations for incorporation of the product (by rainfall or irrigation) after application;

iii. Isoxaben's low volatility; and

iv. The types of application equipment used to apply isoxaben (i.e., isoxaben is not applied using air blast or aerial equipment that would increase the potential for inhalation exposure).

In addition, EPA notes that MOEs calculated for residential handlers of isoxaben are very high, ranging from 2.9 million to 28 million (See Unit III.E.3.). Bystander exposures of both adults and children are expected to be substantially lower than residential handler exposures, resulting in even higher MOEs and lower risk for bystanders. For these reasons, EPA's concern for bystander exposure of adults and children is low, and a quantitative assessment of bystander exposure and risk is considered unnecessary.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of

safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The pre- and postnatal toxicity database for isoxaben includes guideline rat and rabbit developmental toxicity studies and a three-generation reproduction toxicity study in rats. There was no maternal or developmental toxicity observed in the developmental studies in rats and rabbits. Increased qualitative susceptibility was observed in the rat reproductive toxicity study as decreased live pups/litter and decreased gestation survival in $F2_b$ litters (relative to body weight effects in mothers).

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

i. The toxicity database for isoxaben is largely complete, missing only acute and subchronic neurotoxicity studies, an immunotoxicity study and a subchronic inhalation study. EPA has determined that an additional uncertainty factor is not needed to account for the lack of these studies for the following reasons:

- There is no evidence in the existing studies that isoxaben targets either the nervous system or the immune system.
- EPA's concern for inhalation toxicity from subchronic exposures is low, based on isoxaben's low vapor pressure and frequency of application.
- Overall, the toxicity of isoxaben is low. The available oral studies of short-term (e.g., developmental toxicity) or subchronic exposure duration indicated no toxicity up to the limit dose. Effects observed in adult animals (decreased body weight) at exposures of intermediate-term duration were minimal, and malformations seen in offspring in the rat reproduction study were of uncertain relationship to treatment. The endpoints were assumed by EPA to be treatment-related, a conservative assumption intended to ensure the risk assessment is protective of potential effects.

Based on these considerations, EPA does not expect the required studies to provide lower points of departure than those currently selected for risk assessment, and an additional uncertainty factor is not needed to account for the lack of these studies.

ii. There is no evidence of neurotoxicity in the available toxicology database and no evidence of developmental toxicity in either the rat or rabbit developmental toxicity studies at doses up to the limit dose. Based on these considerations, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There was no evidence of increased susceptibility in the rat and rabbit developmental toxicity studies. Although increased qualitative susceptibility was observed in the rat reproductive toxicity study as decreased live pups/litter and decreased gestation survival in $F2_b$ litters (relative to body weight effects in mothers), EPA's concern for qualitative susceptibility is low. Offspring effects were seen only at the limit dose in later generations and not observed in the developmental studies. Additionally, since there is evidence that observed malformations were due in part to heritable factors, the relationship of these effects to treatment is unclear. There are low concerns for effects on offspring viability, because they were only observed at the limit dose and may have been secondary to effects on the dams. The endpoints and points of departure selected for risk assessment are protective of these effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed assuming tolerance-level residues and 100% crop treated for all commodities. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to isoxaben in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by isoxaben.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to isoxaben from food and water will utilize 17% of the cPAD for infants, less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of isoxaben is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Isoxaben is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to isoxaben.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 82,000 for adults. The MOE for adults includes chronic exposure from food and water plus short-term residential handler exposure of adult females, based on the worst-case granular push-type applicator scenario. Because EPA's level of concern for isoxaben is a MOE of 100 or below, this MOE is not of concern. For children, no short-term oral or dermal endpoints of concern were identified, and residential post-application inhalation exposure is expected to be negligible. Therefore, EPA relies on the chronic dietary risk assessment discussed in Unit III.E.2. for evaluating children's short-term risk from isoxaben.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Isoxaben is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to isoxaben.

Using the exposure assumptions described in this unit for intermediate-

term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 51,000 for children. The MOE for children includes chronic exposure from food and water plus intermediate-term oral exposure of children ingesting treated soil. Because EPA's level of concern for isoxaben is a MOE of 100 or below, the MOE for children is not of concern. For adults, no intermediate-term dermal endpoint of concern was identified, and residential post-application inhalation exposure is expected to be negligible. Therefore, EPA relies on the chronic dietary risk assessment discussed in Unit III.E.2. for evaluating adults' intermediate-term risk from isoxaben.

5. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A., risk assessments based on the endpoint selected for chronic risk assessment are considered to be protective of any potential carcinogenic risk from exposure to isoxaben. Based on the results of the chronic risk assessment discussed above in Unit III.E.2., EPA concludes that isoxaben is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography with tandem mass spectromectric detection (LC/MS/MS), method GRM 02.26.S.1) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established a MRL for isoxaben.

C. Revisions to Petitioned-For Tolerances

Based on the maximum residue of 0.015 ppm observed in field trials with almonds and pecans, the proposed tolerances for nut, tree, group 14 and pistachio were reduced from 0.03 ppm to 0.02 ppm. The proposed tolerance for almond hulls was increased from 0.35 ppm to 0.40 ppm based on analysis of the field trial data using the Agency's Tolerance Spreadsheet in accordance with the "Guidance for Setting Pesticide Tolerances Based on Field Trial Data." EPA has also determined that, since the tolerance for grape will cover residues in/on grape juice and raisins, separate tolerances are not needed for these commodities.

Finally, EPA is revising the requested tolerance expression to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the tolerances cover residues of the herbicide isoxaben, including its metabolites and degradates, but that compliance with the specified tolerance levels is to be determined by measuring only isoxaben N-[3-(1-ethyl-1-methylpropyl)-5-isoxazolyl]-2, 6-dimethoxybenzamide, in or on the commodities.

V. Conclusion

Therefore, tolerances are established for residues of isoxaben, including its metabolites and degradates, in or on almond, hulls at 0.40 ppm; grape at 0.01 ppm; nut, tree, group 14 at 0.02 ppm; and pistachio at 0.02 ppm. Compliance with these tolerances is to be determined by measuring only isoxaben *N*-[3-(1-ethyl-1-methylpropyl)-5-isoxazolyl]-2, 6-dimethoxybenzamide, in or on the commodities.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 29, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Add § 180.650 to subpart C to read as follows:

§ 180.650 Isoxaben; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide isoxaben, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only isoxaben, *N*-[3-(1-ethyl-1-methylpropyl)-5-isoxazolyl]-2, 6-dimethoxybenzamide, in or on the commodity.

Commodity	Parts per million
Almond, hulls	0.40
Grape	0.01
Nut, tree, Group 14	0.02
Pistachio	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2010–28499 Filed 11–10–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 252

Defense Federal Acquisition Regulation Supplement; Award-Fee Reductions for Health and Safety Issues (DFARS Case 2009–D039)

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 823 of the National Defense Authorization Act for Fiscal Year 2010. Section 823 requires contracting officers to consider reduction or denial of award fee if contractor or subcontractor actions jeopardize the health or safety of Government personnel.

DATES: *Effective Date:* November 12, 2010.

Comment Date: Comments on the interim rule should be submitted to the address shown below on or before January 11, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D039, using any of the following methods:

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

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D039 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy G. Williams, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment, please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

Section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), requires DoD to revise guidance issued pursuant to section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 823 is entitled "Authority for Secretary of Defense to Reduce or Deny Award Fees to Companies Found to Jeopardize Health or Safety of Government Personnel." For covered contracts that include award fees, if a contractor or its subcontractor acts with gross negligence or reckless disregard for health or safety, causing serious bodily injury or death of Government personnel, then the contracting officer must consider reduction or denial of award fee for the period in which that action occurred. This interim rule provides a clause to detail those dispositions where a reduction or denial of award fee is applicable. The clause also allows for the recovery of all or part of any award fees paid for any previous award fee evaluation period during which contractor actions caused serious bodily injury or death of Government personnel.

II. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

III. Regulatory Flexibility Act:

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because most contracts awarded to small entities use simplified acquisition procedures or, based on the circumstances, may be awarded on a competitive fixed-price basis or a cost-plus-fixed-fee basis. Contracts awarded to small businesses do not generally utilize award-fee type incentive fee structure. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D039) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval

of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comments. This action is necessary because section 823 of the National Defense Authorization Act for Fiscal Year 2010 requires implementation no later than 180 days after October 28, 2009. If this requirement is not implemented in the DFARS, contracting officers may not be aware of the requirement to consider reduction or denial of the award fee paid in a period in which actions of gross negligence or reckless disregard of health or safety by the contractor or its subcontractors caused serious bodily injury or death of Government personnel. However, pursuant to 41 U.S.C. 418b, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 216 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 216—TYPES OF CONTRACTS

■ 2. Sections 216.405–270 and 216.406 are added to subpart 216.4 to read as follows:

216.405–270 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

(a) *Definitions.*

Covered incident and *serious bodily injury,* as used in this section, are defined in the clause at 252.216–7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

(b) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), the contracting officer shall include in the evaluation of any award fee plan, a review of contractor actions that jeopardized the health and safety of Government personnel.

(c) If, in performing under a contract, contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel, the contracting officer shall consider reducing or denying the award fee for any of the relevant award fee periods in which the covered incident occurred, including the recovery of all or part of any award fees previously paid for such period.

216.406 Contract clauses.

Use the clause at 252.216.7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award fee provisions.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.216–7004 is added as follows:

252.216.7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

As prescribed in 216.406 use the following clause:

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (NOV 2010)

(a) *Definitions.* As used in this clause—

Covered incident—

(1) Means any incident in which the Contractor, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (2) of this definition—

(i) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(ii) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(2) Includes those incidents that have resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of $5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of $5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of $100,000.

(iv) In a criminal, civil or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (2)(i), (2)(ii), or (2)(iii) of this definition.

Serious bodily injury means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor's or its subcontractor's actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.

(End of clause)

[FR Doc. 2010–28494 Filed 11–10–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XZ88

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to allow fishing operations to continue. It is intended to promote the goals and objectives of the fishery management plan for the Bering Sea and Aleutian Islands management area.

DATES: Effective November 10, 2010 through 2400 hrs, Alaska local time, December 31, 2010. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, November 26, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XZ88 by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the

Federal eRulemaking Portal Web site at *http://www.regulations.gov.*

- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 initial total allowable catch (ITAC) of Pacific ocean perch in the Bering Sea subarea was established as 3,256 metric tons (mt) by the final 2010 and 2011 harvest specifications for groundfish of the BSAI (75 FR 11778, March 12, 2010). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for Pacific ocean perch in the Bering Sea subarea needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 300 mt to the Pacific ocean perch ITAC in the Bering Sea subarea. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

The harvest specification for the 2010 Pacific ocean perch ITAC included in the harvest specifications for groundfish in the BSAI is revised as follows: 3,556 mt for Pacific ocean perch in the Bering Sea subarea.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the Pacific ocean perch fishery in the Bering Sea subarea. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 5, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (*see* **ADDRESSES**) until November 26, 2010.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 8, 2010.

Brian Parker,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–28530 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 218
Friday, November 12, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 207

[Docket No. FR–5393–P–01]

RIN 2502–AI95

HUD Multifamily Rental Projects: Regulatory Revisions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend certain Federal Housing Administration (FHA) regulations to update these regulations to reflect current HUD policy in the area of multifamily rental projects. On January 21, 2010, HUD issued for public comment a comprehensive set of closing documents for use in FHA multifamily rental projects. As noted in the January 21, 2010, notice, the issuance of revised multifamily rental project closing documents for public comments is HUD's effort to restart the update of these documents that first commenced in 2004, but was not completed. In 2004, HUD also issued a companion proposed rule that identified outdated language and policies that not only needed to be changed in closing documents but also in HUD's regulations. Consistent with the restart of the updating of multifamily rental project closing documents, HUD is once again issuing a corresponding proposed rule to remove outdated regulatory language and policies. Neither the closing documents issued for comment on January 21, 2010, nor this proposed rule include changes to regulations affecting health care forms for nursing homes, intermediate care facilities, board and care homes, and assisted living facilities. HUD will propose changes to those documents separately.

Through update of the multifamily rental project closing documents and the update of certain regulations as provided in this proposed rule, HUD strives to have its documents and regulations reflect current terminology, lending laws, and practices with respect to multifamily projects.

DATES: *Comment Due Date:* December 13, 2010.

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

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

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

FOR FURTHER INFORMATION CONTACT: John Daly, Associate General Counsel for Insured Housing, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500; telephone 202–708–1274 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

By notice published in the **Federal Register** on January 21, 2010 (75 FR 3544), HUD started anew the process for updating the multifamily rental project closing documents (closing documents), a process that first commenced with issuance of a notice published on August 2, 2004 (69 FR 46214). The update of the closing documents commenced in 2004 and restarted in 2010 does not include update of hospital closing documents. Many of these documents, as explained in both the 2004 and 2010 notices, have not been revised in years and need updating to ensure that the documents are consistent with modern real estate and lending laws.

In addition to the closing documents, the update effort that commenced in 2004 included a proposed rule published on August 2, 2004 (69 FR 46210) that would update certain FHA regulations, which like many of the closing documents, did not reflect current real estate and lending practices. This proposed rule issued in today's **Federal Register** restarts the process to update regulations first identified in 2004 as needing revisions to be consistent with revised closing documents. The regulatory changes proposed in this rule are similar to those proposed in 2004, and arise from HUD's review of the closing documents over the last several years.

This proposed rule identifies the changes that HUD intends to make to its regulations in 24 CFR parts 200 and 207. The preamble to this proposed rule also includes a discussion of the public comments formally submitted on the August 2, 2004 proposed rule, and provides HUD's response to those comments. While HUD addresses the prior public comments received, HUD emphasizes that it is starting anew with this proposed rule process and welcomes comments on all issues.

II. This Proposed Rule

Part 200

The requirements for commitment and endorsement of a mortgage note are provided in 24 CFR part 200, subpart A. Generally, where specific closing documents are referenced in 24 CFR part 200, subpart A, the regulations in this subpart provide that the referenced documents be in a form prescribed by HUD. The subpart also iterates other closing requirements that are reflected in the closing documents.

Section 200.5. Regulatory changes to part 200, subpart A, prompted by the review and updating of the closing documents pertain to natural persons and "tenants in common" as eligible mortgagor entities. In the August 2004 rule, HUD had proposed removing tenancies in common as eligible mortgagor entities, except for tenancies in common comprised only of natural persons. In this rule, HUD proposes to amend § 200.5, which defines an eligible mortgagor under HUD's multifamily mortgage insurance programs, to reflect the removal of natural persons and the complete removal of tenants in common as eligible mortgagor entities.

Section 200.88. A revision of the Note is included in the update of the closing documents (HUD 94001M) published on January 21, 2010. HUD is revising the Note with respect to late charges, to provide that the late charge applies when the lender does not receive payment within 10 days after the payment is due. The change responds to comment HUD received that suggested that standardizing the time when the late fee applies would facilitate compliance by Ginnie Mae issuers with their obligation to make payments to investors. HUD is revising 24 CFR 200.88 to reflect this change.

Part 207

Section 207.255. Included in the update of the closing documents is a revision of the security instrument (HUD 94000M). As part of the revision to this document, HUD developed a new two-tiered default scheme. Class A, as proposed in 2004 and now, on the basis of public comments, named "Monetary Event of Default" is for financial defaults, which give the lender an immediate right to an insurance fund claim. Class B, as proposed in 2004 and now, on the basis of public comments, named "Covenant Event of Default" is for all other bases for default, and requires the prior written approval of HUD for the lender to make an insurance fund claim. The Covenant Event of Default category would include several new bases for default derived, in part, from the Freddie Mac model. These include fraud or material misrepresentation or omission by the borrower, its officers, directors, trustees, general partners, members, managers, or guarantors (1) in the application for the HUD-insured loan; (2) in the application for financial assistance, other than the HUD-insured loan; (3) in any financial statement, rent roll, or other report or information provided by the borrower during the term of the Indebtedness; and (4) in any request for lender's consent to any proposed action. Other new bases for default would include the commencement of a forfeiture action or proceeding, which in the lender's reasonable judgment could result in the loss of the property or impairment of the lien. HUD has revised 24 CFR 207.255 to reflect this two-tiered default scheme. As provided in 24 CFR 207.255, once a default exists under the security instrument and continues for a minimum period of 30 days, the lender would become eligible to receive mortgage insurance benefits.

In addition to reflecting the new two-tiered default system, § 207.255 would be revised to clarify that the purpose of the section is to define "default" and "date of default" for purposes of filing an insurance claim with the FHA Commissioner. Also, editorial revisions would be made to improve the readability of this section.

Section 207.256. Minor editorial changes would also be made to § 207.256 to improve readability and to clarify which provisions in § 207.255 would be cross-referenced in § 207.256.

Sections 207.256a, 207.256b, and 207.257. Minor editorial changes would be made to these sections to improve readability, and some changes have been made to correspond to changes made to the closing documents that were published in the January 21, 2010 Notice.

Section 207.258. HUD is also proposing to amend § 207.258, which provides insurance claim requirements, to provide, consistent with existing HUD practice and policy, that the mortgagee request a three-month extension of the 45-day deadline prescribed by § 207.258 for a mortgage funded with the proceeds of state or local bonds, Government National Mortgage Association (Ginnie Mae) mortgage-backed securities, or other bond obligations specified by HUD, any of which contains a lock-out or penalty provision.

Section 207.259. HUD is proposing to amend § 207.259 by adding a new paragraph (b)(2)(vi). This proposed amendment would pertain to cases of a covenant default when the Commissioner, pursuant to § 207.257, has requested the mortgagee to accelerate payment of the outstanding principal balance due under an insured mortgage, and the mortgagee does not comply promptly with such request. In such cases, mortgage insurance benefits, if requested, will be reduced by an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value on the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal procedures established by the Commissioner.

III. Discussion of Public Comments on 2004 Proposed Rule

The public comment period on the August 2, 2004, proposed rule closed on October 2, 2004. HUD received 10 public comments on the proposed rule. Comments were submitted by lenders, home builders, and realty organizations. The following discussion presents the significant issues, questions, and suggestions submitted by public commenters, and HUD's response to these issues, questions and suggestions. Citations to specific sections of the closing documents in the summaries of public comment, below, refer to the versions of closing documents originally published for public comment on August 2, 2004.

Eligible Mortgagor (24 CFR 200.5)

Comment: Commenters stated that tenants in common (TICs) should not be eliminated as eligible mortgagors and that the option should remain open. Commenters pointed out that at the time comments were solicited in 2004 Fannie Mae and Freddie Mac were seeing an increasing number of TICs borrowers due to a growing number of Like-Kind exchanges. They suggested that HUD require a Tenants-in-Common Agreement dealing with such issues as serial bankruptcy, dispute resolution and forced sale and partition and that failure to comply with the Agreement

would be an event of default under the Security Instrument.

HUD response: HUD notes the concerns raised by the commenters. Based on comments received in 2004 and subsequently on the closing documents, HUD is now proposing in the closing documents, namely the Security Instrument, that the borrower be a single asset entity. Ownership by an individual has been abandoned by the commercial lending industry, is not a sound practice and is not a current practice in the insurance programs. Both the natural person and tenants in common structure of ownership is generally inconsistent with HUD's proposed requirements that borrowers should be an entity that can qualify as a single asset mortgagor. FHA's financing requirement (non-recourse, single-asset mortgagor entity) and asset management capabilities are different from Fannie Mae and Freddie Mac.

Late Charge (24 CFR 200.88)

Comment: During the 2010 solicitation of comments on HUD's multifamily closing documents, HUD received a comment that standardizing the time when the late fee applies would facilitate compliance by Ginnie Mae issuers with their obligation to make payments to investors.

HUD response: HUD concurs with this comment and consequently is proposing a corresponding change to the regulations, making the late charge applicable 10 days in arrears.

Defaults for Purposes of Insurance Claim (Two-Tiered Default) (24 CFR 207.255)

Comment: A commenter stated that the regulatory language provides that if a default continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage. The commenter suggested that the regulatory language be revised to make the period of default in the regulation consistent with the language in the Security Instrument to ensure that the 30-day time period in the regulations is the 30-day grace period that exists under the Security Instrument and the Note, and is not sequential to that grace period.

HUD response: HUD reviewed this language, but believes there is no confusion on the time period, and therefore has not made a change to the language.

Comment: One commenter suggested that allowing HUD to require a lender to declare a default and accelerate the Security Instrument due to a default under the Regulatory Agreement is overly broad.

HUD response: HUD has, in the companion Notice published on January 21, 2010, addressed issues raised by commenters on the proposed rule. Namely, HUD concurred that the bases for Class B/Covenant Event of Defaults were overly broad, and has added a "materiality" standard to breach of the covenants under the mortgage as a criterion for Class B/Covenant Event of Defaults. HUD has added that change into the proposed regulation as well.

Comment: One commenter suggested that language be added to 24 CFR 207.255, to cover acceleration required by the FHA Commissioner, as that new authority is provided under 24 CFR 207.257 of the proposed regulation.

HUD response: HUD believes the language in the regulation is already sufficiently broad to cover this provision.

Comment: One commenter suggested that HUD should publish for comment specific criteria that would be used in determining whether to grant approval for an insurance claim.

HUD response: HUD believes the criteria is already quite specific and needs no further clarification.

Modification of Mortgage Terms (24 CFR 207.256b)

Comment: One commenter suggested that HUD add language to make it clear that if, as is common practice, the mortgage is modified and the default is simultaneously cured, technically entering default for the purposes of an insurance claim would be automatically withdrawn.

HUD response: HUD did not make this change. It is HUD's view that a modified mortgage would not be considered to be in default after the modification was put in place.

Comment: One commenter suggested that cash flow generated during a workout should be held by the mortgagor in trust for disposition, as existing regulations provide, rather than by the mortgagee.

HUD response: HUD recognizes the concerns raised by this commenter and has adopted a change in the regulation to allow the mortgagor or the mortgagee, as may be appropriate in the particular situation to hold the cash flow generated during a work out.

Commissioner's Right To Require Acceleration (24 CFR 207.257)

Comment: One commenter noted that there should be no mandatory acceleration.

HUD response: The regulation does not require mandatory acceleration, but rather reserves to HUD the right to require the mortgagee to accelerate.

Mortgagee Notice of Election To Assign for Insurance Benefits (24 CFR 207.258)

Comment: One commenter noted that the proposed regulation unnecessarily elevates policies promulgated in Mortgagee Letters and Certificates to regulatory language.

HUD response: HUD has included these provisions in the regulation because codification offers, among other things, an easily identifiable location for these requirements.

Comment: Commenters suggested that the proposed language does not specify the length of the required extension of the deadline to assign.

HUD response: HUD notes that it has retained current regulatory language that allows the Commissioner to extend the 30 day period during which the mortgagee may file its application for insurance for a period not to exceed 60 days.

Comment: A commenter stated that in situations where the mortgagee believes it would be futile to delay assignment, it may be in the best interest of HUD, the investors, and the mortgagee to assign promptly rather than seek the extension.

HUD response: HUD agrees with this comment, and notes that 24 CFR 207.257 provides that the Commissioner reserves the right to require the mortgagee to accelerate payment in order to protect the interests of the Commissioner upon receipt of notice of violation of a covenant. The Commissioner can exercise this discretion to take an assignment.

Comment: A commenter stated that if the requirement to seek an extension is made mandatory by regulation, it would be more onerous for a mortgagee to obtain a waiver in instances warranting one.

HUD response: HUD notes that this new language does not mandate an extension. Section 207.258 of HUD's regulations (24 CFR 207.258) allows the mortgagee to assign the mortgage or to acquire and convey title to the Commissioner. Further, it will not be more onerous for a mortgagee to obtain a waiver simply because this language is in regulatory form rather than in a mortgagee letter.

Comment: One commenter noted that there is no definition of "other bond obligations" here, although "other bond obligation" is defined in Mortgagee Letter 87–9 Mortgage Prepayment Provisions for HUD-Insured and Coinsured Multifamily Projects (Mortgagee Letter 87–9) and in Chapter 12 of the Multifamily Accelerated

Processing (MAP) Guide. At least "participation certificates," a commonly used arrangement, should be added.

HUD response: HUD agrees and has added "participation certificates" and other bond obligations to the definition.

Comment: A commenter stated that the mortgagee community is concerned that elevating the contractual duties between HUD and mortgagees to regulatory obligations may be construed by aggressive litigants as creating third-party benefits to them.

HUD response: There is no change in the substance of the mortgagee's obligations if the provisions are found in the Mortgagee Letter or in the regulation, so there are no additional third party benefits beyond the notice provided in regulatory format.

Comment: One commenter noted that rather than requiring the mortgagee to "assist" in obtaining refinancing, it would be more prudent for the mortgagee to be obligated to "cooperate."

HUD response: HUD's position is that "assist" is the appropriate terminology in Mortgagee Letter 87–9, and that consistency in the rule should assure that HUD will continue to interpret this provision as it has in the past.

Comment: One commenter noted that the parenthetical clause at the end of the introductory paragraph should be revised from "Prior to the date on which prepayments may be made with penalty" to "prior to the date on which prepayments may be made without penalty" to conform to Mortgagee Letter 87–9 and the new draft Lender's Certificate. (Document No. HUD–92434M (Rev. XX/06)

HUD response: The language quoted in the comment is incorrect. Mortgagee Letter 87–9, and the Mortgagee Certificate (69 FR 46269) proposed in August 2004 both state: "Prior to the date on which prepayments may be made with a penalty of one percent or less." HUD has also retained the "with penalty" language in Section 24(a) of the new Lender's Certificate proposed January 21, 2010.

Comment: Paragraph (a)(1) of 24 CFR 207.258 should provide for an automatic 90-day extension of the deadline for filing notice of the mortgagee's election upon request. An automatic 90-day extension will allow a servicer to stop wasting time and money to obtain an extension and provides investors some knowledge and certainty as to the status of the assignment process for the loan.

HUD response: HUD declined this recommendation as the mortgagee currently has the option of selecting a 30 day extension, and additional, if requested and approved, 60-day extension.

Comment: Paragraph (a)(5) of 24 CFR 207.258 requiring a successor to certify compliance with regulations is not necessary, since the regulations are part of the Contract of Insurance.

HUD response: The certification is required. There is no change in policy, and the notice provided by including this provision in the regulations improves the probability that potentially affected parties are aware of this requirement.

Comment: One commenter noted that paragraph (a)(6) of 24 CFR 207.258 was unclear with respect to "after completion of any refinancing." The commenter recommended that "after commencement of amortization of the mortgage" should be used, as similar language is used with respect to "Improvements" in the Building Loan Agreement documents, and because the project could actually be refinanced with a non-HUD program.

HUD response: HUD has adopted the recommendation.

Comment: One commenter noted that paragraph (a)(6) of 24 CFR 207.258 should be changed to require the mortgagee to notify HUD if payment was not received by the 16th day after the date on which such payment is due.

HUD response: HUD has modified this provision to be consistent with the late charge established under 24 CFR 200.88. HUD is revising the Note (HUD 94001M) with respect to late charges, to provide that the late charge applies when the lender does not receive payment within 10 days after the payment is due. That change responds to comment HUD received that suggested that standardizing the time when the late fee applies would facilitate compliance by Ginnie Mae issuers with their obligation to make payments to investors. HUD is consequently revising 24 CFR 207.258 to be consistent with the late charge in the Note and with the proposed changes in 24 CFR 200.88 previously described.

Comment: One commenter noted that a clause should be added at the end of paragraph (a) of 24 CFR 207.258 to provide the mortgagee with reasonable notice of a decision not to grant an extension in order to prepare the necessary documents and to provide for denial of an extension request when such a denial is warranted.

HUD response: HUD is sympathetic to the concern expressed by the commenter. To address this issue, HUD proposed to add a sentence to § 207.258(b) providing that a mortgagee may consider failure to receive an extension notice within 30 days, a denial of the request for an extension. In addition, HUD has taken the opportunity afforded by this proposed rule to reorganize § 207.258(b) by breaking down the lengthy paragraph into several shorter paragraphs. The reorganization does not affect the substance of § 207.258(b) but will clarify and improve the readability of the regulatory provision.

IV. Justification for Shortened Comment Period

For HUD rules issued for public comment, it is HUD's policy to afford the public "not less than sixty days for submission of comments" (24 CFR 10.1). In cases in which HUD determines that a shorter public comment period may be appropriate, it is also HUD's policy to provide an explanation of why the public comment period has been abbreviated.

In this case, with one exception and minor changes, HUD is resubmitting for public comment the same regulatory amendments presented in HUD's proposed rule published on August 2, 2004 (69 FR 46210). The one regulatory amendment not proposed in 2004, was the proposed amendment to § 200.88. All other regulatory provisions presented for public comment in this rule are the same as those proposed for amendment in 2004, with minor changes, in a few places, with some of the proposed language changes. As discussed in this preamble, HUD received only 10 public comments on the proposed regulatory amendments in the 2004 proposed rule.

Given that this is the second time that HUD is issuing for comment, almost the identical amendments, HUD believes that a 30-day public comment period is sufficient.

V. Findings and Certifications

Unfunded Mandates Reform Act

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is

available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to making certain conforming amendments to FHA regulations that address multifamily rental projects to ensure their consistency with the recent update and revision of the documents used for multifamily rental project and health care facility closings. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects is 14.155.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR parts 200 and 207 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Revise § 200.5 to read as follows:

§ 200.5 Eligible mortgagor.

The mortgagor shall be a single asset mortgagor entity acceptable to the Commissioner, as limited by the applicable section of the Act, and shall possess the powers necessary and incidental to operating the project. Natural persons and tenancies in common are not eligible mortgagor entities.

3. Revise § 200.88 to read as follows:

§ 200.88 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions and standards of the Commissioner for each dollar of each payment to interest or principal more than 10 days in arrears to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

4. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

5. Revise § 207.255 to read as follows:

§ 207.255 Defaults for purposes of insurance claim.

This section defines "default" and "date of default" for purposes of a mortgagee filing an insurance claim with the Commissioner.

(a) The following shall be considered a default under the terms of a mortgage insured under this subpart:

(1) Failure of the mortgagor to make any payment due under the mortgage (also referred to as a "Monetary Event of Default" in certain mortgage security instruments); or

(2) A material violation of any other covenant under the provisions of the mortgage, if because of such violation, the mortgagee has accelerated the debt, subject to any necessary HUD approval (also referred to as a "Covenant Event of Default" in certain mortgage security instruments).

(b) For purposes of a mortgagee filing an insurance claim with the Commissioner, the failure of the mortgagor to make any payment due under an operating loss loan or under the original mortgage shall be considered a default under both the operating loss loan and original mortgage.

(c) If a default as defined in paragraphs (a) or (b) of this section continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage, subject to the procedures in this subpart.

(d) For the purposes of this section the date of default shall be:

(1) The date of the first failure to make a monthly payment that subsequent payments by the mortgagor are insufficient to cover when those subsequent payments are applied by the mortgagee to the overdue monthly payments in the order in which they became due; or

(2) The date of the first uncorrected violation of a covenant or obligation for which the mortgagee has accelerated the debt.

6. Revise § 207.256 to read as follows:

§ 207.256 Notice to the Commissioner of default.

(a) If a default as defined in § 207.255(a) or (b) is not cured within the grace period of 30 days provided under § 207.255(c), the mortgagee must,

within 30 days after the date of the end of the grace period, notify the Commissioner of the default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) The mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the mortgagor's violation of any covenant, whether or not the mortgagee has accelerated the debt.

7. Revise § 207.256a to read as follows:

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue on the mortgage as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

8. Revise § 207.256b to read as follows:

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement that extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b) The Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given, unless the mortgagor agrees in writing that, during such period as payments by the mortgagor to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor or mortgagee, as may be appropriate in the particular situation will hold in trust for disposition, as directed by the Commissioner, all rents or other funds derived from the secured property that are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

9. Revise § 207.257 to read as follows:

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being apprised of the violation of a covenant, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Commissioner.

10. Amend § 207.258, as follows:

a. Revise paragraph (a);

b. Redesignate paragraphs (b)(1) through (b) (5) as (b)(2) through (b)(6) respectively;

c. Redesignate the undesignated introductory paragraph of paragraph (b) as paragraph (b)(1); and

d. Revise newly designated paragraph (b)(1), to read as follows:

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), the mortgagee must, within 45 days after the date of eligibility, give the Commissioner notice, in the manner prescribed in 24 CFR part 200, subpart B, of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section. For mortgages funded with the proceeds of State or local bonds, GNMA mortgage-backed securities, participation certificates, or other bond obligations specified by HUD (such as an agreement under which the insured mortgagee has obtained the mortgage funds from third party investors and has agreed in writing to repay such investors at a stated interest rate and in accordance with a fixed repayment schedule), any of which contains a lock-out or penalty provision, the mortgagee must, in the event of a default during the term of the prepayment lock-out or penalty (i.e., prior to the date on which prepayments may be made with a penalty):

(1) Request an extension of the deadline for filing notice of the mortgagee's intention to file an insurance claim and the mortgagee's election to assign the mortgage or acquire and convey title in accordance with the mortgagee certificate;

(2) Assist the mortgagor in arranging refinancing to cure the default and avert an insurance claim, if HUD grants the requested (or a shorter) extension of notice filing deadline;

(3) Report to HUD at least monthly on any progress in arranging refinancing;

(4) Cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(5) Require successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out or penalty; and

(6) After commencement of amortization of the refinanced mortgage, notify HUD of a delinquency when a payment is not received by the 10th day after the date the payment is due.

(b) *Assignment of mortgage to Commissioner.* (1) *Timeframe; request for extension.*

(i) If the mortgagee elects to assign the mortgage to the Commissioner, the mortgagee shall, at any time within 30 days after the date of notice of the election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, any applicable credit instrument and the realty and chattel security instruments.

(ii) The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. A mortgagee may consider failure to receive a notice of an extension approval by the end of the 30-day time period a denial of the request for an extension.

(iii) The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner.

(iv) The requirements of paragraphs (b)(2) through (b)(6) of this section shall also be met by the mortgagee.

* * * * *

11. In § 207.259, add a new paragraph (b)(2)(vi) to read as follows:

§ 207.259 Insurance benefits.

* * * * *

(b) * * *

(2) * * *

(vi) When there is a covenant default as defined in § 207.255(a)(2) and a mortgagee refuses to comply promptly with the Commissioner's request to accelerate payment pursuant to § 207.257, an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value as of the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal

procedures established by the Commissioner.

* * * * *

Dated: October 25, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–28420 Filed 11–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0072]

RIN 1218–AB80

Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of informal public hearings.

SUMMARY: OSHA is convening an informal public hearing to receive testimony and documentary evidence on the Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) proposed rule (29 CFR part 1910, subparts D and I), published on May 24, 2010 (73 FR 28862).

DATES: *Informal public hearings:* OSHA will hold an informal public hearing in Washington, DC, beginning at 9:30 a.m., January 18, 2011. If necessary, the hearing will continue on subsequent days at the same time and location.

Notice of intention to appear to provide testimony at the informal public hearing: Parties who intend to present testimony or question witnesses at the informal public hearing must notify OSHA in writing of their intention to do so by November 30, 2010.

Hearing testimony and documentary evidence: Parties requesting more than 10 minutes to present their testimony, or who will be submitting documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence to OSHA by December 21, 2010.

ADDRESSES: *Informal public hearing:* The hearing will be held in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Notices of intention to appear, hearing testimony, and documentary evidence: Submit notices of intention to appear, hearing testimony, and documentary evidence, identified by the docket number (OSHA–2007–0072) or the regulation identifier number (RIN 1218–AB80) using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions online for electronically submitting materials, including attachments,
- *Fax:* Send written submissions not exceeding 10 pages in length, including attachments, to the OSHA Docket Office at (202) 693–1648. Hard copies of these documents are not required. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.,* studies, journal articles), submit these attachments in hard copy to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.,* OSHA–2007–0072) so that OSHA can attach them to the appropriate document.
- *Regular mail, express delivery, hand delivery, and messenger and courier service:* Send materials to the OSHA Docket Office, Docket No. OSHA–2007–0072, Technical Data Center, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Note that security-related problems may result in significant delays in receiving submissions by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or courier service. Deliveries (express mail, hand delivery, and messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal hours of operation, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and docket number (OSHA–2007–0072). All submissions, including any personal information, are placed in the public docket without change, and will be available online at *http://www.regulations.gov.* Therefore, OSHA cautions members of the public against submitting information and statements that should remain private, including comments that contain personal information (either about themselves or others) such as Social Security numbers, birthdates, and medical information. For additional information on submitting notices of intention to appear, hearing testimony, or documentary evidence, *see* the **SUPPLEMENTARY INFORMATION** section of this notice below.

Docket: To read or download comments and other material in the docket, go to Docket No. OSHA–2007–0072 at *http://www.regulations.gov* or to the OSHA Docket Office at the address above. While all submissions to the docket are listed in the *http://www.regulations.gov,* some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. However, all submissions, including copyrighted material, are available for inspection and copying in the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions, including notices of intention to appear, the text of testimony, and documentary evidence. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* MaryAnn Garrahan, Office of Communications, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

Technical inquiries and inquiries about the hearing: Virginia Fitzner, Office of Safety Systems, Directorate of Standards and Guidance, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2052.

Copies of this **Federal Register** *notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information regarding the hearing, also are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: *Background.* On May 24, 2010, OSHA published a proposed rule to update, revise, and reorganize the standards on walking-working surfaces and to add personal fall protection systems to the Personal Protective Equipment standard (73 FR 28862). OSHA invited written comments and requests for hearings on the proposed rule. The deadline for submitting comments and hearing requests was August 23, 2010. During this period, a number of commenters submitted requests for an informal public hearing (*see, e.g.,* Ex. OSHA–2007–0072–0150.1). Accordingly, OSHA

will hold an informal public hearing on the proposed rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) in general industry on January 18, 2011, at the Department of Labor's Frances Perkins Building, Washington, DC. If necessary, the hearing will continue on subsequent days at the same time and location. This notice describes the procedures the public must use to participate in the hearings.

Public participation—comments and hearings. OSHA invites members of the public to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearings. In particular, OSHA invites interested parties who have knowledge of, or experience with, walking-working surfaces and the issues raised in the proposed rule to participate in the hearings. OSHA also welcomes data and documentary evidence that will provide the Agency with the best available evidence to use in developing the final rule.

Hearing arrangements. Pursuant to section 6(b)(3) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 655), members of the public have an opportunity at the informal public hearing to provide oral testimony and documentary evidence concerning the issues raised in the proposal. An administrative law judge (ALJ) presides over the hearing and will resolve procedural matters relating to the hearing on the first day.

Purpose of the hearing. The legislative history of Section 6 of the OSH Act, as well as OSHA's rules governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ, and questioning of witnesses is allowed on pertinent issues, the proceeding is largely informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and expeditious oral presentations in the absence of procedural restraints or rigid procedures that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the technical rules of evidence. Instead, it is an informal administrative proceeding convened to gather information and clarify the record. OSHA's regulations governing public hearings and the pre-hearing guidelines that the ALJ issues for the hearings will ensure fairness and due process for participants, as well as facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions regarding relevance, procedures, and participation generally will be resolved in favor of developing a complete record.

Conduct of the hearing. Conduct of the hearing will conform to the provisions of 29 CFR part 1911 (Rules of Procedure for Promulgating, Modifying, or Revoking Occupational Safety and Health Standards). Although the ALJ who presides over the hearings makes no decisions or recommendations on the merits of the proposed or final rules, the ALJ has the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure that interested persons receive a full and fair hearing, the ALJ has the authority to: Regulate the course of the proceedings; dispose of procedural requests, objections, and similar matters; confine presentations to matters pertinent to the issues raised in the proposed rule; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to do so; and limit the time for such questioning.

At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who filed a timely notice of intention to appear at the hearing. During the first part of this post-hearing period, these parties may submit additional data and information to OSHA, and, during the second part of this period, they may submit briefs, arguments, and summations.

Notice of intention to appear to provide testimony at the informal public hearing. Hearing participants must file a written notice of intention to appear prior to the hearing that provides the following information:

- Name, address, and telephone number of each individual who will give oral testimony;
- Name of the establishment or organization each individual represents, if any;
- Occupational title and position of each individual testifying;
- Approximate amount of time required for each individual's testimony;
- A brief statement of the position each individual will take with respect to the issues identified in the proposed rule; and
- A brief summary of documentary evidence each individual intends to present.

OSHA emphasizes that, while the hearings are open to the public and interested parties are welcome to attend, only a party that files a notice of intention to appear may question witnesses and participate fully at the hearing. If time permits, and at the discretion of the ALJ, a party that did not file a notice of intention to appear may be allowed to testify at the hearing, but for no more than 10 minutes.

Hearing testimony and documentary evidence. Parties who request more than 10 minutes to present oral testimony at the hearing, or will submit documentary evidence at the hearing, must submit the full text of their testimony and all documentary evidence no later than December 21, 2010. The Agency will review each submission and determine if the information it contains warrants the amount of time the party requested for the presentation. If OSHA determines that the requested time is excessive, the Agency will allocate an appropriate amount of time for the presentation; OSHA then will notify the participants of the time allotted for their presentations, and will provide the reasons for this determination. The Agency also may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements. During the hearing, OSHA may request that a participant return for questioning at a later time. Before the hearing, OSHA will provide the pre-hearing guidelines and hearing schedule to each hearing participant.

Certification of the record and final determination after the informal public hearing. Following the close of the hearing and the post-hearing comment periods, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The record will consist of all of the written comments, oral testimony, and documentary evidence received during the hearing. The ALJ, however, will not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review all the evidence received as part of the record, and then will issue the final rule based on the record as a whole.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC, on November 8, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–28544 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0995]

RIN 1625–AA00

Safety Zone; Beaufort River/Atlantic Intracoastal Waterway, Beaufort, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Beaufort River portion of the Atlantic Intracoastal Waterway, South Carolina during the construction and expansion of the J.E. McTeer Bridge, also referred to as the S.C. 802 Bridge. This regulation is necessary to protect life and property on the navigable waters of the Beaufort River during the construction and expansion of the J.E. McTeer Bridge. Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before December 13, 2010. The Coast Guard anticipates that this proposed rule will be effective from January 24, 2011 through January 28, 2011 and enforced daily from 9 a.m. until 12 p.m. and 2 p.m. until 5 p.m. on January 24, 2011 through January 28, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0995 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Julie Blanchfield, Coast Guard; telephone 843–740–3184, e-mail *Julie.E.Blanchfield@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0995), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0995" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0995" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The construction and expansion of the J.E. McTeer Bridge will create safety hazards within the main channel of the Beaufort River in the vicinity of the J.E. McTeer Bridge due to the presence of construction equipment and the nature of the construction project. The described portion of the Atlantic Intracoastal Waterway/Beaufort River will be affected daily from 9 a.m. until

12 p.m. and 2 p.m. until 5 p.m. on January 24, 2011 through January 28, 2011. The safety zone is necessary to protect the public from the hazards associated with the construction of the J.E. McTeer Bridge and related activities.

Discussion of Proposed Rule

The proposed rule would designate a temporary safety zone on the Beaufort River in the vicinity of the J.E. McTeer Bridge in Beaufort, South Carolina, which connects Lady's Island to Port Royal Island. The temporary safety zone will be enforced daily from 9 a.m. until 12 p.m. and 2 p.m. until 5 p.m. on January 24, 2011 through January 28, 2011. Persons and vessels may not enter, transit through, anchor in, or remain within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels may request permission to enter, transit through, anchor in, or remain within the safety zone by contacting a designated representative on VHF–FM Channel 16 or via telephone at 843–740–7050.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation is unnecessary. This proposed rule may have some impact on the public, but these potential impacts will be minimal for the following reasons: (1) Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone for a total of six hours each day for five consecutive days; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they will be able to operate in the surrounding area during the effective period; (3) vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (4) advance notification will be made to the local maritime community via broadcast notice to mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: (1) The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Beaufort River encompassed within the safety zone; and (2) the owner and operator of the Lady's Island Marina, which is located adjacent to the J.E. McTeer Bridge.

This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: (1) Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone for a total of six hours each day for five consecutive days; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they will be able to operate in the surrounding area during the effective period; (3) vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (4) advance notification will be made to the local maritime community via broadcast notice to mariners and marine safety information bulletins.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Julie Blanchfield at 843–740–3184. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone on the Beaufort River in Beaufort, South Carolina, which is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a temporary § 165.T07–0995 to read as follows:

§ 165.T07–0995 Safety Zone; Beaufort River/Atlantic Intracoastal Waterway, Beaufort, SC.

(a) *Regulated Area.* The following regulated area is a safety zone: All waters of the Beaufort River in Beaufort, South Carolina encompassed within an imaginary line connecting the following points: starting at Point 1 in position 32°23′ 44.92″ N, 80°40′31.43″ W; thence south to Point 2 in position 32°23′30.92″ N, 80°40′30.75″ W; thence east to Point 3 in position 32°23′30.15″ N, 80°40′12.93″ W; thence north to Point 4 in position 32°23′44.22″ N, 80°40′18.68″ W; thence west to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16 to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such permission must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Effective Date.* The rule is effective daily from 9 a.m. until 12 p.m. and 2 p.m. until 5 p.m. on January 24, 2011 through January 28, 2011.

Dated: November 4, 2010.

Michael F. White, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2010–28680 Filed 11–9–10; 4:15 pm]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2010–0683; FRL–9225–1]

Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant: Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearings.

SUMMARY: On October 6, 2010, the Environmental Protection Agency (EPA)

signed a proposal to promulgate a source specific Federal Implementation Plan (FIP) requiring the Four Corners Power Plant (FCPP), located on the Navajo Nation, to achieve emissions reductions required by the Clean Air Act's Best Available Retrofit Technology (BART) provision. The proposal was published in the **Federal Register** on October 19, 2010 (75 FR 64221). Given the significant public interest in this source specific FIP and to further public participation opportunities, EPA has scheduled three open houses and public hearings. These open houses and public hearings will occur in Shiprock, New Mexico on December 7, 2010, Farmington, New Mexico on December 8, 2010, and Durango, Colorado on December 9, 2010. More information on the locations is provided in **SUPPLEMENTARY INFORMATION**.

DATES: The hearings will occur in Shiprock, New Mexico on December 7, 2010, Farmington, New Mexico, on December 8, 2010, and Durango, Colorado on December 9, 2010.

ADDRESSES: The open houses and public hearings will be held at the following locations: Shiprock, New Mexico—December 7, 2010, Phil L. Thomas Performing Arts Center, Highway 64 West, Shiprock, New Mexico 87420, (505) 368–2490; Farmington, New Mexico—December 8, 2010, San Juan College Henderson Fine Arts Building Rooms 9006 and 9008, Farmington, New Mexico, 97402, (505) 326–3311; and Durango, Colorado—December 9, 2010, Double Tree Hotel, Mesa Verde La Plata Room, 501 Camino Del Rio, Durango, Colorado, 81301, (970) 259–6580.

The open houses will begin at 3 p.m. and end at 5 p.m., local time. The public hearings will begin at 6 p.m. and end at 9 p.m. or later, if necessary, depending on the number of speakers wishing to participate.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the public hearings please contact Anita Lee, EPA Region IX, (415) 972–3958, *r9air_fcppbart@epa.gov.* If you require a reasonable accommodation, please contact Terisa Williams, EPA Region 9 Reasonable Accommodations Coordinator, by Friday, November 18, 2010, at (415) 972–3829, or *Williams.Terisa@epa.gov.*

SUPPLEMENTARY INFORMATION: The public hearings will provide interested parties the opportunity to present views or arguments concerning the proposed FIP. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked on or before the last day of the comment period, December 20, 2010. EPA will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all oral and written comments received on our proposal. To provide opportunities for questions and discussion, EPA will hold open houses prior to the public hearings. During these open houses, EPA staff will be available to informally answer questions on our proposed action. Any comments made to EPA staff during the open houses must still be provided formally in writing or orally during the public hearing in order to be considered in the record.

Oral testimony may be limited to 5 minutes for each commenter to address the proposal. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments, in English or Dine, and data pertaining to our proposal at the Public Hearing. English-Dine translation services will be provided at both the Open Houses and the Public Hearings in Shiprock and Farmington. English-Dine translation services will not be provided at the Durango Open House and Public Hearing unless it is requested by November 18, 2010. Verbatim transcripts, in English, of the hearings and written statements will be included in the rulemaking docket.

The proposed rule was published in the **Federal Register** on October 19, 2010 (75 FR 64221) and can be accessed the following Web site: *http://www.epa.gov/region9/airnavajo/index.html#proposed.* EPA has established a public docket for the proposed rulemaking under the docket number EPA–R09–OAR–2010–0683.

If you are unable to attend the public hearings but wish to submit written comments on the proposed rule, you may submit comments, identified by docket number EPA–R09–OAR–2010–0683, by one of the following methods:

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

E-mail: r9air_fcppbart@epa.gov.

Mail or deliver: Anita Lee (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). Due to building security procedures, to inspect the hard copy materials, please schedule an appointment at least 24 hours in advance during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: November 2, 2010.

Deborah Jordan,

Air Division Director, Region IX.

[FR Doc. 2010–28498 Filed 11–10–10; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 54

[WT Docket No. 10–208; FCC 10–182]

Supplement to Universal Service Reform Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document is a supplement to the Universal Service Reform Mobility Fund, published November 1, 2010. In this document, the Federal Communication Commission proposes the creation of a new Mobility Fund to make available one-time support to significantly improve coverage of current-generation

or better mobile voice and Internet service for consumers in areas where such coverage is currently missing. The Commission seeks comment on creating the Mobility Fund using reserves accumulated in the Universal Service Fund and on the use of a reverse auction to make one-time support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.

DATES: Comments are due on or before December 16, 2010; and reply comments are due on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by WT Docket No. 10–208, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.
- In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *nfraser@omb.eop.gov* or fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Scott Mackoul at (202) 418–0660. For additional information concerning the information collection requirements contained in this document, send and e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Mobility Fund Notice of Proposed Rulemaking* in WT Docket No. 10–208, adopted October 14, 2010, and released on October 14, 2010. The complete text of the *Mobility Fund Notice of Proposed Rulemaking* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Mobility Fund Notice of Proposed Rulemaking* may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 10–182. The *Mobility Fund Notice of Proposed Rulemaking* is also available on the Internet at the Commission's Web site or by using the search function for WT Docket No. 10–208 on the ECFS web page at *http://www.fcc.gov/cgb/ecfs/.*

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in the document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

I. Notice of Proposed Rulemaking

A. Introduction

1. Millions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas. To accelerate the Commission's nation's ongoing effort to close this mobility gap in a fiscally responsible manner, the *Mobility Fund Notice of Proposed Rulemaking* seeks comment on using reserves accumulated in the Universal Service Fund (USF) to create a new Mobility Fund. The purpose of the Mobility Fund is to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing, and to do so by supporting private investment. The Mobility Fund would use market mechanisms—specifically, a reverse auction—to make one-time support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.

2. In the three decades since the Commission issued the first cellular telephone licenses, the wireless industry has continually expanded and upgraded its networks to the point where third generation (called advanced or 3G) mobile wireless services are now widely available. Despite these advances, mobility gaps remain a problem for residents, public safety first responders, businesses, public institutions, and travelers, particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas. Moreover, without existing modern wireless infrastructure, they are at risk of much-delayed access to the coming generations of high-speed wireless broadband services. For this reason, the *National Broadband Plan* recommended providing universal service support to promote the national build-out of 3G services as part of a comprehensive set of recommendations to reform the universal service program. *See* Federal Communications Commission, Connecting America: The National Broadband Plan, 146–48 (rel. Mar. 16, 2010) (*National Broadband Plan*). The proposals in the *Mobility Fund Notice of*

Proposed Rulemaking build on that recommendation. In the *Mobility Fund Notice of Proposed Rulemaking,* the Commission uses "current generation," "3G," and "advanced" interchangeably to refer to mobile wireless services that include voice telecommunications service as well as e-mail and Internet access.

3. The Commission recently undertook steps for fiscally responsible USF reform when, in the *Corr Wireless Order,* the Commission provided instructions for implementing the commitments of both Verizon Wireless and Sprint Nextel to surrender their high-cost universal service support over five years. High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC, WC Docket No. 05–337, CC Docket No. 96–45, *Order and Notice of Proposed Rulemaking,* FCC 10–155 (rel. Aug. 31, 2010) (*Corr Wireless Order*). The Commission directed that the surrendered support be reserved as a potential down payment on proposed broadband universal service reforms as recommended by the *National Broadband Plan,* including creation of a Mobility Fund to provide wireless broadband service in areas that lack coverage. Thus, the Mobility Fund considered in the *Mobility Fund Notice of Proposed Rulemaking* is one of a set of initiatives to promote deployment of broadband and mobile services in the United States through a financially sensible transformation of USF, using market-based and incentive mechanisms.

B. Background

4. *The National Broadband Plan* recommended a Mobility Fund in connection with broader reforms of the USF. The plan recommended providing targeted, one-time support for deployment of 3G infrastructure in order to bring all states to a minimum level of mobile service availability, without increasing the size of the USF. The *National Broadband Plan* observed that supporting 3G build-out in states with 3G coverage lagging the national average would enable those states to catch up with the rest of the nation and improve the business case for 4G rollout in harder-to-serve areas.

C. Overall Design of the Mobility Fund

5. Drawing on some of the USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel and reserved by the Commission, the Mobility Fund would make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available. In order to maximize the reach of available funds, the Commission proposes to provide Mobility Fund support to at most one provider in any given unserved area. The Commission proposes to utilize a reverse auction mechanism to compare all offers to provide service across the unserved areas eligible for participation in the Mobility Fund program, which should give providers incentives to seek the least support needed and enable identification of the providers that will achieve the greatest additional coverage with the limited funding available. The Commission proposes to specify unserved areas eligible for support on a census block basis, using industry data compiled by American Roamer, and to conduct competitive bidding to offer support in unserved census blocks grouped by census tracts. The Commission noted that, because American Roamer reports advertised coverage as reported by many carriers who all use different definitions of coverage, the data from American Roamer may overstate the coverage actually experienced by consumers.

6. The Commission also seeks comment in the *Mobility Fund Notice of Proposed Rulemaking* on a number of alternative methods the Commission could use to distribute Mobility Fund support, including distributing support to any of the identified census tracts nationwide or targeting it to those identified census tracts in any county nationwide or in states where 3G deployment most significantly lags behind the percentage of nationwide population with 3G access. The Commission proposes to support only wireless networks performing as well as or better than 3G networks currently operating in the United States, for example networks using HSPA or EV–DO. The Commission proposes that parties receiving support be required to demonstrate the deployment and offering of service in previously uncovered areas within a specified period of time. The Commission seeks comment on ways to structure the program so that it directs funding to those places where deployment of advanced mobile wireless service is otherwise not likely to happen.

1. Legal Authority

7. The Commission proposes to distribute Mobility Fund support through the universal service program. Accordingly, the Commission's legal authority to create the Mobility Fund is based upon and delimited by its legal authority to distribute universal service funds. The Commission has authority to use universal service funds to support an evolving level of telecommunications services, taking into account advances in telecommunications and information technologies and services. See 47 U.S.C. 254(c). In addition, various statutory and regulatory requirements apply to the use of these funds. See 47 U.S.C. 214, 254; 47 CFR 54.101. The Commission requests comment on its authority to implement the proposals contained in the *Mobility Fund Notice of Proposed Rulemaking.* The Commission also seeks comment on whether these proposals require any revisions to its existing regulations or to its existing authority. The Commission further asks that commenters address, to whatever extent necessary, whether any alternative proposals that they suggest are within its current legal authority or require any expansion of that authority.

2. Size of the Mobility Fund

8. The Commission proposes to use $100 million to $300 million in USF high-cost universal service support to fund, on a one-time basis, the expansion of current-generation mobile wireless services through a new Mobility Fund. Prior voluntary agreements by Verizon Wireless and Sprint Nextel to surrender USF high-cost support will likely make several hundred million dollars available annually that can be used for other USF purposes without increasing the overall size of the high-cost fund. The *National Broadband Plan* recommended using these foregone funds to implement its recommendations, including the creation of the Mobility Fund, and subsequently the Commission adopted the *Corr Wireless Order* implementing the voluntary commitments.

9. The ultimate impact of any amount of support would depend upon a variety of factors, including the extent to which non-recurring funding makes it possible to offer service profitably in areas previously uneconomic to serve, what percentage of the support must fund new facilities as opposed to upgrades to pre-existing facilities, the percentage of total capital costs that support must provide, and the extent to which new customers adopt services newly made available. The Commission seeks comment on the level of support to be provided through the Mobility Fund. Specifically, the Commission asks commenters to consider whether there is an optimal size for the Mobility Fund. For instance, is there an amount that would exceed what is needed to target those areas where non-recurring support could be used most effectively to expand coverage within a relatively

short timeframe? What amount would be too small to effectively jump-start deployment so as to provide service in the places where it might not otherwise become available?

3. One Provider Per Area

10. Given the Commission's objective of using the Mobility Fund to support the provision of expanded advanced mobile wireless services to as much of the currently unserved population in identified areas as possible, the Commission proposes that only one entity in a given geographic area receive Mobility Fund support. The Commission recognizes that mobile wireless providers have expressed competitive concerns, especially given that 3G services may use either CDMA or GSM technology, about the possibility of limiting support to one provider. In light of these concerns, the Commission proposes certain terms and conditions of support to encourage possibilities for competition. The Commission seeks comment on its proposal to make Mobility Fund support available to only one provider per area.

4. Auction To Determine Awards of Support

11. The Commission proposes to use a competitive bidding mechanism to determine the entities that will receive support under the Mobility Fund and the amount of support they will receive—that is, the Commission proposes to award support based on the lowest bid amounts submitted in a reverse auction. Such a mechanism should allow the market to reveal the costs of providing expanded access to advanced mobile services in unserved areas. This should allow the Commission to select the providers that require the least support without requiring onerous cost showings by applicants and without guaranteeing that support payments will cover all, or any specific percentage of, the providers' actual costs.

12. In this reverse auction, which the Commission proposes to conduct using a single round of bidding, applicants formulating their bids would have to evaluate carefully the amount of support they need to provide the required services. In general, bidders would not want to overstate the support they require since they would be competing against other providers for limited support funds and a higher bid would reduce their chances of winning. At the same time, they would not want to understate the support they require, since they might be awarded such support based on a bid amount that does not cover their costs and then be expected to provide services to meet the performance requirements. As a result, the submitted bids should present a good estimate of the actual costs to the bidders of providing advanced mobile services in the areas on which they bid to expand service. The Commission seeks comment generally on the use of a competitive bidding mechanism to determine recipients of Mobility Fund support and support amounts, and particularly, on the use of a single round reverse auction format.

13. More specifically, the Commission proposes to determine winning bidders for Mobility Fund support based on the lowest per-unit bids, using the population of unserved areas (and perhaps other characteristics, such as road miles) as units and taking into account the requirement that there be no more than one Mobility Fund recipient in any particular area. The auction mechanism would compare all per-unit bids across all areas (that is, compare all bids against all other bids, rather than compare all bids for a single area), and order all the submitted bids from lowest per-unit amount to highest. The bidder making the lowest per-unit bid would first be assigned support in an amount equal to the amount needed to cover the population (or units based on other characteristics) deemed unserved in the specific area at the per-unit rate that was bid. For example, if the lowest per-unit bid were $100 per person, the bidder placing that bid would be awarded support in the amount of $100 times the population of the area on which it bid. Support would continue to be assigned to the bidders with the next lowest per-unit bids in turn, as long as support had not already been assigned for that geographic area, until the running sum of support funds requested by the winning bidders was such that no further winning bids could be financed by the money available in the Mobility Fund.

14. By awarding support to those bidders that are able to cover units in unserved areas at the least cost to the Mobility Fund, the greatest amount of population in the identified unserved areas can be covered with the available funds. The Commission seeks comment on this method of determining recipients of Mobility Fund support. The Commission also seeks comment on determining payment amounts as proposed—by multiplying the winning per-unit bid amounts by the units deemed unserved.

5. Identifying Unserved Areas Eligible for Support

15. The Commission proposes to identify unserved areas on a census block basis and, because individual census blocks are so small, the Commission proposes to conduct bidding to offer Mobility Fund support in unserved census blocks grouped by census tracts. The Commission further seeks comment on alternative ways to distribute support to these unserved areas.

a. Identifying Unserved Areas by Census Block

16. As a first step in identifying those areas for which applicants can bid for Mobility Fund support, the Commission proposes to determine the availability of service at the census block level, using a widely available dataset. Census blocks are the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data, so determining coverage by census block should provide a detailed picture of the availability of 3G mobile services. By the end of the first quarter of 2011, census data from the 2010 decennial census should be available on a census block level. The Commission proposes to use that data when it becomes available and seeks comment on the proposal. Until that data becomes available, the Commission will use in its discussion the projected census block data from Geolytics Block Estimates and Block Estimates Professional databases (2009).

17. Specifically, the Commission proposes to use American Roamer data identifying the geographic coverage of networks using EV–DO, EV–DO Rev A, and UMTS/HSPA as a measure of availability of current-generation mobile wireless services. For each census block, the Commission would observe whether the data indicates that the geometric center of the block—referred to as the centroid—is covered by such mobile wireless services. If the data indicates that the centroid is not covered by such services, the Commission proposes to consider that census block as unserved. Alternatively, the Commission could use the data to obtain the geographic proportion of the block that is uncovered—the proportional method. The Commission could then consider unserved any census block where the data indicates that more than 50 percent of the area is unserved. Or, the Commission could consider unserved that fraction of the census block's population (or other units).

18. The Commission seeks comment on its proposed use of American Roamer data to determine areas unserved by current-generation mobile wireless services. Are there distinctions in the way carriers report coverage to American Roamer that the Commission

should consider when using the data? Are there alternative available datasets the Commission can use instead of, or in addition to, American Roamer data that would be more reliable or better suited for identifying unserved areas? The Commission seeks comment also on the proposed centroid method of determining unserved census blocks and on the proportional coverage alternative. Is the centroid method likely to identify areas that are good candidates for support consistent with the objectives of the Mobility Fund? Are there other transparent and workable methods for using the available data to define unserved areas? In addition, the Commission seeks comment on the extent to which the availability in unserved census blocks of other supported services using non-mobile wireless technologies should be a factor in determining whether those census blocks should be eligible for Mobility Fund support.

19. The Commission recognizes that data on mobile services coverage may change over a relatively short timeframe. Therefore, the Commission proposes to delegate to the Wireless Telecommunications Bureau (Wireless Bureau) the authority to identify unserved census blocks prior to announcing a Mobility Fund auction, using the method the Commission adopts and the most recent data available for that purpose.

b. Offering Support by Census Tract

20. While proposing to identify unserved areas at the census block level, the Commission proposes to group unserved census blocks by larger areas—census tracts—as a basis for competitive bidding, since individual census blocks may be too small to serve as a viable basis for providing support. More specifically, the Commission proposes to accept bids for support to expand coverage to all the unserved census blocks within a particular census tract.

21. The Commission seeks comment on whether census tracts are the most appropriate basic geographic unit for providing support to expand coverage. Are there other geographic units by which the Commission might group unserved census blocks that might better balance the need to identify discrete unserved areas for which the Commission proposes to require coverage under the Mobility Fund with business plan requirements of wireless providers?

c. Establishing Unserved Units

22. The Commission proposes at a minimum to establish the number of units in each unserved census block based on population. The Commission also seeks comment on whether it should take into account characteristics such as road miles, traffic density, and/or community anchor institutions in determining the number of units in each unserved census block to be used for assigning support under the Mobility Fund. For example, should the Commission utilize data compiled by the Department of Transportation (such as Traffic Analysis Zones) or data on community anchor institutions to establish the number of units in the census block that will be considered unserved? A traffic analysis zone (TAZ) is a special area delineated by state and/or local transportation officials for tabulating traffic-related data, especially journey-to-work and place-of-work statistics. Using such additional factors in determining the units in each unserved area may better represent the public benefits of providing new access to mobile services. Are there other factors that the Commission should take into account when assessing coverage of unserved areas, such as work or recreation sites; anchor institutions such as schools, libraries, and hospitals; or accessibility to a road system? The Commission asks that commenters address how it should measure the factors on which it seeks comment as well as any other factors they advocate, and how coverage for one type of unit, such as a work site, should compare with coverage for other units, such as resident population, or whether such comparisons would be appropriate.

d. Distributing Mobility Fund Support Among Unserved Areas

23. The *National Broadband Plan* recommended creation of a Mobility Fund as a means of bringing all states to a minimum level of 3G (or better) mobile service availability. Here, the Commission seeks comment on various methods it could use to distribute Mobility Fund support among unserved areas, including ways to target support to places that significantly lag behind the level of 3G coverage generally available nationwide.

24. The Commission could make eligible for Mobility Fund support any area nationwide that the Commission deems to be unserved, including territories. Thus, the Commission seeks comment on whether, if it were to adopt its proposal for identifying census tracts with at least one unserved census block, the Commission should make available for bids all such identified census tracts across the country.

25. The Commission also seeks comment on alternative ways of limiting Mobility Fund support to places that lag significantly behind the level of 3G coverage nationwide. Based on May 2010 American Roamer data and November 2009 population estimates, 98.5 percent of the population nationwide resides in areas with access to 3G services. The Commission notes that, as proposed, it would be using updated coverage and population data to determine areas unserved by 3G prior to any Mobility Fund auction, so it is possible that the level of nationwide coverage could change. Therefore, the Commission seeks comment on various ways to identify places that lag significantly behind that level of coverage based on more updated data.

26. For instance, the Commission seeks comment on making Mobility Fund support available for unserved census blocks in census tracts in any county nationwide where the countywide percentage of population with access to 3G services is more than three percentage points below the level of 3G deployment nationwide, as determined prior to an auction based on updated data. The Commission also seeks comment on targeting Mobility Fund support to unserved blocks in census tracts in those states where the statewide percentage of population with access to 3G services is more than three percentage points less than the percentage of the national population with such access. Alternatively, the Commission seeks comment on whether the it should target an expanded list of counties or states, for example, those with 3G coverage levels that are more than two percentage points below the nationwide level. The Commission also invites suggestions of other means for identifying the counties or states that the Mobility Fund should target.

27. The Commission invites comment on all of the alternatives—distributing support among unserved areas nationwide and various methods for targeting support to a subset of unserved areas. The Commission seeks comment on the relative merits and drawbacks of these alternative approaches. In particular, the Commission welcomes any insights commenters can provide regarding which of these alternatives would most effectively utilize Mobility Fund support to benefit consumers through expanded 3G coverage. The Commission also seeks commenters' views on which of these ways of distributing Mobility Fund support would best help ensure that places with the lowest levels of 3G coverage will not fall even farther behind as the industry begins to deploy the next generation of 4G mobile broadband service. Finally, the Commission notes that some areas

that it identifies as lacking 3G coverage will have some level of mobile voice service, while other identified areas will have no mobile wireless service at all. The Commission seeks comment on whether and how the Commission might prioritize support toward unserved areas that currently lack any mobile wireless service.

e. Targeting Tribal Areas

28. The Commission seeks comment on whether the Commission should reserve funds for developing a Mobility Fund support program targeted separately to Tribal lands that trail national 3G coverage rates. For these purposes, Tribal lands are defined as any federally recognized Indian tribes reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian Allotments. 47 CFR 54.400(e). Communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population. Available data illustrates that less than ten percent of residents on Tribal lands have access to broadband. Also, Tribal lands are often in rural, high-cost areas, and present distinct connectivity challenges. The *National Broadband Plan* observed that many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. As a result, the *National Broadband Plan* noted that Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband will require increased funding. The Commission has recognized that Tribes are inherently sovereign governments that enjoy a unique relationship with the federal government. In turn, the Commission has reaffirmed its policy to promote a government-to-government relationship between the FCC and federally-recognized Indian tribes. Because this relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands, the Commission believes addressing Mobility Fund support for Tribal lands on a separate track will be beneficial in providing adequate time to coordinate with American Indian Tribes and Alaska Native Village governments and seeks their input.

6. Performance Requirements

a. Coverage Requirement

29. The Commission proposes to establish a coverage requirement that will ensure that Mobility Fund support is put to the purpose for which it is intended—to expand coverage in unserved areas. The Commission seeks comment on the percentage of resident population in the census blocks deemed unserved the Commission should require be covered by any party receiving support for a particular census tract. Should the Commission require 100 percent coverage? Or would it be appropriate to require a level of coverage of between 95 and 100 percent of the resident population of census blocks deemed unserved in order to balance its goal of expanding service with concern that excessively high costs to serve a few residents in an area might deter providers from bidding to cover areas otherwise well suited for Mobility Fund support? The Commission notes that should it decide to require less than 100 percent coverage, recipients would receive support based on the percentage of coverage actually achieved, provided that they cover at least the required percentage.

30. Is a performance requirement appropriate, given the Commission's proposed method of determining unserved areas, its proposed use of per-unit bids to determine the set of winning bidders, and its proposal that the Commission will determine support amounts based on the units deemed unserved in the census blocks within the tract? The Commission asks commenters to consider how it should monitor compliance with any coverage requirement, and to address the ways in which monitoring may create incentives for support recipients to further the goals of the Mobility Fund program. The Commission invites commenters describing any alternatives to its proposal to explain with specificity why such alternatives would be preferable. To ensure that the Mobility Fund supports service where it is actually needed, should the Commission require winning bidders to actively market their service in the area(s) for which they bid, and/or to provide service to a specified number or percentage of consumers in such areas by certain milestone dates?

31. The Commission also makes proposals to encourage possibilities for competition in the market for 3G or better services in the geographic areas in which it provides support. First, the Commission proposes that any new tower constructed to satisfy Mobility Fund performance obligations provide the opportunity for collocation. The Commission seeks comment on this proposal. Should the Commission require any minimum number of spaces for collocation on any new towers and/or specify terms for collocation? In addition, the Commission proposes that the use of Mobility Fund support be conditioned on providing data roaming on reasonable and not unreasonably discriminatory terms and conditions on 3G and subsequent generations of mobile broadband networks that are built through Mobility Fund support. The Commission seeks comment on this proposal and asks that commenters provide specific information on the impact and/or the importance of such requirements in promoting the availability of advanced mobile services.

b. Service Quality and Rates

32. The Commission proposes that Mobility Fund support be used to expand the availability of advanced mobile communications services comparable or superior to those provided by networks using HSPA or EV–DO, which are commonly available 3G technologies. Universal service support may be provided for services based on widely available current generation technologies—or superior next generation technologies available at the same or lower costs—even though supported services could be based on earlier technologies. Technologies used to provide the services supported by universal service funds need not be technologies that are strictly limited to providing the particular services designated for support. As detailed in connection with proof of deployment requirements, supported networks would demonstrate their quality of service by proving that they have achieved particular data rates under particular conditions. The Commission proposes that these data rates be comparable to those provided by networks using the basic functionality of HSPA or EV–DO. The Commission would not, however, require that supported parties use any particular technology to provide service. Instead, the Commission proposes to use widely deployed technologies to define a baseline of performance that any supported network must meet or exceed. The Commission seeks comment on this proposal. Should supported networks be required to provide data rates comparable to 4G networks? Alternatively, should supported networks be required to present a path to 4G service?

33. The Commission also seeks comment on how to implement, in the context of the Mobility Fund, the statutory principle that supported

services should be made available to consumers in rural, insular, and high-cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas. Given the absence of affirmative regulation of rates charged for commercial mobile services, as well as the rate practices and structures used by providers of such services, how can parties demonstrate that the rates they charge in areas where they receive support are reasonably comparable to rates charged in urban areas? What should the Commission use as a standard for reasonably comparable and urban areas in this context? What should be the consequence of failing to make the required showing?

c. Deployment Schedule

34. The Commission proposes that recipients be required to meet certain milestones for the provision of service in each unserved census block in a tract in order to remain qualified for the full amount of any Mobility Fund award. For example, the Commission could require that recipients achieve fifty percent of the coverage requirement within one year after qualifying for support. The Commission seeks comment on this proposal and on appropriate coverage percentages and time periods for such a milestone. Are there critical factors that should be taken into account in establishing timetables for rollout in different areas, such as weather conditions or limited construction seasons? The Commission notes that service providers will have to comply with the Commission's rules implementing the National Environmental Policy Act and other federal environmental statutes, as well as all local requirements for construction. Are there areas where those requirements would make it appropriate to adopt alternative schedules?

d. Proof of Deployment

35. Parties supported by the Mobility Fund must provide 3G or better mobile coverage in specific areas previously deemed unserved by 3G. The Commission proposes that parties satisfy their performance requirement by proving that they have deployed a network covering the relevant area and capable of meeting certain minimum standards. The Commission proposes that data from the drive tests conducted after construction and optimization of the network be used to determine whether these requirements have been met. By drive tests, the Commission refers to tests service providers normally conduct to analyze network coverage for mobile services in a particular area, that is, measurements taken from vehicles traveling on roads in the area. More specifically, the Commission proposes that recipients of Mobility Fund support would provide data from their drive tests showing mobile transmissions to and from the network meeting or exceeding the following minimum standards: Outdoor minimum of 200 kbps uplink and 768 kbps downlink to handheld mobile devices at vehicle speeds up to 70 MPH. These data rates should be achieved with 90 percent coverage area probability at a sector loading of 70 percent. The transmissions would be required to support mobile voice and data. The Commission proposes that the drive test would be conducted over all Interstate, US, and State routes in the area, as well as any other roads that the applicable State Agency regulating the provision of telecommunications services deems essential to service. The Commission proposes that drive test data satisfying the foregoing requirements should be submitted within two months of a site providing service or two years of the date support is first provided, whichever comes earlier. The Commission seeks comment on these proposals.

36. The Commission's proposal would not require that providers employ any particular type of technology in expanding coverage. Nevertheless, the Commission seeks comment on whether there are reasons to adopt technology-specific minimum standards. Is there any risk that providers will deploy particular technologies in inefficient ways or ways that limit their capacity for future growth in order to meet the minimum standards? Or should the Commission require superior performance from certain technologies that are capable of far exceeding the minimum requirements? For example, should the Commission require that 4G technologies deployed with support satisfy minimum standards greater than 3G technologies deployed with support?

37. The Commission seeks comment on how to determine the roads that must be included in any drive tests subject to review. Would it be sufficient to cover Interstates, US Routes, and State Routes? Do circumstances vary sufficiently from state to state or region to region such that different approaches should be adopted for different States? What parties are likely to have the best available information regarding what roads are most important for mobile coverage? Should those parties be involved in the process of determining the roads that must be included in the drive tests?

38. To demonstrate coverage of the population within an unserved area, the Commission proposes that bidders submit in electronic Shapefiles site coverage plots from a standard RF prediction tool that utilizes high resolution terrain data and has been calibrated to match the results of drive tests to the extent possible. The Environmental Systems Research Institute (ESRI) Shapefile format is a commonly used GIS (Geographic Information System) file format representing vector data. These plots would be submitted along with the drive test data, preferably on the same plot, and each will display the same coverage threshold parameter, with adjustments to account for drive test configuration specified as necessary. The coverage threshold selected would be one that is (a) sufficient to initiate and hold a voice call, and (b) is mathematically capable using standard link budget calculations of supporting the minimum data rate requirements. These link budget calculations showing derivation of the threshold would also be provided. The scale of the plots would be at least 1:240,000 such that reasonable coverage resolution is evident. In addition, the plots would be accompanied by all relevant site data, including site coordinates, antenna type(s), radiation centers (AGL), Effective Isotropic Radiated Powers (EIRPs), antenna azimuths, and antenna tilts. These plots would also include major roadways, census tract boundaries, and county (or its equivalent) and state boundaries, as well as the boundaries between served and unserved census blocks, as previously determined by the Commission, so that the site's coverage can easily be compared to areas previously deemed unserved. The specific census blocks may be identified on the plot or listed in accompanying data. Lastly, the plots would show the population previously deemed unserved of each block and the percentage of these that are now served.

39. The Commission proposes that parties receiving support be required to file annual reports with the Commission demonstrating the coverage provided with support from the Mobility Fund for five years after qualifying for support. The Commission proposes that the reports include maps illustrating the scope of the area reached by new services, the population residing in those areas (based on Census Bureau data and estimates), and information regarding efforts to market the service to promote adoption among the population in those areas. In addition, the

Commission proposes that each party receiving support be required to include in its annual reports all drive test data that the party receives or makes use of, whether the tests were conducted pursuant to Commission requirements or any other reason. The Commission seeks comment on this proposal and discussion of any alternatives regarding the collection of information about supported services newly offered in previously unserved areas.

D. Mobility Fund Eligibility Requirements

40. In compliance with statutory requirements and to help ensure the commitment of applicants, the Commission proposes certain minimum requirements for those entities wishing to receive support from the Mobility Fund. Specifically, the Commission proposes that a provider be required to (1) Be designated (or have applied for designation) as a wireless Eligible Telecommunications Carrier (ETC) pursuant to 47 U.S.C. 214(e), by the state public utilities commission (PUC) (or the Commission, where the state PUC does not designate ETCs) in any area that it seeks to serve; (2) have access to spectrum capable of 3G or better service in the geographic area to be served; and (3) certify that it is financially and technically capable of providing service within the specified timeframe. The Commission proposes to require that, subject to these requirements, applicants be eligible to submit bids seeking support to deploy service in multiple unserved areas. The Commission seeks comment on these minimum requirements, inquires whether other minimum standards are desirable, and solicits comment on other provider eligibility issues.

41. The Commission proposes a two-stage application process similar to the one it uses in spectrum license auctions. Based on the eligibility requirements for Mobility Fund support, the Commission would require a pre-auction short-form application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership and applicant certifications, and perform a more extensive, post-auction review of the winning bidders' qualifications based on required long-form applications. Such an approach should provide an appropriate screen to ensure serious participation without being unduly burdensome. This would allow the Commission to move forward quickly with the auction, which would speed the distribution of funding and ultimately the provision of advanced mobile wireless services to currently unserved areas. The Commission seeks comment on the use of this application process to ensure compliance with its eligibility requirements.

1. ETC Designation

42. All USF recipients must be designated as ETCs by the relevant state (or by the Commission in cases of states that have determined they have no jurisdiction over a wireless ETC designation request) before receiving high-cost support pursuant to 47 U.S.C. 214 and 254. Therefore, the Commission proposes to require that applicants for Mobility Fund support be designated as wireless ETCs covering the relevant geographic area prior to participating in a Mobility Fund auction. The Commission seeks comment on the proposal.

43. Alternatively, the Commission seeks comment on allowing entities that have applied for designation as ETCs in the relevant area to participate in a Mobility Fund auction. Pursuant to 47 U.S.C. 214(e)(1) and 47 CFR 54.101(b), an ETC is obligated to provide all of the supported services defined in 47 CFR 54.101(a) throughout the area for which it has been designated an ETC. Therefore, an ETC must be designated (or have applied for designation) with respect to an area that includes area(s) on which it wishes to receive Mobility Fund support. Moreover, a recipient of Mobility Fund support will remain obligated to provide supported services throughout the area for which it is designated an ETC if that area is larger than the areas for which it receives Mobility Fund support. Commenting parties should discuss whether the potential gain by allowing a larger pool of applicants offsets any potential abuse and delay that could result if a non-ETC were to bid and win the auction, but then be deemed ineligible for support.

44. In addition, the Commission seeks comment on the ETC designation requirements of 47 U.S.C. 214(e). For example, ETCs must offer supported services throughout the service area for which the designation is received. The statute also provides that when states handle the ETC designation, the states also designate the service areas. Section 214 permits this Commission, with respect to interstate services, to designate ETCs and service areas if no common carrier will provide the services that are supported by Federal universal service support mechanisms under 47 U.S.C. 254(c) to an unserved community or any portion thereof that requests such service. The statute also provides that in states where the state commission lacks jurisdiction over the carrier seeking ETC status, which is sometimes the case for wireless carriers, this Commission designates the ETC and the service area. How can the Commission best interpret these and all the interrelated requirements of 47 U.S.C. 214(e) to achieve the purposes of the Mobility Fund?

2. Access to Spectrum To Provide Required Services

45. In order to participate in a Mobility Fund auction and receive support, the Commission proposes that an entity be required to hold, or otherwise have access to, a Commission authorization to provide service in a frequency band that can support 3G or better services. The Commission seeks comment on both the access to, and the type of, spectrum required for Mobility Fund eligibility.

46. As an initial matter, the Commission proposes that entities currently licensed to operate in identified unserved blocks should be deemed to meet this requirement. The Commission also seeks comment on whether entities other than current licensees should be eligible to participate if they have either applied for a Commission license or have entered into an agreement to acquire a license through an assignment or transfer of control. Therefore, the Commission seeks comment on whether a binding agreement to acquire the necessary authorization to use spectrum should be sufficient for Mobility Fund eligibility.

47. The Commission also seeks comment on using leased spectrum to provide the service that would meet the parameters of the Mobility Fund. Commenters supporting Mobility Fund eligibility for entities using leased spectrum should indicate whether the Commission should impose requirements regarding the terms of spectrum leasing arrangements that will confer eligibility, such as the minimum duration of the arrangement, the amount of spectrum, etc. Moreover, the Commission asks whether the entity must currently be leasing the spectrum at the time of the Mobility Fund's short-form or long-form application deadline or whether a signed agreement is sufficient.

48. The Commission proposes further that entities seeking to receive support from the Mobility Fund have access to spectrum (and sufficient bandwidth) capable of supporting the required services, such as spectrum for use in Advanced Wireless Services, the 700 MHz Band, Broadband Radio Services, broadband PCS or cellular bands. Should the Commission limit eligibility

based on access to specific spectrum suitable for providing the required services? If so, what spectrum should the Commission consider appropriate? Do the technical rules and configuration for Specialized Mobile Radio frequencies permit 3G service? The Commission also seeks comment on whether, with or without regard to requiring access to particular frequencies, the Commission should require that parties seeking support have access to a minimum amount of bandwidth and whether only paired blocks of bandwidth should be deemed sufficient.

3. Certification of Financial and Technical Capability

49. The Commission also proposes that each party seeking to receive support from the Mobility Fund be required to certify that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it seeks support. The Commission seeks comment on how best to determine if an entity has sufficient resources to satisfy the Mobility Fund obligations. The Commission likewise seeks comment on certification regarding an entity's technical capacity. Does the Commission need to be specific as to the minimum showing required to make the certification? Or can the Commission rely on its post-auction review and performance requirements?

4. Other Qualifications

50. In addition to the three minimum qualifications (ETC designation, access to spectrum for 3G or better services, and certifications regarding financial and technical capabilities), the Commission seeks comment on other eligibility requirements for entities seeking to receive support from the Mobility Fund. Parties providing suggestions should be specific and explain how the eligibility requirements would serve the ultimate goals of the Mobility Fund. At the same time that the Commission establishes minimum qualifications consistent with the goals of the Mobility Fund, are there ways the Commission can encourage participation by the widest possible range of qualified parties? For example, are there any steps the Commission should take to encourage smaller eligible parties to participate in the bidding for support?

E. Reverse Auction Mechanism

51. At this stage in the development of the Mobility Fund, the Commission proposes rules for and seeks comment on certain auction design elements that will establish a general framework for the proposed reverse auction mechanism. Accordingly, as detailed in Appendix A of the *Mobility Fund Notice of Proposed Rulemaking,* the Commission proposes rules that will provide the Commission, the Wireless Bureau, and the Wireline Competition Bureau (Wireline Bureau) with some flexibility to choose among various methods of conducting the bidding and procedures to use during the bidding. These rules are generally modeled on the Commission rules that govern the design and conduct of its spectrum license auctions.

52. While the rules the Commission proposes establish the framework for conducting a Mobility Fund auction, they do not necessarily by themselves establish the specific detailed procedures that will govern any auction process. The Commission envisions that it will develop and provide notice to potential bidders of detailed auction procedures prior to conducting a Mobility Fund auction. This will promote the use of specific procedures for an auction that take into account the particular program requirements and auction rules established in this proceeding. Specifically, the Commission proposes that, after establishing program and auction rules for the Mobility Fund in this proceeding, it will release a Public Notice announcing an auction date, identifying areas eligible for support through the auction, and seeking comment on specific detailed auction procedures to be used, consistent with those rules. The Commission further proposes that it will release a subsequent Public Notice specifying the auction procedures, including dates, deadlines, and other details of the application and bidding process. Consistent with the Commission's existing practice for spectrum auctions, the Commission delegates authority jointly to the Wireless and Wireline Bureaus to establish as outlined here, through public notices, the necessary detailed auction procedures prior to a Mobility Fund auction, and to take all other actions needed to conduct any such auction. The Commission seeks comment on this proposal.

1. Basic Auction Design

53. A reverse auction, in which potential providers or sellers of a defined service or other benefit compete to provide it at the lowest price, can be a relatively quick, simple, and transparent method of selecting parties that will provide a benefit at the lowest price and of setting the price those parties should be paid. Here, the Commission proposes general rules for a Mobility Fund reverse auction including some other aspects of the auction design and process that must be considered before actually conducting an auction. As a threshold matter, although there are a number of formats that could be used for reverse auctions, including both multiple-round and single-round formats, the Commission proposes to use a single-round reverse auction to award Mobility Fund support. The Commission proposes a single-round auction because it is simple and because the Commission expects bidders for Mobility Fund support to be well acquainted with the costs associated with providing access to advanced mobile wireless services in the areas they proposes to cover, and to bid accordingly.

2. Application Process

54. The Commission proposes to use a two-stage application process similar to the one the Commission uses in spectrum license auctions. Under this proposal, the Commission would require a pre-auction short-form application from entities interested in participating in a Mobility Fund auction. After the auction, the Commission would conduct a more extensive review of the winning bidders' qualifications through long-form applications. The Commission envisions that both applications would be filed electronically, in a process similar to that used for spectrum license auctions.

55. The Commission proposes that, in the short-form application, potential bidders provide basic ownership information and certify as to their compliance with the eligibility requirements for obtaining Mobility Fund support. Specifically, the Commission proposes that an applicant would need to provide information about its ownership similar to the Part 1 competitive bidding ownership rule for spectrum auctions, 47 CFR 1.2112. This information will establish the identity of applicants and provide information that will aid in ensuring compliance with and enforcement of Mobility Fund auction and program rules. Also, a potential bidder would need to certify its qualifications to receive Mobility Fund support, including providing its ETC designation status and information regarding its access to adequate and appropriate spectrum. Finally, the Commission proposes that applicants be required to certify that they have and will comply with all rules for Mobility Fund competitive bidding. The Commission

seeks comment on these proposed short-form application requirements.

56. In addition, the Commission seeks comment on whether the Commission should require applicants to identify in their short-form applications the specific census tracts with unserved blocks on which they may wish to bid and provide service. As in the Commission's spectrum auctions, the Commission would not necessarily require a bid on each census tract selected in an applicant's short-form application. However, the availability of this information could be helpful in ensuring compliance with the Commission's auction rules. The Commission seeks comment on this and on any other information that the Commission should require of applicants in the pre-auction stage that would help ensure a quick and reliable application process.

57. The Commission proposes that applications to participate in a Mobility Fund auction should be subject to review for completeness and compliance with its rules, and envisions a process similar to that used in spectrum license auctions. Specifically, after the application deadline, Commission staff would review the short-form applications, and once review is complete, the Commission would release a public notice indicating which short-form applications are deemed acceptable and which are deemed incomplete. Applicants whose short-form applications were deemed incomplete would be given a limited opportunity to cure defects and to resubmit correct applications. As with spectrum license auctions, applicants would only be able to make minor modifications to their short-form applications. Major amendments would make the applicant ineligible to bid. Once the Commission staff reviews the resubmitted applications, the Commission would release a second public notice designating the applicants that have qualified to participate in the Mobility Fund auction. The Commission seeks comment on adopting this application process in order to qualify entities to participate in a Mobility Fund auction.

3. Bidding Process

58. The Commission proposes to conduct a single-round reverse auction to identify those applicants that will receive Mobility Fund support and the amount of support they will receive, subject to post-auction processing requirements applicable to winning bidders. The Commission seeks comment on aspects of the bidding process for any Mobility Fund auction, so that potential bidders will understand how bids may be submitted, what bids will be acceptable, and how the auction mechanism will determine winning bidders.

59. Based on the Commission's proposal to award support to bidders that will deploy service in unserved census blocks at the least per-unit cost to the Mobility Fund, the Commission proposes that bids for Mobility Fund support would state the dollar amount of support sought per each unit associated with the unserved area(s) in those census tracts covered by the specific bid submitted. In addition, based on its proposal to award support to only one provider per area, the Commission proposes that a Mobility Fund auction would select at most one winning bidder per census tract. The Commission proposes that after bidding closes, in order to select winning bidders, the auction mechanism will rank bids based on the per-unit bids from lowest to highest and calculate the running sum represented by those bids and the number of units in the unserved areas covered by those bids. The Commission also proposes that if there are any identical bids—in the same per-unit amounts to cover the same tract or tracts, submitted by different bidders—that only one such bid, chosen randomly, be considered in the ranking.

60. Under these proposals, the auction would identify winning bidders starting with the bidder making the lowest per-unit bid and continue to the bidders with the next lowest per-unit bids in turn, provided that support had not already been assigned for that census tract, so long as the running sum based on the units in the identified unserved areas covered by the bids does not exceed the available monies.

61. *Maximum bids and reserve prices.* The Commission proposes a rule to provide the Commission with discretion to establish maximum acceptable per-unit bid amounts for a Mobility Fund auction. The Commission also proposes that it may, prior to the auction, establish reserve amounts, separate and apart from any maximum opening bids, and may elect whether or not to disclose those reserves.

62. *Aggregating service areas and package bidding.* The Commission proposes a rule to provide generally that the Commission shall have discretion to establish bidding procedures for any Mobility Fund auction that permit bidders to submit bids on packages of tracts, so that their bids may take into account scale and other essential efficiencies that tract-by-tract bidding may not permit. If a bidder were awarded support based on a package bid, it would still be required to meet the performance requirements for each census tract in the package.

63. The Commission seeks comment generally on the use of package bidding. The Commission proposes that specific procedures for package bidding be among those determined as part of the process of establishing the detailed procedures for a Mobility Fund auction. The Commission expects that proposals for such procedures would consider how to implement package bidding consistent with its proposal to award support to at most one provider in a census tract, without allowing geographic overlaps among packages to disqualify desirable bids. For this purpose, proposals might include limited package bidding, e.g., permitting only predefined non-overlapping packages, permitting bidders to submit package bids on geographically adjacent census tracts, and/or the possibility of requiring that bidders submitting package bids also submit separate bids on the component tracts.

64. *Refinements to the selection mechanism to address limited available funds.* The auction would identify winning bidders so long as the running sum of support represented by the winning bids does not exceed the monies to be made available in a Mobility Fund auction. However, there would likely be monies remaining after identifying the last lowest per-unit bid that does not exceed the funds available. The Commission proposes that the Commission's rules should provide it with discretion to establish procedures in the pre-auction process by which to identify winning bidder(s) for such remaining funds, e.g., by continuing to consider bids in order of per-unit bid amount while skipping bids that would require more support than is available, or by not identifying winning bidder(s) for the remaining funds and offering such funds in a subsequent auction. In exercising this discretion, the Commission must balance the advantages of assigning Mobility Fund support quickly and transparently with any disadvantages from supporting less cost-effective per-unit bids.

65. The Commission also proposes that, in the pre-auction process, it will determine procedures to address a situation where there are two or more bids for the same per-unit amount but for different areas (tied bids) and remaining funds are insufficient to satisfy all of the tied bids. Specifically, the Commission proposes a rule that would give it the discretion to identify winning bidders among such tied bids by awarding support to that combination of tied bids that would

most nearly exhaust the available funds, by ranking the tied bids to establish an order in which they would be awarded based on remaining available funds, or by declining to select winning bidder(s) for the remaining funds and offering such funds in a subsequent auction.

66. The Commission seeks comment on these proposals for developing procedures to address the possibility that funds will remain after the auction has identified the last lowest per-unit bid that does not exceed the funds available through the auction. The Commission asks commenters to address the relative advantages of any suggested approaches and on other options that may later be considered when the Commission develops specific auction procedures for a Mobility Fund auction.

67. *Withdrawn bids.* The Commission has discretion, in developing procedures for its spectrum license auctions, to provide bidders limited ability to withdraw provisionally winning bids before the close of an auction. While here the Commission proposes that the Wireless and Wireline Bureaus be delegated authority to determine any such procedures in the pre-auction process, the Commission would not expect that the Bureaus would consider permitting any bids to be withdrawn or removed from consideration after the close of bidding in a single-round Mobility Fund auction.

68. In spectrum license auctions, the Commission permits bid withdrawals in certain circumstances so that bidders can better manage their license aggregation strategies. The Commission does not believe that aggregation issues are of comparable importance under the Mobility Fund, which targets support to particular hard-to-reach areas. Further, the Commission believes that permitting bids to be withdrawn after the mechanism has selected winning bidders would unduly disrupt the prompt and smooth distribution of support.

69. The Commission expects that bidders will consider carefully expected costs and the characteristics of the geographic areas they propose to serve if offered Mobility Fund support and bid accordingly, so that if offered support, they can proceed expeditiously to file their long form applications and comply with post-auction procedures.

4. Information and Competition

70. In the interests of fairness and maximizing competition in the auction process, the Commission proposes to prohibit applicants competing for support in the auction from communicating with one another regarding the substance of their bids or bidding strategies. Information available in short-form applications or in the auction process itself might also be used to attempt to reduce competition. Accordingly, for spectrum auctions, the Commission adopted rules providing it with discretion to limit public disclosure of auction-related information, for example by keeping non-public during the auction process certain information from applications and/or the bidding. The Commission proposes to adopt similar rules for a Mobility Fund reverse auction and seeks comment on this proposal.

5. Auction Cancellation

71. As with the Commission's spectrum license auctions, the Commission proposes that the Commission's rules provide it with the discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding. The Commission seeks comment on this proposal.

F. Post-Auction Process, Administration, Management, and Oversight of the Mobility Fund

1. Administration of the Mobility Fund

72. The Universal Service Administrative Company (USAC), a subsidiary of the National Exchange Carrier Association (NECA), is the private not-for-profit corporation created to serve as the Administrator of the USF under the Commission's direction. The Commission appointed USAC the permanent Administrator of all of the federal universal service support mechanisms. USAC is responsible for performing numerous functions including, but not limited to, billing USF contributors, collecting USF contributions, disbursing funds, recovering improperly disbursed funds, processing appeals of funding decisions, submitting periodic reports to the Commission, maintaining accounting records, conducting audits of contributors and beneficiaries, and providing outreach to interested parties. *See* 47 CFR 54.702(b) through (m), 54.711, 54.715. USAC administers the USF in accordance with the Commission's rules and orders. The Commission provides USAC with oral and written guidance, as well as regulation through its rulemaking process. Because the Mobility Fund will be a part of the USF high cost support program, the Commission proposes to direct USAC to administer the Mobility Fund in accordance with the applicable terms of its current appointment as administrator, and subject to all existing Commission rules and orders applicable to the USF Administrator. The Commission seeks comment on whether there are any specific rules or orders currently applicable to USAC's administration of the USF that should not apply specifically to USAC's administration of the Mobility Fund, and whether there are new or different requirements the Commission should apply to USAC's administration of the Mobility Fund.

73. In 2008, the Commission entered into a Memorandum of Understanding (MOU) with USAC to facilitate efficient management and oversight of the Commission's federal universal service program. If the Commission establishes a Mobility Fund, the Commission anticipates that Commission staff would work with USAC outside the context of this rulemaking proceeding to revise the MOU as necessary for efficient administration of the Mobility Fund. The Commission nevertheless solicits input from interested parties on whether there are specific aspects of the MOU that the Commission should consider revising based on the specific purpose and goals of the Mobility Fund. For example, under the MOU, the Commission's Wireline Bureau is the USF Administrator's primary point of contact regarding USF policy questions, including without limitation, questions regarding the applicability of the Commission's USF rules, orders, and directives, unless otherwise specified in such requirements. Because the Mobility Fund would be established to distribute support for the deployment of terrestrial mobile wireless networks providing 3G service, the Commission seeks comment on whether it would be appropriate to add the Wireless Bureau as a point of contact for the USF Administrator for policy questions pertaining to the Mobility Fund.

2. Post-Auction Application Process

74. The Commission proposes a two-stage application process. An applicant for Mobility Fund support would file a short-form application to participate in bidding, and the information on that application would be reviewed as part of the Commission's initial screening process to determine the applicant's eligibility for support based on its ETC status and its other qualifications under the Mobility Fund auction rules. After the conclusion of the auction, winning bidders would file long-form applications to qualify for and receive

Mobility Fund support. Those applications would be subject to an in-depth review of the applicants' eligibility and qualifications to receive USF support. The Commission seeks comment on each step of the post-auction application process. To the extent a commenter disagrees with a particular aspect of the proposed process, the Commission asks them to identify that with specificity and propose an alternative.

a. Post-Auction Application

75. The Commission proposes that, after bidding has ended, the Commission will identify and notify the winning bidders and declare the bidding closed. Unless otherwise specified by public notice, within 10 business days after being notified that it is a winning bidder for Mobility Fund support, a winning bidder would be required to submit a long-form application pursuant to the program requirements governing the Mobility Fund. The Commission seeks comment on the specific information and showings that should be required of winning bidders on the long-form application before they can be certified to receive support from the Mobility Fund and before actual disbursements from the Mobility Fund can be made to them. The Commission proposes that a winning bidder would be required to provide detailed information showing that it is legally, technically and financially qualified to receive support from the Mobility Fund. The Commission also proposes that, if the Commission were to adopt a rule allowing an applicant to participate in the auction while its ETC designation status is pending, the applicant would be required in its long-form application to demonstrate its ETC status by, for example, providing a copy of its ETC designation order from the relevant state PUC. The Commission seeks comment on these proposals and on the specific information that winning bidders should be required to provide to make the required showings.

76. The Commission also seeks comment on the procedures that it should apply to a winning bidder that fails to submit a long-form application by the established deadline. Imposition of some deterrent measure, in addition to dismissal of the late-filed application, could deter auction participants from submitting insincere bids and serve as an incentive for winning bidders to timely submit their long-form applications, enabling prompt application review and allowing expeditious distribution of support. With respect to the disposition of the Mobility Fund support for which a winning bidder does not timely file a long-form application, the Commission proposes that the funds that would have been provided to such an applicant be offered in a subsequent auction. The Commission seeks comment on this proposal.

b. Ownership Disclosure

77. The Commission discusses a proposed requirement for auction participants to disclose certain ownership information as an aid to bidders by providing them with information about their auction competitors and alerting them to the entities that are subject to its rules concerning prohibited communications. The Commission proposes that in the post-auction application phase, an applicant would also be required to provide additional detailed information about its ownership and control. The Commission seeks comment on what ownership information should be required of applicants for Mobility Fund support. Given that wireless providers often create subsidiaries or related entities for specific licenses or other purposes, detailed ownership information may be necessary to ensure that applicants claiming ETC status in fact qualify for such status. In addition to providing information on an applicant's officers and directors, should the Commission require disclosure of an applicant's controlling interests that is, those individuals and entities with either *de jure* or *de facto* control of the applicant? Applicants for authorizations to provide wireless services are required to disclose ownership interests in the applicant of ten percent or more. What threshold level of ownership interest in an applicant for Mobility Fund support should be required to be reported on the applicant's long-form application?

78. The Commission also seeks comment on the extent to which the Commission can minimize the reporting burden on winning bidders by allowing them to use ownership information stored in existing Commission databases and either update the ownership information in the database or certify that there have been no changes in the ownership information since it was last submitted to the Commission.

c. Project Construction

79. The Commission seeks comment on the level of information an applicant for Mobility Fund support should be required to provide regarding the network it will deploy with that support. The Commission proposes that an applicant be required to include in its long-form application a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, and describes each specific development phase of the project (e.g., network design phase, construction period, deployment and maintenance period). To ensure that projects proceed to completion, the Commission proposes that a participant be required to submit a project schedule that identifies the following project milestones: start and end date for network design; start and end date for drafting and posting requests for proposal (RFPs); start and end date for selecting vendors and negotiating contracts; start date for commencing construction and end date for completing construction. The Commission also proposes that a participant's project schedule identify the dates by which it will meet applicable requirements to receive the installments of Mobility Fund support for which it subsequently qualifies.

d. Guarantee of Performance

80. The Commission also seeks comment on whether a winning bidder should be required to post financial security as a condition to receiving Mobility Fund support to ensure that it has committed sufficient financial resources to meeting the program obligations associated with such support under the Commission's rules. In particular, the Commission seeks comment on whether all winning bidders should be required to obtain an irrevocable standby letter of credit (LOC) no later than the date on which their long-form applications are submitted to the Commission. The Commission also seeks comment on whether alternatively, only certain applicants that do not meet specified criteria should be subject to this requirement, and if so, what those criteria should be. For example, should the Commission establish criteria, based on bond rating, market capitalization, or debt/equity ratios (combined with minimum levels of available capital) that, if not met, would make an LOC necessary? Would such a requirement unnecessarily preclude providers that otherwise might be able to satisfy the obligations of the Mobility Fund from seeking to participate?

81. The Commission seeks comment on how to determine the amount of the LOC necessary to ensure uninterrupted construction of a network, as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of an estimated annual

budget that could accompany the build-out schedule required as part of the long-form applications, or the Commission could simply require a specific dollar figure for the LOC in an amount that would ensure that construction could proceed for a given amount of time. Should the amount of an initial LOC, or a subsequent LOC, also ensure the continuing maintenance and operation of the network? Under what circumstances should the participant be required to replenish the LOC?

82. The Commission also seeks comment on what events would constitute a default by the recipient of Mobility Fund support that would allow a draw on the entire remaining amount of the LOC. Further, in the event of bankruptcy, the LOC should be insulated from claims other than the draws authorized for the construction and operation of the network. The Commission seeks comment on provisions it might adopt to provide safeguards to this effect. For example, the Commission could require as a condition of receiving Mobility Fund support, that a winning bidder first provide the Commission with a legal opinion letter that would state, subject only to customary assumptions, limitations and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the Bankruptcy Code), in which the winning bidder is the debtor, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder's bankruptcy estate (or the bankruptcy estate of any other bidder-related entity requesting the issuance of the LOC) under 11 U.S.C. 541.

83. As an alternative to an LOC, the Commission seeks comment on whether the Commission should require a winning bidder to guarantee completion of construction by obtaining a performance bond covering the cost of network construction and operation. Such a requirement would be similar to that which the Commission has imposed as a condition on satellite licenses. The Commission also seeks comment on the types of requirements that bond issuers might impose and whether such requirements would be so unduly burdensome as to restrict the number of carriers that might be able to bid for Mobility Fund support. The Commission also seeks comment on the relative merits of performance bonds and LOCs and the extent to which performance bonds, in the event of the bankruptcy of the recipient of Mobility Fund support, might frustrate the Commission's goal of ensuring timely build-out of the network. The Commission also seeks comment on whether there are other protections that the Commission should reasonably seek to ascertain the financial viability of the winning bidder, and ensure construction of the network and its subsequent operation. For instance, are there ways that the Commission can facilitate timely build-out of the network in areas where recipients of Mobility Fund support enter bankruptcy before completing construction? Are there steps the Commission could take to facilitate completion of the network by another service provider?

e. Other Funding Restrictions

84. The Commission seeks comment on whether participants who receive support from the Mobility Fund should be barred from receiving funds for the same activity under any other federal program, including, for example, federal grants, awards, or loans.

f. Certifications

85. Finally, the Commission seeks comment on the certifications that should be required of a winning bidder to receive Mobility Fund support. The Commission proposes that prior to receiving Mobility Fund support, an applicant be required to certify to the availability of funds for all project costs that exceed the amount of support to be received from the Mobility Fund and certify that they will comply with all program requirements. Should the Commission also require certifications regarding the provision of service at rates reasonably comparable to those offered in urban areas? The Commission has sought comment on the definition of these terms for these purposes in its discussion of performance requirements.

3. Disbursing Support

a. Support Payments

86. The Commission seeks comment on the following proposal to provide Mobility Fund support in installments, and on whether this proposal strikes the appropriate balance between advancing funds to expand service and assuring that service is expanded.

87. The Commission proposes that Mobility Fund support be provided in three installments. Each party receiving support would be eligible for ⅓ of the amount of support associated with any specific census tract once its application for support is granted. A party would receive the second third of its total support when it files a report demonstrating coverage of 50 percent of the population associated with the census block(s) deemed unserved that are within that census tract. A party would receive the final third of the support upon filing a report that demonstrates coverage of 100 percent of the resident population in the unserved census block(s) within the census tract. Alternatively, if the Commission establishes a coverage requirement of less than 100 percent, the Commission proposes that a party may file a report that certifies that, although less than 100 percent of the originally unserved resident population is now covered, at least the required percent of that population is covered and no further coverage expansion is intended. In that case, the party's final payment would be the difference between the total amount of support based on the population of unserved census blocks actually covered, i.e., a figure between the required percentage and 100 percent of the resident population, and any support previously received. The Commission seeks comment on this proposal.

88. 47 U.S.C. 254(e) requires that a carrier shall use support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. How should the Commission ensure that support from the Mobility Fund is used for the purposes in which it was intended as required by 47 U.S.C. 254(e)? The Commission seeks comment on requiring additional information from the recipients concerning how the funds were used and specifically what information should be submitted.

b. Support Liabilities

89. The Commission seeks comment on the extent to which parties qualifying to receive support should be liable in the event that they are unable to expand service pursuant to the goals of the Mobility Fund. The Commission proposes that applicants qualifying for support be able to receive initial payments in advance of providing service in order to finance the expansion of service. Parties receiving such support should be liable to repay the support if they fail to provide the intended service. Should they be subject to additional liabilities and/or security requirements (such as letters of credit or performance bonds) in order to provide them with proper incentives to perform and to protect the Mobility Fund in case they fail to perform as required? Should the Commission require affiliates, such as parent corporations or entities within the same larger enterprise, to be responsible if the recipient fails to meet its obligations? Is there a level of service short of the full service sought that ought to offset the supported parties'

liabilities? Are any special provisions needed in the Commission's rules to address the possibility that a party qualifying for support from the Mobility Fund might enter bankruptcy prior to providing all the coverage necessary to receive support? Are there measures the Commission can take to limit the possibility that Mobility Fund support becomes an asset in such party's bankruptcy estate for an extended period of time instead of being used promptly to further the goals of the Mobility Fund? The Commission seeks comment on these issues.

4. Audits and Record Retention

90. The Commission seeks comment on the rules that the Commission should establish to impose certain internal control requirements on program participants to facilitate program oversight. The Commission has taken action in previous proceedings to detect and deter waste, fraud, and abuse of the USF.

a. Audits

91. Audits are an important tool for the Commission and the USF Administrator to ensure program integrity and to detect and deter waste, fraud, and abuse. Commission rules authorize the Administrator to conduct audits of contributors to the universal service support mechanisms. The 2008 FCC–USAC MOU requires the USF Administrator to conduct audits, including audits of USF beneficiaries, in accordance with generally accepted government auditing standards, as required by 47 CFR 54.702(n). USAC's audit program consists of audits by USAC's internal audit division staff as well as audits by independent auditors under contract with USAC.

92. The Commission proposes that Mobility Fund beneficiaries, like beneficiaries of other USF programs, be subject to assessments as required under the Improper Payments Information Act of 2002 and random compliance audits to ensure compliance with program rules and orders. The Commission seeks comment on whether random compliance audits of Mobility Fund beneficiaries would provide adequate audit oversight of that program. Are there other or additional oversight measures, including scheduled compliance audits that would be appropriate and effective in detecting and deterring waste, fraud, and abuse?

b. Record Retention

93. The Commission adopted rules establishing rigorous document retention requirements for USF program participants. The rules create additional penalties for bad actors—specifically, the Commission can now debar from continued participation in all USF programs, any party that defrauds any of the four USF disbursement programs. Consistent with the rules governing the Commission's existing high-cost support program, the Commission proposes to require recipients of Mobility Fund support to retain all records that they may require to demonstrate to auditors that the support they received was consistent with the Act and the Commission's rules.

94. The Commission seeks comment on what records should at a minimum be included in this requirement. As an initial matter, the Commission proposes that the record retention requirements apply to all agents of the recipient, and any documentation prepared for or in connection with the recipient's Mobility Fund support. The Commission further proposes that beneficiaries be required to make all such documents and records that pertain to them, contractors, and consultants working on behalf of the beneficiaries, available to the Commission's Office of Managing Director, Wireless Bureau, Wireline Bureau, Office of Inspector General, and the USF Administrator, and their auditors.

95. The Commission proposes that a five-year period for record retention, consistent with the rules the Commission adopted for those receiving other universal service high cost support, is a reasonable standard that will serve the public interest. To the extent other rules or any other law require or necessitate documents be kept for longer periods of time, the Commission does not alter, amend, or supplant such rule or law. High cost program recipients would be required to keep documents for such longer periods of time as required or necessary under such other rules or law and make such documents available to the Commission and USAC. The Commission seeks comment on this proposal.

5. Delegation of Authority

96. In order to implement the various requirements the Commission adopts for applicants for and recipients of Mobility Fund support, the Commission proposes to delegate jointly to the Wireless Bureau and Wireline Bureau the authority to determine the method and procedures for applicants and recipients to submit the appropriate and relevant documents and information. This delegation of authority to both bureaus would authorize modification, as necessary, of existing FCC forms and the creation, if necessary, of new FCC forms to implement the rules the Commission adopt in this proceeding.

II. Procedural Matters

A. Filing Requirements

97. *Ex Parte Rules.* The *Mobility Fund Notice of Proposed Rulemaking* will be treated as a permit-but-disclose proceeding subject to the permit-but-disclose requirements under 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

B. Initial Regulatory Flexibility Analysis

98. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Mobility Fund Notice of Proposed Rulemaking.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments set forth in this Federal Register summary—that is, the same dates as the comment and reply deadlines for the *Mobility Fund Notice of Proposed Rulemaking.* The Commission will send a copy of the *Mobility Fund Notice of Proposed Rulemaking,* including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration.

1. Need for, and Objectives of, the Proposed Rules

99. The *Mobility Fund Notice of Proposed Rulemaking* seeks comment on creation of a new Mobility Fund within the high-cost mechanism of the federal universal service program. The purpose of this Mobility Fund is to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing, and to do so by supporting private investment.

100. The Mobility Fund is one of a set of initiatives to promote deployment of broadband and mobile services in the

United States. In the *Mobility Fund Notice of Proposed Rulemaking,* the Commission seeks comment on the creation of the Mobility Fund to provide an initial infusion of funds toward solving persistent gaps in mobile services through targeted, one-time support for the build-out of current- and next-generation wireless infrastructure in areas where these services are unavailable. This proposal represents a critical step in modernizing the USF.

2. Legal Basis

101. The legal basis for the proposed rules and the *Mobility Fund Notice of Proposed Rulemaking* is contained in 47 U.S.C. 154(i), 301, 303(c), 303(f), 303(r), 303(y), and 310, and 47 CFR 1.411.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

102. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

103. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

104. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

105. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

106. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

107. *Auctions.* Initially, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

108. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

109. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a "small business" as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a "very small business" as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

110. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. The Commission has estimated that 222 of these are small under the SBA small business size standard.

111. *Broadband Personal Communications Services.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for the C and F Blocks as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For the F Block, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in the A and B Blocks. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for the D, E, and F Blocks. In 1999, the Commission reauctioned 155

C, D, E, and F Block licenses; there were 113 small business winning bidders.

112. In 2001, the Commission completed the auction of 422 C and F Block broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C Block licenses and 21 F Block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 broadband PCS licenses in the C, D, E and F Block licenses in Auction 78.

113. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001, with five bidders winning 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these bidders claimed status as a small or very small entity and won a total of 311 licenses.

114. *Advanced Wireless Services.* In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands (AWS–1), designated as Auction 66. The Commission defined "small business" as an entity with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years. A small business received a 15 percent discount on its winning bid. A "very small business is defined as an entity with attributed average annual gross revenues that did not exceed $15 million for the preceding three years. A very small business received a 25 percent discount on its winning bid. In Auction 66, thirty-one winning bidders identified themselves as very small businesses and won 142 licenses. Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses. In 2008, the Commission conducted an auction of AWS–1 licenses, designated as Auction 78, in which it offered 35 AWS–1 licenses for which there were no winning bids in Auction 66. Four winning bidders that identified themselves as very small businesses won 17 AWS–1 licenses; three of the winning bidders that identified themselves as a small business won five AWS–1 licenses.

115. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses, identified as "entrepreneur" and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

116. In 2007, the Commission revised the band plan for the commercial (including Guard Band) and public safety 700 MHz Band spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission conducted Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round (SMR) auction format for the A, B, D, and E Block licenses and an SMR auction design with hierarchical package bidding (HPB) for the C Block licenses. For Auction 73, a bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. At the conclusion of Auction 73, 36 winning bidders identifying themselves as very small businesses won 330 of the 1,090 licenses, and 20 winning bidders identifying themselves as a small business won 49 of the 1,090 licenses. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.

117. *700 MHz Guard Band Licenses.* For 700 MHz Guard Band licenses, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding

three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (MEA) 700 MHz Guard Band licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders, of which five identified themselves as small businesses and won a total of 26 licenses. A second auction of eight 700 MHz Guard Band licenses commenced and closed in 2001. Of three bidders, one was a small business that won two of the eight licenses.

118. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

119. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

120. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

121. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

122. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

123. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

124. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

125. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS

licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

126. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

127. *Internet Service Providers (ISPs).* The 2007 Economic Census places ISPs, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of ISP firms are small entities.

128. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, the Commission discusses in turn several different types of entities that might be providing Internet access service.

129. The Commission notes that, although the Commission has no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, it includes these entities in the IRFA.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

130. The *Mobility Fund Notice of Proposed Rulemaking* seeks public comment on creation of a new Mobility Fund within the high-cost mechanism of the federal universal service program. The Mobility fund would make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available. The proposed Mobility Fund would use market mechanisms—specifically, a reverse-auction—to compare all offers to provide service across the unserved areas eligible for participation in the Mobility Fund program.

131. In proposing the Mobility Fund, the Commission seeks comment on various reporting, record-keeping, and other compliance requirements for the parties that will be applying for and receiving support from the Mobility Fund. The *Mobility Fund Notice of Proposed Rulemaking* proposes, for example, that parties interested in participating in a Mobility Fund auction must disclose certain information, such as their ownership, before participating the auction. The *Mobility Fund Notice of Proposed Rulemaking* proposes that auction winners be required to provide more detailed information, including project descriptions and timetables. The parties receiving support would be subject to certain reporting requirements demonstrating a certain level of network quality of service and reasonably comparable rates, and would need to provide, in annual reports, data from drive tests showing mobile transmissions to and from the network meeting or exceeding certain minimum standards. The *Mobility Fund Notice of Proposed Rulemaking* also proposes a five-year record retention period, consistent with the record retention period for other universal service high-cost support.

132. Because the overall design and scope of the Mobility Fund have not been finalized, the Commission does not have a more specific estimate of potential reporting, recordkeeping, and compliance burdens on small businesses. The Commission anticipates that commenters will address the reporting, record-keeping, and other compliance proposals made in the *Mobility Fund Notice of Proposed Rulemaking,* and will provide reliable information on any costs and burdens on small businesses for inclusion in the record of this proceeding.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

133. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

134. The reporting, recordkeeping, and other compliance requirements in this *Mobility Fund Notice of Proposed Rulemaking* could have an impact on both small and large entities. However, even though the impact may be more financially burdensome for smaller entities, the Commission believes the impact of such requirements is outweighed by the benefit of providing the additional USF support necessary to make advanced wireless services available to areas of the nation that are currently unserved. Further, these requirements are necessary to ensure that the statutory goals of 47 U.S.C. 254 are met without waste, fraud, or abuse.

135. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *Mobility Fund Notice of Proposed Rulemaking,* in reaching its final conclusions and taking action in this proceeding.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

136. None.

List of Subjects in 47 CFR Parts 0, 1 and 54

Administrative practice and procedure, Competitive bidding, Telecommunications, Reporting and recordkeeping requirements.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0, 1 and 54 to read as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Amend § 0.131 by adding subparagraph (r) to read as follows:

§ 0.131 Functions of the Bureau

* * * * *

(r) Serves as the Commission's principal policy and administrative staff resource with respect to competitive bidding to distribute universal service support for wireless telecommunications and related services through the Mobility Fund. Develops, recommends and administers policies, programs, rules and procedures concerning competitive bidding to distribute universal service support for wireless telecommunications and related services through the Mobility Fund.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

4. Add Subpart AA to read as follows:

Subpart AA—Competitive Bidding for Universal Service Support Available through the Mobility Fund

Sec.

1.21000 Purpose.
1.21001 Participation in competitive bidding to apply for mobility fund support.
1.21002 Communications prohibited during the competitive bidding process.
1.21003 Competitive bidding process.
1.21004 Applying for mobility fund support.

§ 1.21000 Purpose.

This subpart sets forth procedures for competitive bidding to determine the recipients of universal service support available through the Mobility Fund and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

§ 1.21001 Participation in competitive bidding to apply for mobility fund support.

(a) *Public notice of the application process.* When conducting competitive bidding pursuant to this subpart, the Commission shall by Public Notice announce the dates and procedures for submitting applications to participate in related competitive bidding.

(b) *Application contents.* All parties submitting applications to participate in competitive bidding pursuant to this subpart must provide the following information in their application in a form acceptable to the Commission.

(1) The identity of the applicant, i.e., the party seeking Mobility Fund support, including any information that the Commission may require regarding parties that have an ownership or other interest in the applicant.

(2) The identities of up to three individuals designated to bid on behalf of the applicant.

(3) The identities of all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding.

(4) Certification that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding.

(5) Certification that the applicant, any party capable of controlling the applicant, and any related party with information regarding the applicant's planned or actual participation in the competitive bidding will not communicate any information regarding the applicant's planned or actual participation in the competitive bidding to any other party with an interest in any other applicant until after the post-auction deadline for winning bidders to submit long-form applications for Mobility Fund support, unless the Commission by Public Notice announces a different deadline.

(6) Certification that the applicant is in compliance with any and all statutory or regulatory requirements for receiving universal service support from the Mobility Fund. The Commission may elect to accept as sufficient the applicant's demonstration in its application that the applicant will be in compliance at a point in time designated by the Commission.

(7) Such additional information as the Commission may require.

(c) *Demonstration of financial qualification.* The Commission may require as a prerequisite to participating in competitive bidding pursuant to this subpart that applicants demonstrate their financial qualifications or commitment to provide supported services by depositing funds, posting performance bonds, or any other means the Commission considers appropriate.

(d) *Application processing.* (1) Commission staff shall review any application submitted during the period for submission and before the deadline for submission for completeness and compliance with the Commission's rules. No applications submitted at any

other time shall be reviewed or considered.

(2) The Commission shall not permit any applicant to participate in competitive bidding pursuant to this subpart to do so if, as of the deadline for submitting applications, the application does not adequately identify the applicant or does not include required certifications.

(3) The Commission shall not permit any applicant to participate in competitive bidding pursuant to this subpart to do so if, as of the applicable deadline, the applicant has not provided any required demonstration of financial qualifications that the Commission has required.

(4) The Commission shall not permit applicants to make any major modifications to their applications after the deadline for submitting applications. The Commission shall not permit applicants to participate in the competitive bidding if their applications require major modifications to be made after deadline for submitting applications. Major modifications include but are not limited to any changes to the identity of the applicant or to the certifications required in the application.

(5) The Commission may permit applicants to make minor modifications to their applications after the deadline for submitting applications. The Commission may establish deadlines for making some or all permissible modifications to applications and may permit some or all permissible modifications to be made at any time. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(6) After receipt and review of the applications, the Commission shall by Public Notice identify all applicants that may participate in an auction conducted pursuant to this subpart.

§ 1.21002 Communications prohibited during the competitive bidding process.

(a) *Prohibited communications.* Each applicant, each party capable of controlling an applicant, and each party related to an applicant with information regarding an applicant's planned or actual participation in the competitive bidding is prohibited from communicating any information regarding the applicant's planned or actual participation in the competitive bidding to any other party with an interest in any other applicant to participate in the competitive bidding from the deadline for submitting applications to participate in the competitive bidding until after the post-auction deadline for winning bidders to submit long-form applications for Mobility Fund support, unless the Commission by Public Notice announces a different deadline.

(b) *Duty to report potentially prohibited communications.* Any applicant or related party receiving communications that may be prohibited under this rule shall report the receipt of such communications to the Commission.

(c) *Procedures for reporting potentially prohibited communications.* The Commission may by Public Notice establish procedures for parties to report the receipt of communications that may be prohibited under this rule.

§ 1.21003 Competitive bidding process.

(a) *Public notice of competitive bidding procedures.* The Commission shall by Public Notice establish detailed competitive bidding procedures any time it conducts competitive bidding pursuant to this subpart.

(b) *Competitive bidding procedures.* The Commission may conduct competitive bidding pursuant to this subpart using any of the procedures described below.

(1) The Commission may establish procedures for limiting the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process. The Commission may by Public Notice establish procedures for parties to report the receipt of non-public information regarding applicants, applications, and bids during any time the Commission has limited the public availability of the information during the competitive bidding process.

(2) The Commission may sequence or group multiple items subject to bidding, such as multiple geographic areas eligible for Mobility Fund support, and may conduct bidding either sequentially or simultaneously.

(3) The Commission may establish procedures for bidding on individual items and/or for combinations or packages of items.

(4) The Commission may establish reserve prices, either for discrete items or combinations or packages of items, which may be made public or kept non-public during a period of time covering the competitive bidding process.

(5) The Commission may prescribe the form and time for submitting bids and may require that bids be submitted remotely, by telephonic or electronic transmission, or in person.

(6) The Commission may prescribe the number of rounds during which bids may be submitted, whether one or more, and may establish procedures for determining when no more bids will be accepted.

(7) The Commission may require a minimum level of bidding activity.

(8) The Commission may establish acceptable bid amounts at the opening of and over the course of bidding.

(9) The Commission may establish procedures for comparing and ranking bids and determining the winning bidders that may become recipients of universal service support available through the Mobility Fund and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

(10) The Commission may permit bidders to withdraw bids and, if so, establish procedures for doing so.

(11) The Commission may delay, suspend or cancel bidding before or after bidding begins for any reason that affects the fair and efficient conduct of the bidding, including natural disasters, technical failures, administrative necessity or any other reason.

(c) *Apportioning package bids.* If the Commission elects to accept bids for combinations or packages of items, the Commission may provide a methodology for apportioning such bids to discrete items within the combination or package when a discrete bid on an item is required to implement any Commission rule.

(d) *Public notice of competitive bidding results.* After the conclusion of competitive bidding, the Commission shall by Public Notice identify the winning bidders that may become recipients of universal service support available through the Mobility Fund and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

§ 1.21004 Applying for mobility fund support.

Winning bidders that fail to substantially comply with the requirements for filing the post-auction long-form application by the applicable deadline shall be in default on their bids and subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart.

PART 54—UNIVERSAL SERVICE

5. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 254 unless otherwise noted.

6. Add Subpart L to read as follows:

Subpart L—Mobility Fund

Sec.
54.1001 Mobility Fund.
54.1002 Geographic areas eligible for support.
54.1003 Provider eligibility.
54.1004 Application process.
54.1005 Performance requirements.
54.1006 Mobility Fund disbursements.
54.1007 Audits.

§ 54.1001 Mobility Fund.

The Commission may designate reserves accumulated in the Universal Service Fund to be made available through the Mobility Fund. The Commission may use competitive bidding, as provided in Part 1, Subpart AA, to determine the recipients of support available through the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to post-auction procedures established by the Commission.

§ 54.1002 Geographic areas eligible for support.

(a) Mobility Fund support may be made available for specific geographic areas identified by the Commission.

(b) The Commission may assign relative coverage units to each identified geographic area in connection with conducting competitive bidding and disbursing support.

§ 54.1003 Provider eligibility.

(a) A party applying for Mobility Fund support must be designated an Eligible Telecommunications Carrier for an area that includes geographic area(s) with respect to which it applies for Mobility Fund support.

(b) A party applying for Mobility Fund support must, in a form specified by the Commission, hold or otherwise have access to a Commission authorization to provide spectrum-based services such that it is capable of satisfying performance requirements in the geographic area with respect to which it applies.

(c) A party applying for Mobility Fund support must certify that is financially, technically, and legally qualified to provide the supported mobile services.

§ 54.1004 Application process.

(a) *Application deadline.* Unless otherwise provided by Public Notice, winning bidders for Mobility Fund support must file a long-form application for Mobility Fund support within 10 business days of the Public Notice identifying them as eligible to apply.

(b) *Application contents.* (1) Identification of the party seeking the support.

(2) Information the Commission may require to demonstrate that the applicant is legally, technically and financially qualified to receive support from the Mobility Fund, including but not limited to proof of its designation as an Eligible Telecommunications Carrier for an area that includes the area with respect to which support is requested and identification of its authorization to provide spectrum-based services in the area with respect to which support is requested.

(3) Disclosure of all parties with a controlling interest in the applicant and any party with a greater than ten percent ownership interest in the applicant, whether held directly or indirectly.

(4) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, and describes each specific development phase of the project, e.g., network design phase, construction period, deployment and maintenance period.

(5) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from the Mobility Fund and that the applicant will comply with all program requirements.

(6) Any guarantee of performance that the Commission may require by Public Notice or other proceedings, including but not limited to, letters of credit, performance bonds, or demonstration of financial resources.

(c) *Application processing.* (1) No application will be considered unless it has been submitted during the period specified by Public Notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(2) The Commission shall deny any application that, as of the submission deadline, either does not adequately identify the party seeking support or does not include required certifications.

(3) After reviewing applications submitted, the Commission may afford an opportunity for parties to make minor modifications to amend applications or correct defects noted by the applicant, the Commission, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(4) The Commission shall deny all applications to which major modifications are made after the deadline for submitting applications. Major modifications include any changes to the identity of the applicant or to the certifications required in the application.

(5) After receipt and review of the applications, the Commission shall release a Public Notice identifying all applications that have been granted and the parties that are eligible to receive Mobility Fund support.

§ 54.1005 Performance requirements.

(a) Parties receiving Mobility Fund support shall submit to the Commission annual reports for ten years after they qualify for support. The annual reports shall include:

(1) Electronic Shapefiles site coverage plots illustrating the area reached by new services at a minimum scale of 1:240,000;

(2) A list of relevant census blocks previously deemed unserved, with total resident population and resident population residing in areas reached by new services (based on Census Bureau data and estimates);

(3) A report regarding the services advertised to the population in those areas;

(4) Data received or used from drive tests analyzing network coverage for mobile services in the area for which support was received.

(b) No later than two months after a site begins providing service or two years after receiving Mobility Fund support, parties receiving the support shall submit to the Commission data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network meeting or exceeding the following:

(1) Outdoor minimum of 200 kbps uplink and 768 kbps downlink at vehicle speeds up to 70 MPH;

(2) Achieved with 90% coverage area probability at a sector loading of 70%.

(c) Drive tests submitted in compliance with this section shall cover all Interstate, U.S. routes, and State routes in the area for which support was received and any other roads deemed essential for mobile service by the State Agency regulating the provision of telecommunications services in that area.

§ 54.1006 Mobility Fund disbursements.

(a) Mobility Fund support shall be disbursed to recipients in three stages, as follows:

(1) One-third of the total possible support, if coverage were to be extended to 100 percent of the units deemed

unserved in the geographic area, when a recipient's long-form application for support with respect to a geographic area is deemed approved.

(2) One-third of the total possible support with respect to a specific geographic area when a recipient files a report demonstrating coverage of 50 percent of the units in that area previously deemed unserved.

(3) The remainder of the total possible support when a recipient files a report demonstrating coverage of 100 percent of the units in that area previously deemed unserved.

(b) If the Commission concludes for any reason that coverage of 100 percent of the units in the geographic area previously deemed unserved will not be achieved, the Commission instead may provide support based on the final total units covered in that area. In such circumstances, the final disbursement will be the difference between the total amount of support based on the final units covered in that area and any support previously received with respect to that area. Parties accepting a final disbursement for a specific geographic area based on coverage of less than 100 percent of the units in the area previously deemed unserved waive any claim for the remainder of support for which they previously were eligible with respect to that area.

§ 54.1007 Audits.

(a) Parties receiving Mobility Fund support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) Parties receiving Mobility Fund support and their agents are required to retain any documentation prepared for or in connection with the recipient's Mobility Fund support for a period of not less than 5 years. All such documents shall be made available upon request to the Commission's Office of Managing Director, Wireless Telecommunications Bureau, Wireline Competition Bureau, Office of Inspector General, and the Universal Service Fund Administrator, and their auditors.

[FR Doc. 2010–28535 Filed 11–10–10; 8:45 am]

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Notices

Federal Register

Vol. 75, No. 218

Friday, November 12, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0108]

Availability of an Environmental Assessment for a Biological Control Agent for Arundo donax

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of *Arundo donax* (giant reed, Carrizo cane). The environmental assessment considers the effects of, and alternatives to, the release of Arundo scale into the continental United States for use as a biological control agent to reduce the severity of *Arundo donax* infestations. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 13, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0108* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0108, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0108.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A. Wager-Page, Chief, Pest Permitting Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 734–8453.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of Arundo scale, *Rhizaspidiotus donacis* (Leonardi), into the continental United States for use as a biological control agent to reduce the severity of *Arundo donax* infestations.

A. donax is a highly invasive, bamboo-like weed that was introduced to North America in the early 1500s for its fiber uses. It is among the fastest growing plants in the continental United States, making it a severe threat to riparian areas, where it causes erosion, damages bridges, alters channel morphology, increases costs for chemical and mechanical control along transportation corridors, and impedes law enforcement activities along international borders. Additionally, *A. donax* consumes excessive amounts of water, competing for water resources in arid regions where these resources are critical to the environment, agriculture, and municipal users.

Existing *A. donax* management options include herbicides, prescribed fires, biomass removal, and other methods. However, these management measures are expensive, temporary, and have impacts on species other than *A. donax.* Therefore, APHIS is proposing to issue permits for the release of Arundo scale into the continental United States in order to reduce the severity and extent of *A. donax* infestations.

The proposed biological control agent, Arundo scale, is one of the most damaging insects to *A. donax* in its native range. The scale attacks the rhizome and developing underground buds of *A. donax* by feeding on cells that carry out photosynthesis and cellular respiration, resulting over time in gradual thinning, leaf reduction, and a sickly, yellowish-clouded appearance of the weed. While Arundo scale may not be singularly successful in reducing the *A. donax* population in the continental United States, its use is expected to be effective in combination with other control methods or biological control agents that may be released in the future.

APHIS' review and analysis of the proposed action are documented in detail in an environmental assessment (EA) entitled "Field Release of the Arundo Scale, *Rhizaspidiotus donacis* (Hemiptera: Diaspididae), an Insect for Biological Control of *Arundo donax* (Poaceae) in the Continental United States" (September 2010). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the #Regulations.gov Web site or in our reading room (*see* **ADDRESSES** above for instructions for accessing *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the persons listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, November 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–28471 Filed 11–10–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Minnkota Power Cooperative, Inc.: Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an Environmental Assessment.

SUMMARY: The Rural Utilities Service (RUS) has issued an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR parts 1500–1508), and RUS's Environmental and Policies and Procedures (7 CFR part 1794) in connection with potential impacts related to a proposal by Minnkota Power Cooperative, Inc. (Minnkota) with headquarters in Grand Forks, North Dakota. The proposal consists of the construction of approximately 260 miles of 345 kilovolt (kV) transmission line in North Dakota between the Center 345 kV Substation (located northeast of the Milton R. Young Generation Station, near Center, North Dakota) and the Prairie Substation (located west of Grand Forks, North Dakota). Minnkota is requesting financial assistance from RUS for the proposal.

DATES: Written comments on this Notice must be received on or before December 13, 2010.

ADDRESSES: To obtain copies of the EA or for further information, contact: Mr. Dennis Rankin, Environmental Protection Specialist, USDA/RUS, 1400 Independence Ave., SW., Room 2244–S, Stop 1571, Washington, DC 20250–1571, fax: (202) 690–0649, or e-mail: *dennis.rankin@wdc.usda.gov.* A copy of the EA will be available for public review at the Agency's address provided in this Notice, at the Agency's Web site: *http://www.usda.gov/rus/water/ees/ea.htm#Minnkota_Power_Cooperative,_Inc._,* and at the following repositories:

Building location	Address	Phone
Aneta Public Library	11995 19th St., Aneta, ND 58212	701–326–4505
Bismarck's Veterans Memorial Library	515 N. 5th St., Bismarck, ND 58501–4057	701–355–1480
City of Carrington Library	55 9th Ave., Carrington, ND 58421–2017	701–652–3921
Goodrich Public Library	122 McKinley Ave., Goodrich, ND 58444	701–884–2632
Grand Forks Library	2110 Library Circle, Grand Forks, ND 58201–6324	701–772–8116
Griggs County Library	902 Burrel Ave., Cooperstown, ND 58425–0546	701–797–2241
Harvey Public Library	119 10th St., Harvey, ND 58341–1531	701–324–2156
Mayville Library	52 Center Ave. N., Mayville, ND 58257	701–788–3388
New Rockford Public Library	811 First Ave. N., New Rockford, ND 58356	701–947–5540
Northwood Public Schools and City Library	204 N Doheny St., Northwood, ND 58267	701–587–5221
Oliver County Auditor	115 West Main, Hensler, ND 58530	701–794–8777
Sheridan County Auditor	215 East 2nd St., McClusky, ND 58463	701–363–2205
Turtle Lake Public Library	107 Eggert St., Turtle Lake, ND 58575–0637	701–448–9170
Washburn Public Library	705 Main Ave., Washburn, ND 58577–0637	701–462–8180

SUPPLEMENTARY INFORMATION: Minnkota proposes to construct the following for the project: (1) Construct approximately 260 miles of 345 kV transmission line between the Center 345 kV Substation (located northeast of the Milton R. Young Generation Station, near Center, North Dakota) and the Prairie Substation (located west of Grand Forks, North Dakota), (2) modification of three existing substations (Center 345 kV, Square Butte 230 kV, and Prairie Substations), (3) construction of about 1,500 feet of 230 kV tie line, (4) relocation of transmission line structures at the Center 345 kV and Prairie Substations, and (5) other associated facilities. It is anticipated that the facility would be in service in 2013. A Notice of Intent to prepare an EA and hold scoping meetings was published in the **Federal Register** on October 30, 2009. Public meetings were held during the week of November 16, 2009. A summary of public comments can be found at the Agency's Web site listed in this Notice.

An EA that describes the proposal in detail and discusses its anticipated environmental impacts has been prepared by Minnkota and HDR Engineering, Inc. RUS has reviewed and accepted the document as its EA of the proposal. The EA is available for public review at the addresses provided in this Notice.

Questions and comments should be sent to RUS at the mailing or e-mail addresses provided in this Notice. RUS should receive comments on the EA in writing by December 13, 2010 to ensure that they are considered in its environmental impact determination. Should RUS, based on the EA of the proposal, determine that the impacts of the construction and operation of the proposal would not have a significant environmental impact, it will prepare a Finding of No Significant Impact. Public notification of a Finding of No Significant Impact would be published in the **Federal Register** and in newspapers with circulation in the proposal area.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures (7 CFR part 1794).

Dated: November 8, 2010.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA, Rural Utilities Service.

[FR Doc. 2010–28563 Filed 11–10–10; 8:45 am]

BILLING CODE P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting Notice

DATE AND TIME: Friday, November 19, 2010, 11 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

SUBJECT: Notice of meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. The BBG will be considering resolutions regarding protection of journalists and the Agency's Ethics Program, report from the Board's Governance Committee, a report from the International Broadcasting Bureau Coordinating Committee, and research presentations by InterMedia and Gallup. The meeting is open to the public—but

due to space limitations via webcast only—and will be streamed live on the BBG's public Web site at *http://www.bbg.gov.* The meeting will also be made available on the BBG's public Web site for on-demand viewing.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2010–28617 Filed 11–9–10; 11:15 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 64–2010]

Foreign-Trade Zone 78—Nashville, TN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Government of Nashville and Davidson County, grantee of FTZ 78, requesting authority to expand FTZ 78 to include sites in La Vergne, Clarksville and Gallatin, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 5, 2010.

FTZ 78 was approved by the Board on April 2, 1982 (Board Order 190, 47 FR 16191, 4/15/82) and expanded on February 18, 1999 (Board Order 1024, 64 FR 9472, 2/26/1999), October 24, 2000 (Board Order 1124, 65 FR 66231, 11/03/2000), and September 30, 2002 (Board Order 1249, 67 FR 62697, 10/08/2002). The current zone project includes the following sites: *Site 1* (1.2 acres)—General-Warehousing Space, 750 Cowan Street, Nashville; *Site 2* (57.0 acres)—Cockrill Bend Industrial Park, 7355 Cockrill Bend Boulevard, Nashville; *Site 3* (9.2 acres)—Irish Express Way Logistics, 323 Mason Road, La Vergne; *Site 4* (39 acres)—Space Park North Industrial Park, 1000 Cartwright Street, Goodlettsville; *Site 5* (19 acres)—Old Stone Bridge Industrial Park, Old Stone Bridge, Goodlettsville; *Site 6* (806 acres)—Nashville International Airport, One Terminal Drive, Nashville; and *Site 7* (80 acres)—Eastgate Business Park, 3850 Eastgate Boulevard, Lebanon.

The applicant is requesting authority to expand the zone to include sites in La Vergne, Clarksville and Gallatin, Tennessee: *Proposed Site 8* (55.0 acres)—Ozburn-Hessey Logistics, 300 New Sanford Road, La Vergne; *Proposed Site 9* (1,546.0 acres)—Clarksville Commerce Park, between Highway 79 and Rossview Road on International Boulevard, Clarksville; *Proposed Site 10* (139.0 acres)—River Chase Barge Port, 41A Bypass and Beacon Road, Clarksville; *Proposed Site 11* (500.0 acres)—Nyrstar Company, 1800 Zinc Plant Road, Clarksville; and *Proposed Site 12* (451.0 acres)—Gallatin Industrial Center, Airport Road and Gateway Drive, Gallatin. The sites will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Maureen Hinman 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 January 11, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 26, 2011.

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 Maureen Hinman at *maureen.hinman@trade.gov* or (202) 482–0627.

Dated: November 5, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–28573 Filed 11–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ21

Notice of Intent To Prepare a Programmatic Environmental Impact Statement on Implementing Recovery Actions for Hawaiian Monk Seals

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

ACTION: Notice of Intent to prepare a Programmatic Environmental Impact Statement; extension of public scoping period; request for comments.

SUMMARY: On October 1, 2010, NMFS published a Notice of Intent to prepare a Programmatic Environmental Impact Statement (PEIS) on Recovery Actions for Hawaiian monk seals (75 FR 60721). Public comments were due by November 15, 2010. NMFS has decided to allow additional time for submission of public comments on this action.

DATES: The public comment period for this action has been extended 15 days. Written comments must be received or postmarked by November 30, 2010.

ADDRESSES: Comments on the Notice of Intent and the scoping process for this action may be submitted by:

- *Mail:* National Marine Fisheries Service, Pacific Islands Regional Office, Hawaiian Monk Seal Recovery Actions PEIS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814; or
- *E-mail: monkseal@noaa.gov.*

To be included on a mailing list and receive newsletters and copies of the Draft and Final PEIS, please send your mailing address and/or e-mail address to Jeff Walters, Hawaiian Monk Seal Recovery Coordinator, Protected Resources Division, NOAA NMFS Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, or via the following e-mail address: *monkseal@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Walters, NMFS Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, or *monkseal@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Notice of Intent, published on October 1, 2010, is available upon request and can be found on the following Web site: *http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonkseal.htm.*

The PEIS will assess the direct, indirect, and cumulative effects of implementing the alternative approaches for funding, undertaking,

and permitting the management, research and enhancement activities on Hawaiian monk seals as well as other components of the marine ecosystem and human environment. Anyone having relevant information they believe NMFS should consider in its analysis should provide a description of that information along with complete citations for supporting documents.

NMFS has provided a potential proposed action and several other alternative actions in the October 1, 2010 Notice of Intent. The final scope and structure of the alternatives, to be determined at a later date, will reflect the combined input from the public, research institutions, affected State and Federal agencies, and NMFS administrative and research offices. A principal objective of the scoping and public involvement process is to determine a range of reasonable management alternatives that will identify critical issues, and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative.

Comments will be accepted during the scoping period through November 30, 2010. We request that you include in your comments: (1) Your name, address, and affiliation (if any); and (2) Any relevant background documents to support your comments.

Dated: November 5, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–28517 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Louisiana Coastal Resources Management Program and the Jobos Bay (Puerto Rico), Rookery Bay (Florida), and Chesapeake Bay (Maryland) National Estuarine Research Reserves.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The National Estuarine Research Reserve evaluations will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L. Evaluation of a National Estuarine Research Reserve requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

Dates and Times: The Louisiana Coastal Resources Management Program evaluation site visit will be held January 3–7, 2011. One public meeting will be held during the week. The public meeting will be held on Monday, January 3, 2011, at 6:30 p.m. in the Griffon Room, LaSalle Building, Capitol Complex, 617 North 3rd Street, Baton Rouge, Louisiana.

The Jobos Bay (Puerto Rico) National Estuarine Research Reserve evaluation site visit will be held January 24–28, 2011. One public meeting will be held during the week. The public meeting will be held on Tuesday, January 25, 2011, at 5 p.m. at the Jobos Bay National Estuarine Research Reserve Visitors' Center, Road 705, Kilometer 2.3, Main Street, Aguirre, Puerto Rico.

The Rookery Bay (Florida) National Estuarine Research Reserve evaluation site visit will be held January 24–28, 2011. One public meeting will be held during the week. The public meeting will be held on Wednesday, January 26, 2011, at 6:30 p.m. at the Rookery Bay National Estuarine Research Reserve Environmental Learning Center, 300 Tower Road, Naples, Florida.

The Chesapeake Bay (Maryland) National Estuarine Research Reserve evaluation site visit will be held January 24–28, 2011. One public meeting will be held during the week. The public meeting will be held on Tuesday, January 25, 2011, at 7 p.m. at the McCann Center, Jug Bay Wetlands Sanctuary, 1361 Wrighton Road, Lothian Maryland.

ADDRESSES: Copies of the states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting held for a Program. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability of the final evaluation findings for the Rhode Island Coastal Management Program (CMP) and the Tijuana River (California), Padilla Bay (Washington), and North Carolina National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The State of Rhode Island was found to be implementing and enforcing its federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of its financial assistance awards. The Tijuana River, Padilla Bay, and North Carolina NERRs were found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal

Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

(Federal Domestic Assistance Catalog 11.419; Coastal Zone Management Program Administration)

Dated: November 1, 2010.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–28436 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet and Strip From India: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 12, 2010.

FOR FURTHER INFORMATION CONTACT: Elfi Blum, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197.

Background

On March 2, 2010, the Department of Commerce (the Department) published the initiation of a new shipper review under the countervailing duty order on polyethylene terephthalate film, sheet and strip from India for the period January 1, 2009, through December 31, 2009. *See Polyethylene Terephthalate Film, Sheet and Strip from India: Initiation of Antidumping Duty and Countervailing Duty New Shipper Reviews,* 75 FR 10758 (March 9, 2010). This new shipper review covers one producer and exporter of the subject merchandise to the United States: SRF Limited. On August 27, 2010, the Department published a notice of extension for the preliminary results of this new shipper review until November 22, 2010. *See Polyethylene Terephthalate Film, Sheet and Strip From India: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review,* 75 FR 52717 (August 27, 2010). The Department is now further extending the deadline for the preliminary results until December 14, 2010.

Extension of Time Limit for the Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and section 351.214(i)(1) of the Department's regulations require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the review was initiated, and the final results of the review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that a new shipper review is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations allow the Department to extend the 180-day period to 300 days, and to extend the 90-day period to 150 days. The Department determines that this new shipper review involves extraordinarily complicated issues pertaining to the *bona fides* of this new shipper. In addition, we need further information from SRF Limited to analyze fully the subsidy programs under review. Because of these issues, the Department must issue another supplemental questionnaire to SRF Limited, provide SRF Limited with time to respond, and have sufficient time to analyze SRF Limited's response.

Therefore, the Department is extending the deadline for completion of the preliminary results of this new shipper review by an additional 22 days. Accordingly, the deadline for the completion of these preliminary results is now no later than December 14, 2010.

This notice is issued and published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: November 5, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–28565 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs From the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 12, 2010.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Erin Kearney, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, the Department of Commerce ("Department") published the initiation of the administrative review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China ("PRC"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 74 FR 37690 (July 29, 2009). On July 14, 2010, the Department published the preliminary results of review. *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 40788 (July 14, 2010). The 2008–2009 administrative review covers the period June 1, 2008, through May 31, 2009 and a deferred administrative review for Feili Group (Fujian) Co., Ltd. and Feili Furniture Development Limited Quanzhou City covers the period June 1, 2007, through May 31, 2008.

Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. The Act further provides, however, that the Department may extend that 120-day period to 180 days after the preliminary results if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the final results of the 2007–2008 deferred and 2008–2009 administrative reviews of folding metal tables and chairs from the PRC within the 120-day time limit due to the Department's adoption of a new labor valuation methodology for the final results. We find that additional time is needed to complete these final results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the final results of this review, which is currently due on November 11, 2010, by 60 days to January 10, 2011, which is the 180th day after publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 5, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–28562 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA023

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands NonPollock Groundfish Fishery

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

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to decrease the fee rate for the non-pollock groundfish fishery to repay the $35,000,000 reduction loan to finance the Non-Pollock groundfish fishing capacity reduction program.

DATES: The non-pollock groundfish program fee rate decrease will begin on January 1, 2011.

ADDRESSES: Send questions about this notice to Paul Marx, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Paul Marx, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) generally authorizes fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for repaying reduction loans which finance reduction program costs.

Subpart L of 50 CFR part 600 is the framework rule generally implementing section 312(b)–(e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorizes reduction loans.

Enacted on December 8, 2004, section 219, Title II, of FY 2005 Appropriations Act, Public Law 104–447 (Act) authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands ("BSAI") non-pollock groundfish fishery ("reduction fishery") as set forth in the Act.

The longline catcher processor subsector (the "Longline Subsector") is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act.

The longline subsector non-pollock groundfish reduction program's objective was to reduce the number of vessels and permits endorsed for longline subsector of the non-pollock groundfish fishery.

All post-reduction fish landings from the reduction fishery are subject to the longline subsector non-pollock groundfish program's fee.

NMFS proposed the implementing notice on August 11, 2006 (71 FR 46364), and published the final notice on September 29, 2006 (71 FR 57696).

NMFS allocated the $35,000,000 reduction loan to the reduction fishery and is repayable by fees from the fishery.

NMFS published in the **Federal Register** on September 24, 2007 (72 FR 54219), the final rule to implement the industry fee system for repaying the non-pollock groundfish program's reduction loan and established October 24, 2007, as the effective date when fee collection and loan repayment began. The regulations implementing the program are located at § 600.1012 of 50 CFR part 600's subpart M.

NMFS published in the **Federal Register** on November 2, 2009 (74 FR 56592), a notice to decrease the fee rate to $0.016 per pound, effective January 1, 2010.

II. Purpose

The purpose of this notice is to adjust, in accordance with the framework rule's § 600.1013(b), the fee rate for the reduction fishery. Section 600.1013(b) directs NMFS to recalculate the fee rate that will be reasonably necessary to ensure reduction loan repayment within the specified 30 year term.

NMFS has determined for the reduction fishery that the current fee rate of $0.016 per pound is more than needed to service the loan. Therefore, NMFS is decreasing the fee rate to $0.015 per pound which NMFS has determined is sufficient to ensure timely loan repayment.

Subsector members may continue to use *Pay.gov* to disburse collected fee deposits at: *http://www.pay.gov/paygov/*.

Please visit the NMFS Web site for additional information at: *http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm.*

III. Notice

The new fee rate for the Non-Pollock Groundfish fishery will begin on January 1, 2011.

From and after this date, all subsector members paying fees on the non-pollock groundfish fishery shall begin paying non-pollock groundfish fishery program fees at the revised rate.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on September 24, 2007 (72 FR 54219).

The revised fee rate applicable to the non-pollock groundfish program's reduction fishery is as follows:

Fishery	Current fee rate	New fee rate
Non-Pollock Groundfish	$0.016 per pound	$0.015 per pound.

Authority

The authority for this action is Public Law 108–447, 16 U.S.C. 1861a(b–e), and 50 CFR 600.1000 *et seq.*

Dated: November 5, 2010.

Gary Reisner,

Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2010–28528 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA028

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council in conjunction with the Gulf & South Atlantic Fisheries Foundation will convene a Smalltooth Sawfish workshop.

DATES: The meeting will convene at 1 p.m. on Wednesday, December 1, 2010 and conclude by 12 p.m. on Thursday, December 2, 2010.

ADDRESSES: The meeting will be held at the Sheraton Suites, 4400 West Cypress Street, Tampa, FL 33607; telephone: (813) 873–8675.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Helies, Program Director, Gulf & South Atlantic Fisheries Foundation; telephone: (813) 286–8390.

SUPPLEMENTARY INFORMATION: A two-day workshop will be held to bring together representatives from state agencies, NOAA Fisheries, research universities, industry and non-industry representatives to present the latest information and research on smalltooth sawfish. Specific topics to be addressed at this workshop include but are not limited to: (1) Present new information or conclusions on the status of the sawfish populations; (2) Present information and evaluate details of observed interactions; (3) Discuss the assumed post-release mortality rate for sawfish released from shrimp trawls based on recent observations; (4) Present information and consider potential efficacy of bycatch reduction technologies and strategies to minimize sawfish bycatch and catch mortality; (5) Present information and consider implications of shrimp fishing effort reduction; and (6) Form feasible options for minimizing sawfish bycatch and bycatch mortality to the extent practicable.

Copies of the agenda and other related materials can be obtained by calling (813) 286–8390.

Although other non-emergency issues not on the workshop agenda may come for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. During the workshop, actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 8, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–28446 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Partial Rescission of Antidumping Duty 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) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. The period of review is May 1, 2009, through April 30, 2010. The Department is rescinding these reviews in part.

DATES: *Effective Date:* November 12, 2010.

FOR FURTHER INFORMATION CONTACT: Dustin Ross or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0747 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2010, based on requests from interested parties, we initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom in accordance with section 751(a) of the Tariff Act of 1930 (the Act) and 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010).

Rescission of Reviews in Part

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review in part "if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review." Subsequent to the initiation of these reviews, we received timely withdrawals of the requests we had received for the reviews as follows:

Country	Company
France	Edwards Ltd. and Edwards High Vacuum Int'l. Ltd., Microturbo SAS, Pratt & Whitney, Ringball Corporation.
Germany	Avio (formerly known as FiatAvio), Cerobear GmbH, Edwards Ltd. and Edwards High Vacuum Int'l. Ltd., Fitchel & Sachs AG, Neuwig Fertigung GmbH, Pratt & Whitney, Ringball Corporation, RWG Frankenjura-Industrie Flugwerklager GmbH, SNR Walzlager GmbH.
Italy	Avio, S.p.A. (formerly known as FiatAvio), Meter S.p.A., Ringball Corporation.
Japan	Aisin Seiki Co. Ltd., Avio (formerly known as (Avio), Canon Inc., Fukuyama Shoji Co., Ltd., IKO Nippon Thompson Co., Ltd. (formerly known as Nippon Thompson Co., Ltd.), Inoue Jukuuke Kogyo Co., Ltd., Izumoto Seiko Co., Ltd., Makino Milling Machine Company, Nankai Seiko Co., Ltd., Nippon Pillow Block Co., Ltd., Nippon Pillow Block Sales Co., Osaka Pump Co. Ltd., Sapporo Precision, Inc., and Tokyo Precision, Inc., Takeshita Seiko Co., Ltd., Univance Corp.
The United Kingdom	Pratt & Whitney, Rolls-Royce PLC.

In addition, on September 1, 2010, the Department revoked, in part, the antidumping duty order on ball bearings and parts thereof from the United Kingdom as it applies to all subject merchandise exported and/or sold by The Barden Corporation (U.K.) Limited and Schaeffler (U.K.) Limited. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661 (September 1, 2010). The effective date of the revocation is May 1, 2009. Therefore, we are also rescinding the review of the 2009/2010 period with respect to The Barden Corporation (U.K.) Limited and Schaeffler (U.K.) Limited.

Because there are no other requests for review of the above-named firms, we are rescinding the reviews with respect to these companies in accordance with 19 CFR 351.213(d)(1). We will instruct U.S. Customs and Border Protection (CBP) to liquidate entries not still subject to the ongoing review at the rate required at the time of entry. *See* 19 CFR 351.212(c)(1).

With respect to entries of subject merchandise produced by The Barden Corporation (U.K.) Limited or Schaeffler (U.K.) Limited which do not meet the terms of the revocation and which were entered, or withdrawn from warehouse, for consumption between May 1, 2009, and April 30, 2010, we will instruct CBP to liquidate applicable entries at the cash-deposit rate for merchandise produced by The Barden Corporation (U.K.) Limited or Schaeffler (U.K.) Limited in effect at the time of entry unless such entries concern imports of subject merchandise from entities (*e.g.* resellers of merchandise produced by The Barden Corporation (U.K.) Limited or Schaeffler (U.K.) Limited) which continue to be subject to the ongoing review of the order on subject merchandise from the United Kingdom.

The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice is published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: November 4, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–28567 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 12, 2010.

SUMMARY: The Department of Commerce ("Department") preliminarily determines that aluminum extrusions from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Lori Apodaca, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2010, the Department received a petition concerning imports of aluminum extrusions from the PRC filed in proper form by the Aluminum Extrusions Fair Trade Committee,[1] and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, "Petitioners").[2] Between April 6 and April 19, 2010, the Department issued several requests for information and clarification of certain areas of the Petition, to which Petitioners timely filed additional responses.

The Department initiated this investigation on April 27, 2010.[3] In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy ("NME")

[1] The Aluminum Extrusions Fair Trade Committee is comprised of Aerolite Extrusion Company, Alexandria Extrusion Company, Benada Aluminum of Florida, Inc., William L. Bonnell Company, Inc., Frontier Aluminum Corporation, Futura Industries Corporation, Hydro Aluminum North America, Inc., Kaiser Aluminum Corporation, Profile Extrusions Company, Sapa Extrusions, Inc., and Western Extrusions Corporation.

[2] *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Aluminum Extrusions from the People's Republic of China, dated March 31, 2010 ("Petition").

[3] *See Aluminum Extrusions from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 75 FR 22109 ("Initiation Notice").

investigations. The process requires exporters and producers to submit a separate-rate status application ("SRA") [4] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. The SRA for this investigation was posted on the Department's Web site, *http://ia.ita.doc.gov/ia-highlights-and-news.html*, on April 27, 2010. The due date for filing an SRA was June 28, 2010.

On May 17, 2010, the International Trade Commission ("ITC") determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of aluminum extrusions from the PRC.[5]

Period of Investigation

The period of investigation ("POI") is July 1, 2009, through December 31, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2009. *See* 19 CFR 351.204(b)(1).

Postponement of Preliminary Determination

On August 4, 2010, Petitioners made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On August 19, 2010, the Department published a postponement of the preliminary AD determination on aluminum extrusions from the PRC.[6]

Scope of the Investigation

The merchandise covered by this investigation is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion ("drawn aluminum") are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes aluminum extrusions that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise.

Subject extrusions may be identified with reference to their end use, such as heat sinks, door thresholds, or carpet trim. Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are finished products and ready for use at the time of importation.

The following aluminum extrusion products are excluded: Aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors, picture frames, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "kit." A kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum

[4] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) ("Policy Bulletin 05.1"), available at *http://ia.ita.doc.gov/policy/bull05-1.pdf.*

[5] *See Investigation Nos. 701–TA–475 and 731–TA–1177 (Preliminary): Aluminum extrusions from China,* USITC Publication 4153 (June 2010).

[6] *See Aluminum Extrusions from the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 75 FR 51243 (August 19, 2010).

Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 mm or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTS"): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope in this proceeding is dispositive.

Scope Comments

In accordance with the preamble to our regulations,[7] the Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within twenty calendar days of publication.[8]

On May 10, 2010, Petitioners submitted comments concerning the scope of the investigation. On this same date, Toagosei America, Inc. ("Toagosei"), an importer of aluminum extrusions, and Shanghai Canghai Aluminum Tube Packing Co. ("Shanghai Canghai"), its Chinese exporter and supplier, submitted a product exclusion request for collapsible tubular containers. Also on May 10, 2010, Kam Kiu Aluminium Products Sdn Bhd and Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. (collectively "Kam Kiu") submitted a request to exclude drawn aluminum products from the scope. On May 10, 2010, Brazeway, Inc. ("Brazeway") submitted comments arguing that all shapes, forms, fabrications and subassemblies extruded from soft aluminum alloys (Aluminum Association series 1000, 3000, 6000) be included in the scope. On the same date, Eagle Metal Distributors, Inc. ("Eagle Metals") also submitted comments requesting that certain aluminum extrusions that have a particular chemistry, wall thickness and length be excluded from the scope. On May 11, 2010, Shenyang Yuanda Aluminium Industry Engineering Co., Ltd. ("CNYD"), a Chinese exporter of assorted aluminum components, made a request for its unitized curtain walls and component parts to be considered kits excluded from the scope of the investigation. Also on May 11, 2010, the Department received scope comments from Hubbell Power Systems, Inc. ("HPS"), a U.S. importer of aluminum extrusions from the PRC, requesting a product exclusion for insulators and connectors used in the electric transmission industry. On May 20, 2010, Petitioners responded to scope comments submitted by Eagle Metals, CNYD, Kam Kiu, Toagosei, Shanghai Canghai and HPS.

On June 14, 2010, Toagosei clarified its May 20, 2010 scope comments regarding collapsible tubular containers. On June 15, 2010, the Department received scope comments from Alumi-Guard, Inc. ("Alumi-Guard"), a domestic manufacturer of fences and gates, proposing to modify the scope exclusion regarding fully assembled finished merchandise and kits so that such items comprised of at least 70 percent aluminum extrusions by weight would not be excluded from the scope of the investigation. On June 22, 2010, the Department received scope comments from Jerith Manufacturing Co., Inc. ("Jerith"), proposing to revise the scope exclusion regarding fully assembled finished merchandise and kits so that fully assembled finished merchandise and kits comprised of at least 75 percent aluminum extrusions by weight would not be excluded from the scope of the proceeding. On June 23, 2010, the Department received scope comments from Zhaoqing Asia Aluminum Factory Co. Ltd. ("ZAA"), an exporter of aluminum extrusions from the PRC and ZAA's U.S. purchaser of aluminum extrusions, Shapes Unlimited, Inc. ("Shapes Unlimited"), requesting that certain aluminum extrusions with specific chemistry, wall thickness, finish and weight be excluded from the scope. On June 24, 2010, Elite Fence Products, Inc. ("Elite Fence") proposed a modification of the scope language mimicking the request made by Jerith. On July 22, 2010, Delair Group, LLC ("Delair"), submitted a scope language modification requesting the exclusion for finished products and kits be modified so that finished products and complete kits comprised of at least 75 percent aluminum extrusions by weight would not be excluded from the scope of the investigations. On August 20, 2010, Petitioners submitted a request to amend the scope to exclude certain collapsible tubular containers meeting specific dimensions. On August 23, 2010, Toagosei and Shanghai Canghai submitted comments in support of Petitioners' August 20, 2010, scope amendment request. On August 26, 2010, Digger Specialties, Inc. ("DSI") requested a revision of scope language also mimicking the request made by Jerith.

On September 15, 2010, Nexxt Show, LLC ("Nexxt Show"), an importer of aluminum exhibition kits, inquired as to whether its imports would be covered by the "kit" exclusion. On September 17, 2010, the Department received scope comments from the Shower Door Manufacturers and Shower Enclosures Alliance ("Shower Door Manufacturers"), in which they requested clarification of the scope language covering "kits" and "finishes." On September 27, 2010, Petitioners filed their rebuttal, objecting to the proposals made by the Shower Door Manufacturers. On September 29, 2010, the Department received scope comments from Aavid Thermalloy, LLC ("Aavid"), requesting a scope exclusion for heat sinks manufactured for electronic equipment.

On October 1, 2010, Eagle Metals submitted additional scope comments covering its May 10, 2010 submission. On October 6, 2010, the Department received comments from Brazeway, objecting to Aavid's request to exclude heat sinks. On this same date, Petitioners filed pre-preliminary scope comments, requesting that the Department not amend the scope language in a manner contrary to Petitioners' intent.

The Department has summarized the submitted comments and has made preliminary determinations with regard to the issues.[9] Based on our analysis of the comments, we preliminarily determine to amend the scope language by adding the following exclusion: "the scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 mm or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm."[10] No other changes to the scope language have been made for this preliminary determination. Comments received on or after October 7, 2010, were not submitted in time for

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See Notice of Initiation,* 75 FR at 22110.

[9] *See* the Department's memorandum entitled "Aluminum Extrusions from the People's Republic of China, Preliminary Determinations: Comments on the Scope of the Investigations, dated October 27, 2010.

[10] *See id.*

consideration for the preliminary determination; however, we will fully consider them for the final determination. Interested parties may address these comments in their case briefs, and rebuttal briefs as appropriate.

Non-Market Economy Country

For purposes of initiation, Petitioners submitted an LTFV analysis for the PRC as an NME.[11] The Department's most recent examination of the PRC's market status determined that NME status should continue for the PRC.[12] Additionally, in two recent investigations, the Department also determined that the PRC is an NME country.[13] In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The Department has not revoked the PRC's status as an NME country, and we have therefore treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Selection of Respondents

In accordance with section 777A(c)(2) of the Act, the Department selected the two largest exporters (by quantity) of aluminum extrusions (Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Limited, (collectively, "Guang Ya Group"); and ZAA as the mandatory respondents in this investigation based on the information contained in the timely submitted Quantity &Value ("Q&V") questionnaire responses filed by 49 exporters/producers.[14]

On April 16, 2010, and September 8, 2010, Zhaoqing New Zhongya Aluminum Co., Ltd. ("ZNZ"), Zhongya Shaped Aluminium (HK) Holding Limited ("Shaped Aluminum") and Karlton Aluminum Company Ltd. ("Karlton") (collectively "New Zhongya") filed an Original Questionnaire response to sections A and sections C and D, respectively, requesting to be considered as a voluntary respondent. Further, on June 29, 2010, ZNZ, Shaped Aluminum and Karlton each filed SRA's.

The Department issued its antidumping questionnaire to Guang Ya Group and ZAA on July 16, 2010. The Department requested that the respondents provide a response to section A of the Department's questionnaire on August 6, 2010, and a response to sections C and D of the questionnaire on August 23, 2010. From August 5, 2010, until the present, the Department has granted both respondents several extensions for their submissions.

Guang Ya Group submitted its responses to the section A and sections C and D questionnaires on August 16, 2010 and September 8, 2010, respectively. The Department issued several supplemental questionnaires and Guang Ya Group submitted responses to these supplemental questionnaires on September 22, 24, 27, 29, October 15, and 21, 2010.

ZAA submitted its section A response on August 13, 2010. ZAA submitted responses to section C and D on September 3, 2010. On September 10, 2010, ZAA informed the Department that it would no longer participate in the investigation.[15] The Department subsequently determined that it did not have sufficient time to investigate New Zhongya as a voluntary respondent.[16] However, as described in the *Affiliation* section below, New Zhongya is being examined in the context of its relationship to the Guang Ya Group.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production ("FOPs") valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, the Philippines, Indonesia, Thailand, Ukraine and Peru are countries comparable to the PRC in terms of economic development.[17] Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.[18] No parties provided comments on the record concerning the surrogate country.

We have determined that it is appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (1) It is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Thus, we have calculated normal value ("NV") using Indian prices when available and appropriate to value the FOPs of the aluminum extrusion producers under investigation. We have obtained and relied upon contemporaneous publicly available information wherever possible.[19]

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to

[11] *See Initiation Notice,* 75 FR at 22111.

[12] *See Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China"): China's Status as a Non-Market Economy ("NME") (August 30, 2006) (memorandum is on file in the CRU on the record of case number A–570–901).*

[13] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9593 (March 5, 2009) ("*Kitchen Racks Prelim*") (unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009) ("*Kitchen Racks Final*")) and *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 4929, 4931 (January 28, 2009) (unchanged in *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 29167 (June 19, 2009)).

[14] *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Aluminum extrusions from the People's Republic of China: Selection of Mandatory Respondents," dated July 16, 2010 ("Respondent Selection Memo"). Of the companies that filed Q&Vs, 34 were named in the Petition, 15 were not. Some companies submitted one Q&V for multiple entities, resulting in 45 submissions in total, covering 49 companies.

[15] *See* ZAA's September 10, 2010, letter to the Department stating that it would no longer participate in the investigation.

[16] *See* The Department's October 1, 2010 supplemental questionnaire to New Zhongya.

[17] *See* Memorandum to Eugene Degnan from Carole Showers, "Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Aluminum Extrusions from the People's Republic of China ("PRC") ("Office of Policy Surrogate Countries Memorandum"), dated July 26, 2010. The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

[18] *See id.*

[19] *See* Memorandum to Wendy J. Frankel, "Aluminum Extrusions from the People's Republic of China: Surrogate Value Memorandum" (October 27, 2010) ("Surrogate Value Memorandum").

value the FOPs within 40 days after the date of publication of the preliminary determination.[20]

Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information with which to value the FOPs for the preliminary determination in this proceeding were originally due August 24, 1010. On August 4, 2010, Petitioners requested an extension to submit surrogate values. On August 6, 2010, the Department granted this request extending the deadline for submission of surrogate value information for all interested parties until 7 days after both mandatory respondents had submitted their section D questionnaire responses. Surrogate value submissions were filed September 10, 2010, by Petitioners and Guang Ya Group, respectively. Petitioners filed rebuttal surrogate values comments on September 28, 2010. For a detailed discussion of the surrogate values used in this LTFV proceeding, *see* the "Factor Valuation" section below and the Surrogate Value Memorandum.

Affiliation

Based on the evidence presented in Guang Ya Group's questionnaire responses, we preliminarily find affiliation between the entities comprising Guang Ya Group pursuant to section 771(33)(A) and (F) of the Act.[21] In addition, based on the evidence presented in Guang Ya Group's questionnaire responses, we find that Guang Ya Group should be collapsed and treated as a single entity for purposes of this investigation, pursuant to sections 771(33)(A) and (F) of the Act, and 19 CFR 351.401(f)(1) and (2).[22] Further, while we have not accepted New Zhongya as a voluntary respondent in this investigation, we have determined to examine New Zhongya in the context of its relationship to Guang Ya Group.[23] In that context, we issued supplemental questionnaires to New Zhongya on October 1, 2010, and October 12, 2010.[24] Based on the evidence on the record, we have preliminarily determined that the New Zhongya entities are affiliated and should be collapsed and treated as a single entity pursuant to sections 771(33)(A) and (F) of the Act and 19 CFR 351.401(f)(1) and (2).[25] Additionally, we have preliminarily determined that Guang Ya Group and New Zhongya are also affiliated with each other pursuant to section 771(33)(A) and (F) of the Act.[26]

Similarly, we also find that the Guang Ya Group and New Zhongya should be collapsed and treated as a single entity (collectively "Guang Ya Group/New Zhongya") for purposes of this investigation, pursuant to sections 771(33)(A) and (F) of the Act, and 19 CFR 351.401(f)(1) and (2).[27] Furthermore, we find that Guang Ya Group/New Zhongya is affiliated with another exporter/producer of aluminum extrusions: Xinya Aluminum & Stainless Steel Product Co., Ltd. ("Xinya"), pursuant to sections 771(33)(A) and (F) of the Act.[28] Although neither Guang Ya Group nor New Zhongya provided the full ownership information of this entity, as requested by the Department, Guang Ya Group stated on the record of this antidumping ("AD") investigation that a sibling of its owner was "shareholder" of Xinya, and New Zhongya stated on the public record of the companion countervailing duty investigation of aluminum extrusions from the PRC ("CVD investigation") that a sibling of its owner was "owner" of Xinya. Because this information was provided on the public record of that proceeding, it is deemed to be public information.[29] Accordingly, we find it reasonable to infer, as facts available, that the family members identified in the AD response as "shareholder" of Xinya, and the public CVD investigation response as the "owner" of Xinya, holds full ownership of his or her respective company. Therefore, because Xinya is owned by members of the same family that has ownership interests in Guang Ya Group and New Zhongya, we have determined to preliminarily treat Xinya as owned by the family grouping. Thus, we also find Xinya to be affiliated with Guang Ya Group/New Zhongya, based on common family ownership, pursuant to sections 771(33)(A) and (F) of the Act.

Finally, we determine that Guang Ya Group, New Zhongya, and Xinya should be collapsed and treated as a single entity for the purposes of this investigation, pursuant to sections 19 CFR 351.401(f)(1) and (2).[30] This finding is based on the determination that Guang Ya Group, New Zhongya, and Xinya are affiliated, that each are exporters/producers of similar or

[20] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[21] *See* Memorandum to Wendy J. Frankel, Investigation of Aluminum Extrusions from the People's Republic of China: Preliminary Determination Regarding Affiliation and Collapsing of Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Limited, and Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminium (HK) Holding Limited; Xinya Aluminum & Stainless Steel Product Co., Ltd. and Dayang Aluminum Co., Ltd. (October 27, 2010) ("Affiliation and Collapsing Memo").

[22] *Id.*

[23] *See* October 1, 2010 supplemental questionnaire.

[24] New Zhongya requested, and the Department granted, an extension to the submission of the response to the October 12, 2010 supplemental questionnaire until October 28, 2010. Additionally, the U.S. sales and FOP databases submitted pursuant to the October 1, 2010 supplemental questionnaire were consolidated with Guang Ya Group data and due to the Department on October 19, 2010. However, Guang Ya Group requested an extension for the submission of the consolidated database to October 21, 2010. The Department granted this extension request, but informed Guang Ya Group that as a result of the extension, the Department may not be able to use this data for the preliminary determination. In fact, due to the need to make multiple formatting changes to the consolidated database to render it usable for margin calculation, the Department was unable to use this data for the preliminary determination. *See* Analysis Memo.

[25] *See* Affiliation and Collapsing Memo.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] On October 22, 2010, the Department sent letters to Guang Ya Group and New Zhongya asking them to provide an explanation of why certain company names and company ownership information should be accorded business proprietary ("BPI") treatment, in light of the fact that this information was previously submitted as public information on the record of the countervailing duty investigation of aluminum extrusions and/or found to be publicly available on the Internet. Specifically, the Department requested that New Zhongya address the fact that it had previously submitted the names and shareholdings of each of its intermediate and ultimate owners as public information, but was now treating this information as BPI. In regard to Guang Ya Group, the Department requested that Guang Ya Group also provide an explanation of why it was treating the ownership information referenced above as BPI. On October 25, 2010, both companies responded that they agree to the treatment of this information as public information. *See* October 25, 2010 letter to the Department from New Zhongya: Aluminum Extrusions from China: Antidumping, and October 25, 2010 letter to the Department from Guang Ya Group: Aluminum Extrusions from the PRC: Comments by the Guang Ya Group Regarding Treatment of Affiliated Party Information as BPI. Accordingly, we have determined to treat this information as public information going forward in this investigation. *See* October 27, 2010 memorandum to the file: Reclassification of Business Proprietary Information (placing the public version of New Zhongya's August 6, 2010, supplemental questionnaire response and certain publicly available information found on the Internet, on the record of the AD investigation).

[30] *See* Affiliation and Collapsing Memo.

identical products and no retooling would be necessary in order to restructure manufacturing priorities,[31] and that there is significant potential for manipulation of price or production between the parties based on the familial ownership of these companies.

In considering the level of common ownership pursuant to 19 CFR 351.401(f)(2)(i), we find common ownership of Guang Ya Group, New Zhongya, and Xinya by the family grouping. In this context, the family in question is the "person" jointly owning these entities. In regards to 19 CFR 351.401(f)(2)(ii), the record of this proceeding shows that family members are directors and managers of each of the three companies.[32] Given that (1) the family grouping has ownership interests in both Guang Ya Group and New Zhongya, and we are concluding based on facts available that the family grouping holds ownership over Xinya, (2) the family grouping has directors and senior managers at each company, and (3) all of the companies produce and or export merchandise under consideration in this investigation, we find that the family grouping is in a position to have significant influence over the production and sales decisions of all three companies. We find that these factors support a finding of significant potential for manipulation such that all three companies should be treated as a single entity for purposes of margin calculation and assessment.[33] For further discussion of the Department's affiliation and collapsing decision, see the Affiliation and Collapsing Memo.

The calculation of the margin for the preliminary determination will necessarily be based only on the data submitted by Guang Ya Group/New Zhongya. However, we will request that the single entity of Guang Ya Group/New Zhongya/Xinya provide additional information and data pursuant to a post-preliminary determination supplemental questionnaire, including but not limited to, separate rate information, U.S. sales data and FOP data relating to Xinya. We will re-calculate the margin for the final determination using this information, as appropriate.

We note that record evidence shows that Guang Ya Group/New Zhongya/Xinya are also potentially affiliated through family ownership with another company that produces and/or exports aluminum extrusions: Da Yang Aluminum Co., Ltd. ("Da Yang"). Da Yang was named in the petition of this investigation, and the Department issued a Q&V questionnaire to Da Yang on April 27, 2010. Our records show that the Q&V questionnaire was delivered to Da Yang on May 5, 2010. Da Yang never responded to our Q&V questionnaire. Our practice is to treat companies who did not respond to the Department's request for information as part of the PRC-wide entity.[34] Therefore, Da Yang is already considered part of the PRC-wide entity and is not eligible for consideration in the collapsing analysis of the other individually reviewed respondents. *See The PRC-Wide Entity and PRC-Wide Rate,* below.

Targeted Dumping

On September 17 and September 30, 2010, respectively, the Department received Petitioners' allegations of targeted dumping by Guang Ya Group and New Zhongya using the Department's methodology as established in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) ("*Steel Nails*"). Based on our examination of the targeted dumping allegations filed by Petitioners, and pursuant to section 777A(d)(1)(B)(i) of the Act, the Department has determined that Petitioners' allegations sufficiently indicate that there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, time periods, and regions.

As a result, the Department has applied the targeted dumping analysis established in *Steel Nails* to the Guang Ya Group/New Zhongya's U.S. sales to targeted purchasers, time periods, and regions. The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. *See* section 777A(d)(1)(B)(i) of the Act and *Steel Nails.* In this test we made all price comparisons on the basis of comparable merchandise (*i.e.,* by control number or CONNUM). The test procedures are the same for the customer, time period and region targeted-dumping allegations. We based all of our targeted-dumping calculations on the net U.S. price which we determined for U.S. sales by Guang Ya Group/New Zhongya in our standard margin calculations. For further discussion of the test and the results, *see* Analysis Memo. As a result of our analysis, we preliminarily determine that there is a pattern of sales for comparable merchandise that differ significantly among certain purchasers, time periods, and regions for Guang Ya Group/New Zhongya in accordance with section 777A(d)(1)(B)(i) of the Act, and our practice as discussed in *Steel Nails.* For the preliminary determination, however, we find that in this investigation the result using the standard average-to-average methodology is not substantially different from that using the alternative average-to-transaction methodology. Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all U.S. sales that Guang Ya Group/New Zhongya reported.

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations.[35] The process requires exporters and producers to submit a SRA.[36] The standard for eligibility for a separate rate is whether a firm can demonstrate an

[31] *See* Guang Ya Group August 16, 2010, section A response at 16.

[32] *See* October 27, 2010, memorandum to the file: Reclassification of Business Proprietary Information.

[33] *See, e.g., Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review,* 74 FR 47198 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

[34] *Drill Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 75 FR 51004 (August 18, 2010) stating "although all exporters/producers were given an opportunity to submit Q&V responses, we only received seven timely filed Q&V responses in response to our request. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information and that it is appropriate to treat these non-responsive PRC exporters/producers as part of the PRC-wide entity because they did not qualify for a separate rate."

[35] *See Initiation Notice,* 75 FR at 22113.

[36] *See* Policy Bulletin 05.1: "While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of 'combination rates' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See* Policy Bulletin 05.1 at 6.

absence of both *de jure* and *de facto* government control over its export activities. In the instant investigation, the Department received timely-filed SRAs from 39 companies.[37]

Because ZAA did not cooperate in this investigation, we find that ZAA did not demonstrate that it was eligible for a separate rate, and it is thus part of the PRC-entity. One SR applicant, Press Metal Huasheng Aluminum Extrusion Co. Ltd., did not have any shipments of the merchandise under investigation during the POI, and so is not eligible for consideration for a separate rate.

One SR applicant, Shanghai Canghai Aluminum Tube Packing Co., submitted an SRA on June 30, 2010 (pursuant to an extension granted by the Department).[38] On August 18, 2010, the Department issued a Supplemental Questionnaire ("SQ") to Shanghai Canghai. On September 8, 2010, Shanghai Canghai improperly filed its response to the SQ and the Department was not able to analyze the information contained in the response. Therefore, Shanghai Canghai will not be considered for a separate rate in the preliminary determination. However, we are providing Shanghai Canghai an additional opportunity to correct these deficiencies after the preliminary determination.

The remaining 36 SR applicants have all stated that they are wholly foreign-owned enterprises or located in a market economy, are joint ventures between Chinese and foreign companies, or are wholly Chinese-owned companies. Therefore, the Department must analyze whether these respondents are wholly foreign-owned or located in a market economy as claimed or demonstrated an absence of both *de jure* and *de facto* governmental control over export activities, as appropriate.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

A. Separate-Rate Recipients[39]

1. Wholly Foreign-Owned or Located in a Market Economy

Thirteen separate rate applicants, *i.e.,* the three New Zhongya entities, the two Guang Ya Group entities and eight other separate rate companies, provided evidence in their SRAs that they are wholly owned by individuals or companies located in a market economy ("ME"), (collectively "Foreign-Owned SR Applicants").[40] Therefore, because they are wholly foreign-owned or located in a market economy, and we have no evidence indicating that they are under the control of the PRC, a separate-rate analysis is not necessary to determine whether these companies are independent from government control.[41] Accordingly, we have preliminarily granted a separate rate to these companies.

2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd. and twenty-one of the separate-rate companies in this investigation stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies (collectively "PRC SR Applicants"). Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The evidence provided by the PRC SR Recipients supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies.

[37] The 39 separate-rate applicants are: (1) Alnan Aluminium Co., Ltd.; (2) Changshu Changsheng Aluminium Products Co., Ltd.; (3) China Square Industrial Limited; (4) Cosco (J.M) Aluminium Developments Co., Ltd.; (5) First Union Property Limited/Top-Wok Metal Co., Ltd.; (6) Foshan Guangcheng Aluminium Co., Ltd.; (7) Foshan Jinlan Non-ferrous Metal Product Co.; Ltd.; (8) Foshan Sanshui Fenglu Aluminium Co., Ltd.; (9) Guang Ya Aluminium Industries (Hong Kong) Limited; (10) Guang Ya Aluminium Industries Co., Ltd.; (11) Guangdong Hao Mei Aluminium Co., Ltd/Hao Mei Aluminium Co., Ltd./Hao Mei International Co., Ltd..; (12) Guangdong Weiye Aluminium Factory Co., Ltd.; (13) Guangdong Xingfa Aluminum Co., Ltd.; (14) Hanwood Enterprises Limited; (15) Honsense Development Company; (16) Innovative Aluminium (Hong Kong) Limited; (17) Jiangyin Trust International Inc.; (18) JMA (HK) Company Limited; (19) Kam Kiu Aluminium Products Sdn Bhd; (20) Karlton Aluminium Company Limited; (21) Kong Ah International Company Limited; (22) Longkou Donghai Trade Co., Ltd.; (23) Ningbo Yili Import and Export Co., Ltd.; (24) North China Aluminum Co., Ltd.; (25) PanAsia Aluminium (China) Limited; (26) Pingguo Asia Aluminum Co., Ltd.; (27) Popular Plastics Co., Ltd.; (28) Press Metal Huasheng Aluminum Extrusion Co., Ltd.; (29) Press Metal International Ltd.; (30) Shanghai Canghai Aluminium Tube Packing Co., Ltd.; (31) Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.; (32) Tai-Ao Aluminium (Taishan) Co., Ltd.; (33) Tianjin Ruixin Electric Heat Transmission Technology Co., Ltd.; (34) USA Worldwide Door Components (Pinghu) Co., Ltd./Worldwide Door Components (Pinghu) Co.; (35) Zhaoqing Asia Aluminum Factory Co., Ltd.; (36) Zhaoqing New Zhongya Aluminum Co., Ltd.; (37) Zhejiang Yongkang Listar Aluminium Industry Co., Ltd.; (38) Zhongshan Gold Mountain Aluminium Factory Ltd.; and (39) Zhongya Shaped Aluminium (HK) Holding Limited.

[38] *See* the Department's June 25, 2010, letter to Shanghai Canghai granting the company's request to extend the deadline for its SRA submission to July 2, 2010.

[39] All separate-rate applicants receiving a separate rate are hereby referred to collectively as the "SR Recipients;" this includes the mandatory respondents.

[40] The wholly foreign-owned SR Applicants are: (1) Cosco (J.M.) Aluminium Developments Co., Ltd.; (2) Guangdong Xingfa Aluminum Co., Ltd.; (3) PanAsia Aluminum (China) Limited; (4) Pingguo Asia Aluminum Co., Ltd.; (5) Popular Plastics Company Limited; (6) Tai-Ao Aluminium (Taishan) Co., Ltd.; (7) USA Worldwide Door Components (Pinghu) Co., Ltd., and (8) Worldwide Door Components Co.

[41] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

In this investigation, the separate rate applicants each asserted the following: (1) That the export prices are not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses. Additionally, each of these companies' SRA responses indicates that its pricing during the POI does not involve coordination among exporters.

Evidence placed on the record of this investigation by 36 of the SR Applicants demonstrate an absence of *de jure* and *de facto* government control with respect to their respective exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we are preliminarily granting a separate rate to these entities and have identified each of them in the *Preliminary Determination* section of this notice, below.

Application of Facts Otherwise Available and Adverse Facts Available

The PRC-Wide Entity and PRC-Wide Rate

We issued our request for Q&V information to 130 potential Chinese exporters of the subject merchandise, in addition to posting the Q&V questionnaire on the Department's website. *See* Respondent Selection Memo. While information on the record of this investigation indicates that there are numerous producers/exporters of aluminum extrusions in the PRC, we received 45 timely filed Q&V responses.[42] Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Therefore, the Department has preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information (including Da Yang).[43] We have treated these non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate their eligibility for a separate rate. *See, e.g., Kitchen Racks Prelim,* unchanged in *Kitchen Racks Final.*

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (F) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Specifically, certain companies did not respond to our questionnaire requesting Q&V information. Additionally, on September 10, 2010, ZAA informed the Department that it would no longer participate in the investigation. Accordingly, we find that the PRC-entity withheld information requested by the Department; failed to provide information in a timely manner and neither indicated that it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form; significantly impeded the proceeding by not submitting the requested proceeding, and in the case of ZAA, submitted information that cannot be verified as a result of its determination to discontinue participation in the proceeding. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available ("FA") is appropriate to determine the PRC-wide rate. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("*SAA*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC-wide entity (including ZAA) did not respond to our requests for information, it has failed to cooperate to the best of its ability. Furthermore, the PRC-wide entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown. *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) ("*Nippon Steel*") where the Court of Appeals for the Federal Circuit 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").

[42] Several of the Q&V responses provided Q&V data for more than one company. As a result, the 45 Q&V responses provided quantity and value for 49 entities.

[43] Da Yang is one of the companies identified in the Petition to whom we issued a Q&V questionnaire but received no response.

Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[44] With respect to adverse facts available ("AFA"), for the preliminary determination, we have assigned the PRC-wide entity the rate of 59.31 percent, which is the dumping margin calculated for Guang Ya Group/New Zhongya/Xinya in the preliminary determination. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.[45]

Partial AFA for Guang Ya Group/New Zhongya

New Zhongya did not provide a sufficient description of the FOP inputs named: Additive, Aluminum sealant, Chromaking agent, Deslagging agent, Long life additive for alkaline etching, and Refining agent for the Department to determine an appropriate source with which to value these inputs. However, information contained in New Zhongya's questionnaire responses, identified these as broadly as various "additives." Because New Zhongya did not provide us with sufficient means to identify an appropriate surrogate value for these inputs as requested by the Department, as adverse facts available, we have applied the highest surrogate value on the record for any input described as an "additive." We intend to address these FOP valuations further in post-preliminary determination supplemental questionnaires.

Margin for the Separate Rate Companies

As discussed above, the Department has preliminarily determined that in addition to the individually reviewed entities, 29 other companies have demonstrated their eligibility for a separate rate. The Department's practice is to establish a margin, as the separate rate, for these entities based on the average of the rates we calculated for the mandatory respondents, excluding any rates that were zero, *de minimis,* or based entirely on AFA.[46] In the instant investigation we have only one mandatory respondent, Guang Ya Group/New Zhongya/Xinya. As the rate for Guang Ya Group/New Zhongya/Xinya is not zero, *de minimis,* or based entirely on AFA, we are using its margin to establish the separate rate margin.

Date of Sale

19 CFR 351.401(i) states that, "in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube,* the CIT noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'" *Allied Tube & Conduit Corp.* v. *United States* 132 F. Supp. 2d at 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*"). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube,* 132 F. Supp. 2d 1087, 1090–1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

For sales by Guang Ya Group/New Zhongya, consistent with 19 CFR 351.401(i), we used the commercial invoice date as the sale date because record evidence indicates that the terms of sale were not set until the issuance of the commercial invoice.[47]

Fair Value Comparisons

To determine whether sales of aluminum extrusions to the United States by the respondents were made at LTFV, we compared export price ("EP") and constructed export price ("CEP") to normal value ("NV"), as described in the "Constructed Export Price," "Export Price," and "Normal Value" sections of this notice.

U.S. Price

Constructed Export Price

In accordance with section 772(a) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). In its questionnaire responses, Guang Ya Group stated that it made CEP sales through its U.S. affiliate, Guangcheng Aluminum Industries (USA) Inc. ("Guangcheng USA"). In accordance with section 772(a) of the Act, we used CEP for Guang Ya Group's U.S. sales where the merchandise subject to this investigation was sold directly to an affiliated purchaser located in the United States.

For sales reported by Guang Ya Group as CEP sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price, where applicable, for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included such expenses as foreign inland freight from the plant to the port of exportation

[44] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum, at "Facts Available."

[45] *See* 19 CFR 351.308(c) and (d) and section 776(c) of the Act; *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at 1.

[46] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[47] *See, e.g.,* the Guang Ya Group's section A response at page 29, and New Zhongya's section A response at 29.

and marine insurance. In accordance with section 772(d)(1) of the Act, the Department deducted commissions, credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.[48]

New Zhongya also reported that it had CEP sales, but requested that the Department not require it to submit data for these sales based on the fact that they comprised a very small percentage of its total sales. Where the percentage of CEP sales is less than five percent, the Department practice is to not require that the sales be reported.[49] Accordingly, the Department has permitted New Zhongya not to report these sales.[50]

Export Price

In accordance with section 772(a) of the Act, we used EP for certain U.S. sales reported by Guang Ya Group and all sales reported by New Zhongya. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.,* foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation, etc.) in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates from India. *See* "Factor Valuation" section below for further discussion of surrogate value rates.

Adjustments to Guang Ya Group and New Zhongya Data

For the preliminary determination, using information from Guang Ya Group's narrative questionnaire/supplemental questionnaire responses, the Department made adjustments to Guang Ya Group's and New Zhongya's FOP and U.S. sales data to resolve multiple flaws with respect to formatting, variable names, and spreadsheet reference errors. For example, where values for credit expenses were lost in Guang Ya Group's Excel version of its U.S. sales database due to broken cell links, resulting in "reference" errors, the Department used data found in Guang Ya Group's questionnaire/supplemental questionnaire response narratives to calculate the missing values using SAS programming language.[51]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Therefore, for this preliminary determination we have calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. *See, e.g., Kitchen Racks Prelim,* 71 FR at 19703 (unchanged in *Kitchen Racks Final*). In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value to value FOPs, but when a producer sources an input from a ME and pays for it in a ME currency, the Department may value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill* v. *United States,* 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents during the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Guang Ya Group/New Zhongya can be found in the Surrogate Value Memorandum.

For the preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Guang Ya Group and New Zhongya's FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI,

[48] *See* Surrogate Value Memorandum.

[49] *See* 19 CFR 351.408(d); *see* also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil,* 71 FR 2183 (January 13, 2006), and accompanying Issues and Decision Memorandum at 6.

[50] *See* October 20, 2010, letter to New Zhongya: Extension of Deadline to submit supplemental questionnaire.

[51] *See* the memorandum to the file: Preliminary Determination Analysis Memorandum for Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Limited, (collectively, the "Guang Ya Group") dated October 27, 2010, for a complete listing of all such adjustments.

product-specific, and tax-exclusive. *See* Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian WPI as published in the IMF's *International Financial Statistics. See, e.g., Kitchen Racks,* 74 FR at 9600.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.[52]

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008). Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See id.*

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[53] Where we find ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[54] we use the actual purchases of these inputs to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight-average the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[55] Where appropriate, we add freight to the ME prices of inputs.

Both Guang Ya Group and New Zhongya claimed that certain of their reported raw material inputs were sourced from an ME country and paid for in ME currencies. Record evidence indicates, however, that New Zhongya's purchases were not from an NME country. Accordingly, we valued these purchases with a surrogate value.[56] With respect to the Guang Ya Group's claim that it had certain purchases of inputs from an ME country(ies), record evidence brings into question the quantities and types of merchandise that may have been imported from market economy countries.[57] Thus, we valued these inputs with surrogate values for the preliminary determination.

As a consequence of the decision of the Court of Appeals for the Federal Circuit in *Dorbest Ltd.* v. *United States,* 604 F. 3d 1363 (Fed. Cir. 2010), the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent Federal Circuit decision. For these preliminary results, we have calculated an hourly wage rate to use in valuing the reported labor input by averaging earnings and/or wages in countries that are economically-comparable to the PRC and that are significant producers of comparable merchandise. To calculate the hourly wage data, we used wage rate data reported by the International Labor Organization ("ILO").[58] Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, we used industry-specific data to calculate a surrogate wage rate for this review, in accordance with section 773(c)(1) of the Act.

For this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 28 ("Manufacture of fabricated metal products, except machinery and equipment") of the ISIC–Revision 3 by countries determined to be both economically-comparable and significant producers to the PRC. The Department finds the two-digit

[52] *See, also e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at pages 4–5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at pages 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at page 23.

[53] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[54] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

[55] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

[56] *See* Analysis Memo: Market Economy Purchases section.

[57] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718, and Exhibit D.18 of the Guang Ya Groups September 29, 2010 supplemental questionnaire response.

[58] The ILO industry-specific data is reported according to the International Standard Industrial Classification of all Economic Activities ("ISIC") code, which is maintained by the United Nations Statistical Division and is periodically updated. These updates are referred to as "Revisions." The ILO, an organization under the auspices of the United Nations, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC–Rev.2, ISIC–Rev.3, and most recently, ISIC–Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

description under Sub-Classification 28 is the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. For further information on the calculation of the wage rate, see the Surrogate Value Memorandum.

We valued truck freight expenses using a per-unit average rate calculated from data on the Infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. To value water, we used the revised Maharashtra Industrial Development Corporation water rates available at *http://www.midcindia.com/water-supply.* We valued natural gas using April through June 2002 data from the Gas Authority of India Ltd. Consistent with the Department's recent determination in Polyvinyl Alcohol, we averaged the base and ceiling gas prices of 2,850 rupees per 1000 cubic meters ("m^3") and 2,150 rupees per 1000 m^3, and added a transmission charge of 1,150 rupees per 1000 m^3 to calculate a value of Rs 3.650/cubic meter. We used the Indian Bureau of Mines' publication: 2007 Edition of the Indian Minerals Yearbook ("IBM Yearbook") to value coal. For this preliminary determination, we find that the IBM Yearbook's reported Grade C coal most closely matches the coal consumed by respondents during the POI. We valued diesel using the June 2007 diesel prices across four Indian cities from the Indian Oil Corporation. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements of Indian aluminum extrusions producers Bhoruka Aluminum, Ltd., and Sudal Industries Ltd., each covering the fiscal period April 1, 2009, through March 31, 2010.[59] The Department may consider other publicly available financial statements for the final determination, as appropriate.

Currency Conversion

Where necessary, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Guang Ya Group/New Zhongya/Xinya upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[60] This practice is described in Policy Bulletin 05.1.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin
Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Limited; Zhaoqing New Zhongya Aluminum Co., Ltd.; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; Xinya Aluminum & Stainless Steel Product Co., Ltd.	Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Limited; Zhaoqing New Zhongya Aluminum Co., Ltd.; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; Xinya Aluminum & Stainless Steel Product Co., Ltd.	59.31
Alnan Aluminium Co., Ltd	Alnan Aluminium Co., Ltd	59.31
Changshu Changsheng Aluminium Products Co., Ltd	Changshu Changsheng Aluminium Products Co., Ltd	59.31
China Square Industrial Limited	Zhaoqing China Square Industry Limited	59.31
Cosco (J.M) Aluminium Co., Ltd	Cosco (J.M) Aluminium Co., Ltd.; Jiangmen Qunxing Hardware Diecasting Co., Ltd.	59.31
First Union Property Limited	Top-Wok Metal Co., Ltd	59.31
Foshan Jinlan Non-ferrous Metal Product Co.; Ltd	Foshan Jinlan Aluminium Co. Ltd	59.31
Foshan Sanshui Fenglu Aluminium Co., Ltd	Foshan Sanshui Fenglu Aluminium Co., Ltd	59.31
Guangdong Hao Mei Aluminium Co., Ltd	Guangdong Hao Mei Aluminium Co., Ltd	59.31
Guangdong Weiye Aluminium Factory Co., Ltd	Guangdong Weiye Aluminium Factory Co., Ltd	59.31
Guangdong Xingfa Aluminium Co., Ltd	Guangdong Xingfa Aluminium Co., Ltd	59.31
Hanwood Enterprises Limited	Pingguo Aluminium Company Limited	59.31
Honsense Development Company	Kanal Precision Aluminium Product Co., Ltd	59.31
Innovative Aluminium (Hong Kong) Limited	Taishan Golden Gain Aluminium Products Limited	59.31
Jiangyin Trust International Inc	Jiangyin Xinhong Doors and Windows Co., Ltd	59.31
JMA (HK) Company Limited	Guangdong Jianmei Aluminum Profile Company Limited; Foshan JMA Aluminium Company Limited.	59.31
Kam Kiu Aluminium Products Sdn Bhd	Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd	59.31
Longkou Donghai Trade Co., Ltd	Shandong Nanshan Aluminum Co., Ltd	59.31
Ningbo Yili Import and Export Co., Ltd	Zhejiang Anji Xinxiang Aluminum Co., Ltd	59.31
North China Aluminum Co., Ltd	North China Aluminum Co., Ltd	59.31
PanAsia Aluminium (China) Limited	PanAsia Aluminium (China) Limited	59.31
Pingguo Asia Aluminum Co., Ltd	Pingguo Asia Aluminum Co., Ltd	59.31
Popular Plastics Co., Ltd	Hoi Tat Plastic Mould & Metal Factory	59.31
Press Metal International Ltd	Press Metal International Ltd	59.31

[59] *See* Analysis Memo: Surrogate Financial Statements, for a discussion of the selection of these financial statements.

[60] *See Initiation Notice,* 75 FR at 22113–14.

Exporter	Producer	Weighted-average margin
Shenyang Yuanda Aluminium Industry Engineering Co. Ltd	Zhaoqing Asia Aluminum Factory Company Limited; Guang Ya Aluminum Industries Co., Ltd.	59.31
Tai-Ao Aluminium (Taishan) Co., Ltd	Tai-Ao Aluminium (Taishan) Co., Ltd	59.31
Tianjin Ruixin Electric Heat Transmission Technology Co., Ltd	Tianjin Ruixin Electric Heat Transmission Technology Co., Ltd	59.31
USA Worldwide Door Components (Pinghu) Co., Ltd.; Worldwide Door Components (Pinghu) Co.	USA Worldwide Door Components (Pinghu) Co., Ltd	59.31
Zhejiang Yongkang Listar Aluminium Industry Co., Ltd	Zhejiang Yongkang Listar Aluminium Industry Co., Ltd	59.31
Zhongshan Gold Mountain Aluminium Factory Ltd	Zhongshan Gold Mountain Aluminium Factory Ltd	59.31
PRC-wide Entity*		59.31

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border protection ("CBP") to suspend liquidation of all entries of aluminum extrusions from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

Additionally, as the Department has determined in its *Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 75 FR 54302 (September 7, 2010) ("*CVD Prelim*") that the merchandise under investigation exported by Guang Ya Group, and that exported by New Zhongya, benefitted from export subsidies, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the amount by which the NV exceeds the U.S. price for Guang Ya Group/New Zhongya/Xinya, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2007).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of aluminum extrusions, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. The Department also requests that parties provide an electronic copy of its case and rebuttal brief submissions in either a "Microsoft Word" or a "pdf" format.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, at a time and location to be determined. *See* 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–28539 Filed 11–10–10; 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: Preliminary Results of New Shipper Reviews and Preliminary Rescission, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting new shipper reviews (NSRs) of Jinxiang Chengda Imp & Exp Co., Ltd. (Chengda), Jinxiang Yuanxin Imp & Exp Co., Ltd. (Yuanxin), and Zhengzhou Huachao Industrial Co., Ltd. (Huachao) under the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of

November 1, 2008 through October 31, 2009. As discussed below, we preliminarily determine that Yuanxin's and Huachao's sales are *bona fide* and that these sales have been made in the United States at prices below normal value (NV). Yuanxin and Huachao have also demonstrated their eligibility for a separate rate in these NSRs. In addition, we find Chengda's sales to be not *bona fide.* As such, we are preliminarily rescinding the NSR for Chengda. The dumping margins are set forth in the "Preliminary Results of the Review" section below. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis.* We invite interested parties to comment on these preliminary results. *See* "*Comments*" section below.

DATES: *Effective Date:* November 12, 2010.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, Toni Page, and 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, (202) 482–1398, and (202) 482–2316, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2009, the Department received timely requests for a NSR from Chengda and Yuanxin, and on December 1, 2009, the Department received a timely request from Huachao in accordance with 19 CFR 351.214(c). On December 29, 2009, the Department determined that the requests submitted by Chengda, Yuanxin, and Huachao met the threshold requirements for initiation of a NSR and initiated the NSRs. *See Fresh Garlic From the People's Republic of China: Initiation of New Shipper Reviews,* 75 FR 343 (January 5, 2010).

Since the initiation of these reviews, the Department has issued original and supplemental questionnaires to Chengda, Yuanxin, and Huachao, to which each has responded in a timely manner. As explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, Re: Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm (February 12, 2010).

On March 10, 2010, the Department placed copies of CBP documents on the record of this review pertaining to Chengda's, Yuanxin's, and Huachao's shipments of garlic from the PRC exported to the United States during the POR. *See* Memorandum to the File, from Scott Lindsay, Senior Case Analyst, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Entry Packages (March 10, 2010).

On June 8, 2010, the Department extended the deadline for the preliminary results of these NSRs to no later than November 1, 2010. *See Fresh Garlic from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Reviews,* 75 FR 32362 (June 8, 2010). On July 20, 2010, the Department sent interested parties a letter requesting comments on the surrogate country selection and information pertaining to valuing factors of production. *See* Letter to Interested Parties, from the Department, Re: New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC") (July 20, 2010). On September 10, 2010, Huachao submitted comments on the surrogate country selection and information pertaining to valuing factors of production. *See* Letter to the Department, from Huachao, Re: Fresh Garlic from the People's Republic of China—Surrogate Value Information for 16th New Shipper Review (September 10, 2010) (Huachao's Surrogate Value Submission). The Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners) also submitted comments regarding surrogate values for this NSR. *See* Letter to the Department, from Petitioners, Re: 16th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (September 10, 2010) (Petitioners' Surrogate Value Data). No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

On October 6, 2010, the Department placed a copy of the CBP data run on the record of this review, which contains all entries of subject merchandise exported from the PRC to the United States during the POR. *See* Memorandum to the File, from The Team, AD/CVD Operations, Office 6, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Entries from November 1, 2008 through October 31, 2009 (October 6, 2010). On October 18, 2010, Petitioners placed on the record comments regarding the *bona fides* of sales made by Yuanxin, Chengda, and Huachao. *See* Petitioners' October 18, 2010 *Bona Fides* Comments.

Period of Review

Pursuant to 19 CFR 351.214(g), the POR covered by these NSRs is November 1, 2008 through October 31, 2009.

Scope of the Order

The products covered by this 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 this 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 this 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 CBP to that effect.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a foreign country is

an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of each new shipper sale at issue. In evaluating whether or not a sale in a NSR is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005) (*TTPC*). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (Ct. Int'l Trade 2005) (*New Donghua*) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.). In *TTPC,* the court also affirmed the Department's decision that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (*TTPC,* 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC,* 366 F. Supp. 2d at 1263. Finally, in *New Donghua,* the Court of International Trade affirmed the Department's practice of evaluating the circumstances surrounding a NSR sale, so that a respondent does not unfairly benefit from an a typical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.

Chengda: We preliminarily find that the sales made by Chengda during the POR were not *bona fide* commercial transactions. Chengda's POR sales' price and quantities were both atypical and aberrational. Since much of the factual information used in our analysis of the *bona fides* of the transactions involves business proprietary information, a full discussion of the bases for our decision to rescind is set forth in the Memorandum to: Barbara E. Tillman, Office Director, AD/CVD Operations, Office 6, Import Administration, from Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, Import Administration: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Jinxiang Chengda Import & Export Co., Ltd.* (November 1, 2010) (Chengda *Bona Fides* Memorandum). Because we have found Chengda's sales to not be *bona fide,* we cannot rely on them to calculate a dumping margin and are therefore preliminarily rescinding Chengda's NSR. *See TTPC* and *New Donghua.*

Yuanxin: Based on the totality of circumstances, we preliminarily find that the sale made by Yuanxin during the POR was a *bona fide* commercial transaction. The facts that led us to this preliminary conclusion include the following: (1) Neither Yuanxin nor its customers incurred any extraordinary expenses arising from this transaction; (2) the sale was made between unaffiliated parties at arm's length; and (3) the timing of the sale does not indicate that the sale was not *bona fide.* Since much of the factual information used in our analysis of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision to rescind is set forth in the Memorandum to: Barbara E. Tillman, Office Director, AD/CVD Operations, Office 6, Import Administration, from Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, Import Administration: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Jinxiang Yuanxin Imp & Exp Co., Ltd.* (November 1, 2010) (Yuanxin *Bona Fides* Memorandum). We will continue to examine the *bona fides* of Yuanxin's sale after the preliminary results.

Huachao: Based on the totality of circumstances, we preliminarily find that the sale made by Huachao during the POR was a *bona fide* commercial transaction. The facts that led us to this preliminary conclusion include the following: (1) Neither Huachao nor its customer incurred any extraordinary expenses arising from the transaction; (2) the sale was made between unaffiliated parties at arm's length; and (3) the timing of the sale does not indicate that this sale was not *bona fide.* However, we note that certain evidence on the record suggests that the *bona fides* of Huachao's sale is not definitive. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum to: Barbara E. Tillman, Office Director, AD/CVD Operations, Office 6, Import Administration, from Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, Import Administration: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Zhengzhou Huachao Industrial Co., Ltd.* (November 1, 2010) (Huachao's *Bona Fides* Memorandum). Accordingly, we will continue to examine the *bona fides* of Huachao's sale after the preliminary results.

Separate Rates

As noted above, designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports. To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588* (May 6, 1991) (*Sparklers*), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate status test to determine whether the exporter is independent from government control does not consider, in general, macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on

controls over the investment, pricing, and output decision-making process at the individual firm level.[1]

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.

Throughout the course of this proceeding, Yuanxin and Huachao have each placed documentation on the record to demonstrate absence of *de jure* control including business licenses, financial statements, and narrative information regarding government laws and regulations on corporate ownership and the companies' operations and selection of management.[2] In addition, Yuanxin and Huachao have each placed on the record copies of certain laws and regulations, including the "Company Law of the People's Republic of China," the "Foreign Trade Law of the PRC," and "Regulations of the PRC on the Administration of Company Registration." The Department has analyzed these PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 102, 105 (January 3, 2007), unchanged in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review,* 72 FR 37715, 37716 (July 11, 2007). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we determine that the evidence on the record supports a preliminary finding of an absence of *de jure* government control of Yuanxin and Huachao based on: (1) An absence of restrictive stipulations associated with the exporter's business license; (2) the existence of legislative enactments legal authority on the record decentralizing control over the respondent; and (3) other formal measures by the government decentralizing control of companies.

B. Absence of De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See, e.g., Silicon Carbide,* 59 FR at 22586–87. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether Yuanxin and Huachao are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The absence of *de facto* governmental control over exports is based on whether a company: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See, e.g., Silicon Carbide,* 59 FR at 22587, and *Sparklers,* 56 FR at 20589; *see* also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

The Department conducted a separate-rates analysis for each new shipper. In their questionnaire responses, Yuanxin and Huachao each submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Each new shipper sets its own export prices independent of the government and without the approval of a government authority; (2) each new shipper retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each new shipper has an executive director and general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the owners of the company, and the general manager appoints the manager of each department; and (5) there is no restriction on each new shipper's use of export revenues. The questionnaire responses of the new shippers do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of *de facto* government control. Therefore, the Department preliminarily finds that Yuanxin and Huachao have established, *prima facie,* that each qualifies for separate rate status under the criteria established by *Silicon Carbide* and *Sparklers.* Accordingly, the Department has preliminarily granted Yuanxin and Huachao separate rate status.

Preliminary Determination of New Shipper Status

We preliminarily determine that Yuanxin and Huachao have met the requirements to qualify as new shippers during the POR. Both companies have preliminarily established that they have: (1) Not previously shipped subject merchandise to the United States, (2) made sales to the United States we have preliminarily found to be *bona fide;* (3) demonstrated eligibility for a separate rate, and (4) provided adequate questionnaire responses. Therefore, for purposes of these preliminary results, we are treating Yuanxin's and Huachao's respective new shipper sales of subject merchandise to the United States as appropriate transactions for review.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's factors of production (FOPs), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004).

As discussed in the "Non-Market Economy Country Status" section above, the Department considers the PRC to be an NME country. Pursuant to section 773(c)(4) of the Act, the Department determined that India, Indonesia, Peru, the Philippines, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development. *See* Memorandum to Thomas Gilgunn, Program Manager, from Carole Showers,

[1] *See Notice of Final Determination of Sales at Less than Fair Value; Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, Final Results of Antidumping Administrative Review,* 62 FR 61276, 61279 (November 17, 1997)

[2] Since we have preliminarily determined that Chengda's NSR sales are not *bona fide,* there is no reason to conduct an analysis of whether Chengda has demonstrated an absence of government control over its operations.

Director, Office of Policy, Subject: Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (July 20, 2010). Also in accordance with section 773(c)(4) of the Act, the Department has found that India is a significant producer of comparable merchandise. Moreover, pursuant to section 773(c)(4) of the Act, the Department finds India to be a reliable source for surrogate values because India is at a similar level of economic development, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments of this proceeding, and the only surrogate value data submitted on the record are from Indian sources. Given the above facts, the Department has selected India as the primary surrogate country for this review. The sources of the surrogate factor values are discussed under the "*Normal Value*" section below and in the Memorandum from Scott Lindsay, Re: Preliminary Results of the 2008–2009 New Shipper Reviews of Fresh Garlic from the People's Republic of China: Surrogate Values (November 1, 2010) (*Surrogate Values Memorandum*).

U.S. Price

In accordance with section 772(a) of the Act, we calculated an export price for sales to the Unites States for Yuanxin and Huachao because each company made its sale to an unaffiliated party before the date of importation and the use of constructed export prices was not otherwise warranted. We calculated each company's export price based on its price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted from the starting price to unaffiliated purchasers the expenses for foreign inland freight, international freight, brokerage and handling, marine insurance, warehousing, and U.S. customs duties. For the expenses that were either provided by an NME vendor or paid for using an NME currency, we used surrogate values as appropriate. *See* the "*Factor Valuations*" section below for details regarding the surrogate values for movement expenses. *See also* Memorandum To: The File, From: Lingjun Wang, Case Analyst, Office 6, Import Administration: Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Jinxian Yuanxin Imp. & Exp. Co., Ltd.; and Memorandum To: The File, From: Summer Avery, Case Analyst, Office 6, Import Administration: Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Zhengzhou Huachao Industrial Co., Ltd.

Normal Value

A. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department calculates NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. However, there are circumstances in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China,* 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (*PVA*) (citing to *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China,* 66 FR 31204 (June 11, 2001)).

For the final results of several recent prior administrative reviews (ARs) and NSRs,[3] the Department found that garlic industry producers in the PRC do not generally track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow most, if not all, respondents to quantify, report, and substantiate this information. In the preliminary results of the *11th AR and NSRs,* the Department also stated that "should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV."[4] In the course of this review, none of the garlic producers reported FOPs related to growing whole garlic bulbs. As such, for the reasons outlined in the Memorandum from Scott Lindsay, Re: 2008–2009 New Shipper Review of Fresh Garlic from the People's Republic of China: Intermediate Input Methodology (November 1, 2010) (*Intermediate Input Methodology Memorandum*), the Department is applying an "intermediate-product valuation methodology" to the NSR respondents for which we are calculating an antidumping duty margin in these preliminary results. Using this methodology, the Department calculated NV by starting with a surrogate value for the garlic bulb (*i.e.,* the "intermediate product"), adjusting for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic. *See Intermediate Input Methodology Memorandum.*

B. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOP data reported by Yuanxin and Huachao for the POR. We relied on the factor-specific data submitted by Yuanxin and Huachao for the production inputs in their questionnaire responses, where applicable, for purposes of selecting surrogate values (SVs). To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly-available Indian SVs.

In selecting the SVs, consistent with our past practice, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 71 FR 71509

[3] *See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews,* 72 FR 34438 (June 22, 2007) (*11th AR and NSRs*); *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review,* 73 FR 34251 (June 17, 2008) (*12th AR*); *Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews,* 73 FR 56550 (September 29, 2008); and *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative and New Shipper Reviews,* 74 FR 29174 (June 19, 2009).

[4] *Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews,* 71 FR 71510, 71520 (December 11, 2006).

(December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC). *See Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Where necessary, we adjusted the SVs for inflation/deflation using the Wholesale Price Index (WPI) as published in the International Monetary Fund's International Financial Statistics, available at *http://ifs.apdi.net/imf.* For more information regarding the Department's valuation for the various FOPs, *see Surrogate Values Memorandum.*

Garlic Bulb Valuation for Huachao

The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act,[5] is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive, and contemporaneous with the POR. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China,* 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

As discussed above, the Department is applying an intermediate input methodology for Huachao. Therefore, we sought to identify the best available SV for the garlic bulb input for production. *See* Petitioners' Surrogate Value Data and Huachao's Surrogate Value Submission; *see also Surrogate Values Memorandum.* For the preliminary results of this review, we find that data from the Azadpur APMC's "Market Information Bulletin" are the most appropriate information available to value Huachao's garlic bulb input.

In its FOP database, Huachao reported garlic bulb input size for the garlic produced and sold to the United States during the POR. Consistent with our findings in the *12th AR,* the Department continues to find that garlic bulb sizes that range from 55 mm and above are Grade Super-A, and garlic bulb sizes that range between 40 mm and 55 mm are Grade A and Grade Super-A. *See Surrogate Values Memorandum.* Because the Grade Super-A prices reported by the APMC which are on the record of this review are from 2007–2008, we inflated them to make them contemporaneous to our POR. *See Surrogate Values Memorandum.*

Garlic Bulb Valuation for Yuanxin

Yuanxin has submitted information on the record indicating that it sold single clove garlic. When examining single clove garlic in a prior segment of this proceeding, the Department determined that single clove garlic possessed physical characteristics which significantly distinguish it from the Grade A and Grade Super-A garlic on which we normally rely to value garlic bulb inputs. *See Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews,* 74 FR 50952 (October 2, 2009). As such, neither Grade A nor Grade Super-A garlic is an appropriate basis from which to derive a SV for the bulb input used by Yuanxin. Petitioners have placed on the record an FOB sales offer, which is contemporaneous with the POR, from Sundaram Overseas Operations (SOO), an Indian trading company, as the basis for deriving NV. SOO's sales offer is an Indian export price for a whole garlic product that is physically similar to the product sold by Yuanxin. For these preliminary results, the Department is using the SOO sales offer of single clove garlic as the NV for Yuanxin. *See Surrogate Values Memorandum.* However, the Department requests comments and factual information regarding the appropriate SV to use in calculating the single clove garlic input for Yuanxin for purposes of the final results of review. Since much of our analysis regarding Yuanxin's garlic and the garlic bulb input thereof has been treated as business proprietary information, a full discussion of the basis for calculating an appropriate surrogate value for Yuanxin's garlic bulb input is set forth in the *Surrogate Values Memorandum.*

Other Factors of Production

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas (WTA), as published by Global Trade Information Services (GTIS).[6] However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian Rupee to the U.S. Dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian Rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the U.S. Dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted.[7]

However, the data reported in the Global Trade Atlas (GTA) software published by GTIS reports import statistics, such as from India, in the original reporting currency and, thus, these data correspond to the original currency value reported by each country. Additionally, the data reported in the GTA software are reported to the nearest digit and, thus, there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing various FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained, and have the same level of accuracy as the original data released.

Furthermore, with regard to the GTA Indian import-based SVs, in accordance with the Omnibus Trade and Competitiveness Act of 1988 legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to

[5] Section 773(c)(1)(B) of the Act states that * * * "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority."

[6] *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 74 FR 50946, 50950 (October 2, 2009) (unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 74 FR 65520 (December 10, 2009)).

[7] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances, and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

believe or suspect the source data may be subsidized.[8] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand, because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[9] Based on the existence of these subsidy programs that were generally available to all exporters and producers in Indonesia, South Korea, and Thailand at the time of the POR, the Department finds that it is reasonable to infer that all exporters from these countries may have benefitted from these subsidies. We also disregarded prices from NME countries [10] and those imports that were labeled as originating from an "unspecified" country from the average Indian import values, because we could not be certain that they were not from either an NME or a country with general export subsidies.

We valued the packing material inputs using weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India (MSFTI), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and compiled by the GTA.

The Department valued surrogate truck freight cost by using a per-unit average rate calculated from April 2009 data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm. See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52282, 52286 (September 9, 2008) (and unchanged in *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 6857 (February 11, 2009)); and *Surrogate Values Memorandum* at Attachment 9.

To value electricity, the Department used March 2008 electricity price rates from Electricity Tariff & Duty and Average Rates of Electricity Supply in India, published by the Central Electricity Authority of the Government of India. Because these data are not contemporaneous with the POR, we inflated March 2008 prices to make them contemporaneous to our POR. *See Surrogate Values Memorandum* at Attachment 4.

We valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank. *See Surrogate Value Memorandum* at Attachment 4.

For direct, indirect, and packing labor, pursuant to a recent decision by the Court CAFC, we are no longer using the regression-based methodology to value labor. *See Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these preliminary results, we have calculated an hourly wage rate to use in valuing respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this AR, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization (ILO). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the *Surrogate Values Memorandum.* The Department calculated a simple average industry-specific wage rate of $1.20 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 ("Manufacture of Food Products and Beverages") to be the best available wage rate SV on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and to be significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine. Further information on the calculation of the wage rate can be found in the *Surrogate Values Memorandum.*

Financial Ratios

Petitioners and Huachao submitted factual information regarding surrogate financial ratios. *See* Petitioners' Surrogate Value Data and Huachao's Surrogate Value Submission. After analyzing these comments and factual information, the Department has determined that it is appropriate to calculate a single set of surrogate financial ratios applicable to the production and sales of all subject merchandise (both whole and peeled garlic) for these preliminary results using both Tata Tea's and Limtex's financial data. Since the 2002–2003 administrative review, the Department has considered tea processing to be sufficiently similar to garlic processing in that neither product is highly processed or preserved prior to sale. *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 70 FR 34082 (June 13, 2005) (*9th AR Final Results*), and accompanying Issues and Decision Memorandum at 34–35. Moreover, we note that it is the Department's preference to use financial data from more than one surrogate producer to reflect the broader experience of the surrogate industry.[11]

[8] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

[9] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at pages 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at pages 17, 19–20; *and Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at page 23.

[10] The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, North Korea, the People's Republic of China, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

[11] *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review,* 69 FR 42039 (July 13, 2004), and accompanying Issues and Decision Memorandum at Comment 2; *see also Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decisions Memorandum at Comment 3, and *Certain Oil Country Tubular Goods from the*

Continued

We find that calculating an average of these two Indian tea processors' data provides financial ratios that best reflect the broader experience of the garlic industry and that are consistent with our practice during previous reviews.[12] The Department finds that both Tata Tea's and Limtex's non-integrated production process is similar to that of the garlic industry. We find that the resulting financial ratios from the average of Tata Tea's and Limtex's financial data provide the best surrogate for the garlic industry in the PRC as a whole, based on the information on the record of this review. *See Surrogate Values Memorandum.*

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. *See http://www.ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of the Reviews

As a result of our review, we preliminarily find that the following margins exist for Yuanxin and Huachao during the period November 1, 2008 through October 31, 2009:

FRESH GARLIC FROM THE PRC

Exporter/manufacturer	Weighted-average margin (dollars per kilogram)
Manufactured and Exported by Jinxiang Yuanxin Imp & Exp Co	$0.75
Manufactured and Exported by Zhengzhou Huachao Industrial Co., Ltd	0.03

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Consistent with the *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) (*Final Results Garlic Thirteenth Review*), we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. *See Final Results Garlic Thirteenth Review.* Specifically, we will divide the total dumping margins for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. If the Department issues a final rescission determination for Chengda, it will be assessed at the PRC-entity rate of $4.71 per kilogram. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Consistent with the final results of the *Final Results Garlic Thirteenth Review,* we will establish and collect a per-kilogram cash-deposit amount which will be equivalent to the company-specific dumping margin published in the final results of this review. Specifically, the following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(1) of the Act: (1) For subject merchandise produced and exported by Yuanxin or Huachao, the cash deposit rate will be the per-unit rate determined in the final results of this new shipper review and; (2) for subject merchandise exported by Yuanxin, but not produced by Yuanxin, the cash deposit rate will be the per-unit PRC-wide rate (*i.e.,* $4.71 per kilogram); (3) for subject merchandise exported by Huachao, but not produced by Huachao, the cash deposit rate will be the per-unit PRC-wide rate; (4) For subject merchandise produced and exported by Chengda, the cash deposit rate will continue to be the PRC-wide rate; (5) for subject merchandise exported Chengda but not manufactured by Chengda, the cash deposit rate will continue to be the PRC-wide rate; and (6) for subject merchandise manufactured by Chengda, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These requirements, when imposed, shall remain in effect until further notice.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding not later than ten days after the date of public announcement, or if there is no public announcement within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on these preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case and rebuttal briefs in electronic format (*e.g.,* preferably in Microsoft Word).

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs not later than 90 days after these preliminary results are issued, unless the final results are extended. *See* 19 CFR 351.214(i).

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

People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 13.

[12] *See Fresh Garlic From the People's Republic of China: Final Results of New Shipper Review,* 75 FR 61130 (October 4, 2010), and accompanying Issues and Decision Memorandum at Issue 4.

occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these 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: November 1, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–28571 Filed 11–10–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Small Business Programs (OMB Control Number 0704–0386)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments 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. The Office of Management and Budget (OMB) has approved this information collection requirement for use through April 30, 2011. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by January 11, 2011.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0386, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "OMB Control Number 0704–0386" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "OMB Control Number 0704–0386". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "OMB Control Number 0704–0386" on your attached document.

○ *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0386 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, *Attn:* Ms. Jennifer Abi-Najm, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Abi-Najm, 703–602–0131. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.regulations.gov.* Paper copies are available from Ms. Jennifer Abi-Najm, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 219, Small Business Programs, and the clause at DFARS 252.219–7003; OMB Control Number 0704–0386.

Needs and Uses: DoD uses this information in assessing contractor compliance with small business subcontracting plans in accordance with 10 U.S.C. 2323(h).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 41.

Number of Respondents: 41.

Responses per Respondent: 1.

Annual Responses: 41.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Summary of Information Collection

DFARS 219.704 and paragraph (g) of the clause at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), require prime contractors to notify the administrative contracting officer of any substitutions of firms that are not small business firms for the firms listed in those subcontracting plans that specifically identify small businesses. Notifications must be in writing and may be submitted in a contractor-specified format.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–28495 Filed 11–10–10; 8:45 am]

BILLING CODE 5001–08–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, Regulatory Information Management Services, 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 January 11, 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: November 5, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title of Collection: Consolidation Loan Rebate Fee Report.

OMB Control Number: 1845–0046.

Agency Form Number(s): ED Form 4–619.

Frequency of Responses: Monthly.

Affected Public: Businesses or other for-profit.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 12,350.

Abstract: The Consolidation Loan Rebate Fee Report for payment by check or Electronic Funds Transfer is used by approximately 950 lenders participating in the Title IV, Part B loans program. The information collected is used to transmit interest payment rebate fees to the Secretary of Education.

Requests for 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 4417. 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. 2010–28505 Filed 11–10–10; 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, Regulatory Information 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 December 13, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* 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: November 5, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Student Aid Internet Gateway (SAIG) Enrollment Documents.

OMB Control Number: 1845–0002.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 16,974.

Total Estimated Annual Burden Hours: 5,756.

Abstract: Enrollment in the Federal Student Aid Internet Gateway allows eligible entities to securely exchange Title IV, Higher Education Act of 1965 (HEA) assistance programs data electronically with the Department of Education processors. Organizations establish Destination Point Administrators to transmit, receive, view and update student financial aid records using telecommunication software. Eligible respondents include the following, but are not limited to, institutions of higher education that participate in Title IV, HEA assistance programs, third-party servicers of eligible institutions, guaranty agencies, Federal Family Education Loan Program lenders, Title IV Additional Servicers, local educational agencies. The Enrollment Form for Post Secondary Schools and Servicers represents the full complement of questions that must be presented for an organization enrolling in SAIG. The Enrollment Form for State Scholarship and Grant Agencies and the Enrollment Form for tracking Free Application for Federal Student Aid Completion for Local Educational Agencies are a subset of selected questions (from the full complement of questions) to streamline the form for ease of use.

Requests for 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 4234. 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. 2010–28508 Filed 11–10–10; 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, Regulatory Information Management Services, 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 January 11, 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: November 5, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title of Collection: Lender's Application for Payment of Insurance Claim, the U.S. Department of Education (ED) Form 1207.

OMB Control Number: 1845–0042.

Agency Form Number(s): ED Form 1207.

Frequency of Responses: On occasion.

Affected Public: Businesses or other for-profit.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 3.

Abstract: The U.S. Department of Education (ED) Form 1207, Lender's Application for Payment of Insurance Claim, is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed. ED uses the information on the ED Form 1207 to match disbursement data already on file for claim payment validation.

Requests for 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 4418. 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. 2010–28496 Filed 11–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13845–000]

Qualified Hydro 30, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 5, 2010.

On September 29, 2010, Qualified Hydro 30, LLC filed an application, pursuant to Section 4(f) of the Federal Power Act, proposing to study the feasibility of the Monroe Lake Dam Hydroelectric Project No. 13845, to be located at the existing Monroe Lake Dam on the Salt Creek, in the City of Guthrie, in Monroe County, Indiana. The Monroe Lake Dam is owned by the United States government and operated by the U.S. Army Corps of Engineers.

The proposed project would consist of: (1) The existing earth-filled dam which is 93 feet in height with an overall length of 1,350 feet; (2) a new reinforced concrete powerhouse, 40 feet by 50 feet, to be located downstream of the existing stilling basin; (3) a new 100-foot-long, 10.0-foot-diameter penstock; (4) two vertical Kaplan turbine-generator units with a combined capacity of 2.5 megawatts; (5) a new 3-MVA substation adjacent to the powerhouse; (6) a new 1,000-foot-long, 12.5 to 34.5-kilovolt transmission line; and (7) appurtenant facilities. The project would have an estimated annual generation of 8.0 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, 33 Commercial Street, Gloucester, MA 01930, (978) 252–7112.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly recommends electronic filing, documents may also be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project, including a copy of the application can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13845) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28479 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13844–000]

Qualified Hydro 31, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 5, 2010.

On September 29, 2010, Qualified Hydro 31, LLC filed an application, pursuant to Section 4(f) of the Federal Power Act, proposing to study the feasibility of the Salamonie Lake Dam Hydroelectric Project No. 13844, to be located at the existing Salamonie Lake Dam on the Salamonie River, in the City of Wabash, in Wabash County, Indiana. The Salamonie Lake Dam is owned by the United States government and operated by the U.S. Army Corps of Engineers.

The proposed project would consist of: (1) The existing earth-filled dam which is 133 feet in height with an overall length of 6,100 feet; (2) a new reinforced concrete powerhouse, 40 feet by 60 feet, to be located downstream of the existing stilling basin; (3) a new 75-foot-long, 8.0-foot-diameter penstock; (4) two vertical Kaplan turbine-generator units with a combined capacity of 3.5 megawatts; (5) a new 4 MVA substation adjacent to the powerhouse; (6) a new 7,500-foot-long, 12.5 to 34.5-kilovolt transmission line; and (7) appurtenant facilities. The project would have an estimated annual generation of 11.0 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, 33 Commercial Street, Gloucester, MA 01930, (978) 252–7112.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at FERCOnlineSupport.gov; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly recommends electronic filing, documents may also be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's website located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project, including a copy of the application can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13844) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28478 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145–109]

Public Utility District No. 1 of Chelan County, WA; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 5, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.* 2145–109.

c. *Date Filed:* September 3, 2010.

d. *Applicant:* Public Utility District No. 1 of Chelan County, Washington.

e. *Name of Project:* Rocky Reach Hydroelectric Project.

f. *Location:* The project is located on the Columbia River in the City of Entiat, in Chelan County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michelle Smith, Public Utility District No. 1 of Chelan County, Washington, P.O. Box 1231, Wenatchee, WA 98807. Phone: (509) 663–8121.

i. *FERC Contact:* Any questions on this notice should be addressed to Jade Alvey at (202) 502–6864, or email *Jade.Alvey@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 6, 2010.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2145–109) on any comments or motions filed.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served

upon each representative of the applicant specified in the particular application.

k. *Description of the Application:* The applicant is seeking Commission authorization to allow Beebe Ranch to construct a 40-slip community boat dock, and a community access area on the left bank of the Columbia River. The proposed facilities would be for use by residents of the Beebe Ranch Development. The community boat dock would be located north of the Beebe Bridge, in Douglas County, Washington.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28477 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1881–066]

PPL Holtwood, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 5, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to change project boundary.

b. *Project No.:* 1881–066.

c. *Date Filed:* July 30, 2010.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Holtwood Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River, in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis J. Murphy, Vice President & Chief Operating Officer, PPL Holtwood, LLC, Two North Ninth Street (GENPL6), Allentown, Pennsylvania 18101; telephone (610) 774–4316.

i. *FERC Contact:* Hillary Berlin: (202) 502–8915; e-mail: *Hillary.Berlin@ferc.gov*.

j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* December 6, 2010.

All documents may be filed electronically via the Internet. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments.

k. *Description of Request:* The licensee is requesting approval of the following changes to the project boundary: (1) Removal of 1.22 acres of land from the project boundary to convey to a private resident in exchange for 0.5 acres adjacent to the Pequea Creek boat launch that would be added to the project boundary and used to provide additional parking of the boat launch; (2) removal of a 33.8-acre parcel on which the Indian Steps Museum and Ulmer-Root-Haines Memorial Park and nature trail are located and convey land to the Conservation Society of York County, who currently owns the museum building; (3) removal of approximately 1,672 acres of land from the project boundary to convey to the Lancaster County Conservancy and York County, as part of an agreement that includes granting conservation easements over certain project lands and the establishment of an endowment fund to preserve public use of those lands and other land along the Susquehanna River; and (4) the addition of approximately 61 acres of land owned by the licensee to the project boundary to be used for the proposed new powerhouse and other project purposes associated with the capacity-related amendment that was approved on October 30, 2009.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "'COMMENTS'", "'PROTEST'", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28476 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–29–003]

Enbridge Pipelines (North Texas) L.P.; Notice of Baseline Filing

November 4, 2010.

Take notice that on November 3, 2010, Enbridge Pipelines (North Texas) L.P. submitted a revised baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28473 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 4, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1490–000.
Applicants: West Texas Gas, Inc.
Description: West Texas Gas Inc. Annual purchase gas cost reconciliation.
Filed Date: 11/02/2010.
Accession Number: 20101102–5194.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1491–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: ProLiance Negotiated Rate Agreement to be effective 1/1/2011.
Filed Date: 11/03/2010.
Accession Number: 20101103–5015.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1492–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agreement 2010–11–03—Hess to be effective 11/3/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5024.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1493–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Company submits tariff filing per 154.203: Order No. 587–U Compliance Filing of Portland General Electric to be effective 11/1/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5026.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1496–000.
Applicants: Monroe Gas Storage Company, LLC.
Description: Monroe Gas Storage Company, LLC submits supplemental NAESB Compliance Filing, to be effective 11/1/2010.

Filed Date: 11/04/2010.
Accession Number: 20101104–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: RP11–1497–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits tariff filing per 154.204: 20101104 Carlton Buyout to be effective 11/1/2010.
Filed Date: 11/04/2010.
Accession Number: 20101104–5021.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: RP11–1498–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 11/04/10 Negotiated Rate—Repsol to be effective 11/5/2010.
Filed Date: 11/04/2010.
Accession Number: 20101104–5028.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–28437 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 3, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–691–096.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Compliance Filing of Midwest Independent Transmission System Operator, Inc.
Filed Date: 10/29/2010.
Accession Number: 20101029–5260.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: ER10–2238–001.
Applicants: Indigo Generation LLC.
Description: Indigo Generation LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 8/16/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5023.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER10–2239–001.
Applicants: Larkspur Energy LLC.
Description: Larkspur Energy LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 8/16/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5025.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER10–2776–001.
Applicants: Wells Fargo Commodities, LLC.
Description: Wells Fargo Commodities, LLC submits tariff filing per: Wells Fargo Commodities, LLC Market-Based Rate Tariff to be effective 9/17/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5045.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER10–3247–001.
Applicants: Electric Energy, Inc.
Description: Electric Energy, Inc. submits tariff filing per 35: Compliance Transmittal Letter MBR Withdrawal to be effective 11/3/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5016.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER10–3305–001.
Applicants: Electric Energy, Inc.
Description: Electric Energy, Inc. submits tariff filing per 35: Baseline OATT Correction to be effective 11/3/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5014.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER10–3305–002.
Applicants: Electric Energy, Inc.
Description: Electric Energy, Inc. submits tariff filing per 35: OATT Tariff Revision for Removal of Price Caps to be effective 11/4/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5017.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER11–1828–001.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits tariff filing per 35.17(b): Amendment to Interconnection Agreement Filing to be effective 9/29/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5069.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER11–1996–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per: City of Eudora, KS Schedule WSM–01/2011, Supplemental to be effective N/A.
Filed Date: 11/03/2010.
Accession Number: 20101103–5027.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER11–2005–000.
Applicants: Wind Capital Holdings, LLC.
Description: Wind Capital Holdings, LLC submits tariff filing per 35.12: Market-Based Rate Tariff Baseline Filing to be effective 11/1/2010.
Filed Date: 11/02/2010.

Accession Number: 20101102–5099.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2006–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: PSE Original Service Agreement No. 506 to be effective 11/2/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5100.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2007–000.
Applicants: Tuana Springs Energy, LLC.
Description: Tuana Springs Energy, LLC submits tariff filing per 35.12: Market-Based Rate Tariff Baseline Filing to be effective 11/1/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5103.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2008–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: PSE Original Service Agreement #507 11022010 to be effective 11/2/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5104.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2009–000.
Applicants: Michigan Wind 1, LLC.
Description: Michigan Wind 1, LLC submits tariff filing per 35.12: Market-Based Rate Tariff Baseline Filing to be effective 11/1/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5108.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2010–000.
Applicants: J.D. Wind 4, LLC.
Description: J.D. Wind 4, LLC submits tariff filing per 35.12: Market-Based Rate Baseline Filing to be effective 11/1/2010.
Filed Date: 11/02/2010
Accession Number: 20101102–5110.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2011–000.
Applicants: Harvest Windfarm, LLC.
Description: Harvest Windfarm, LLC submits tariff filing per 35.12: Market-Based Rate Tariff Baseline Filing to be effective 11/1/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5115.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2012–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: PSE Original Service Agreement No. 508 v2 to be effective 11/2/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5116.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2013–000.
Applicants: CR Clearing, LLC.
Description: CR Clearing, LLC submits tariff filing per 35.12: Market-Based Rate Tariff Baseline Filing to be effective 11/1/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5121.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2014–000.
Applicants: Cow Branch Wind Power, LLC.
Description: Cow Branch Wind Power, LLC submits tariff filing per 35.12: Market-Based Rate Tariff Baseline Filing to be effective 11/1/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5122.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2015–000.
Applicants: Lighthouse Energy Trading Company, Inc.
Description: Lighthouse Energy Trading Co., Inc submits a notice of cancellation.
Filed Date: 11/02/2010.
Accession Number: 20101102–0202.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2016–000.
Applicants: Cassia Gulch Wind Park, LLC.
Description: Cassia Gulch Wind Park, LLC submits tariff filing per 35.12: Market-Based Rate Tariff Baseline Filing to be effective 11/1/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5123.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2017–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–11–02 GMC Amendment to be effective 1/1/2011.
Filed Date: 11/02/2010.
Accession Number: 20101102–5149.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2018–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filing per 35.15: Cancellation of Rate Schedule REA–1 to be effective 1/1/2011.
Filed Date: 11/02/2010.
Accession Number: 20101102–5164.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2019–000.
Applicants: Ameren Illinois Company.
Description: Ameren Illinois Company submits tariff filing per 35.12: Legacy Agreements to be effective 12/31/9998.
Filed Date: 11/02/2010.
Accession Number: 20101102–5171.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2020–000.
Applicants: Domtar Paper Company, LLC.
Description: Domtar Paper Company, LLC submits tariff filing per 35.12: Domtar Paper Company, LLC Market-Based Rate Application to be effective 1/1/2011.
Filed Date: 11/02/2010.
Accession Number: 20101102–5172.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2021–000.
Applicants: Domtar A.W. LLC.
Description: Domtar A.W. LLC submits tariff filing per 35.12: Domtar A.W. LLC Market-Based Rate Application to be effective 1/1/2011.
Filed Date: 11/02/2010.
Accession Number: 20101102–5175.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2022–000.
Applicants: Louisville Gas and Electric Company.
Description: Louisville Gas and Electric Company submits tariff filing per 35: ER10295 ER10298 EL1038 Settlement Implementation to be effective 8/1/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5013.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER11–2023–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35: Compliance Filing to Incorporate ER09–1051–000 Approved Revisions into eTariff to be effective 8/30/2010.
Filed Date: 11/03/2010.
Accession Number: 20101103–5044.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: ER11–2024–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities Company submits tariff filing per 35: 11_03_10 KU EEI IA Concurrence Correction to be effective N/A.

Filed Date: 11/03/2010.
Accession Number: 20101103–5047.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–28438 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 2, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1477–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC submits tariff filing per 154.204: Daugherty and Stand negotiated rates to be effective 11/1/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5038.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1478–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: South Jersey 11–1–2010 Negotiated Rate to be effective 11/1/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5060.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1480–000.
Applicants: Marathon Oil Company.
Description: Petition for Waiver of Capacity Release Requirements of Marathon Oil Company.
Filed Date: 10/29/2010.
Accession Number: 20101029–5253.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: RP11–1481–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.204: Sculpted CD to be effective 12/1/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5094.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1482–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.204: November 1, 2010 Negotiated Rate Filing to be effective 11/1/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5134.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1483–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Negotiated Rate Agreement—Newfield 4–30–10 to be effective 4/30/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5139.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1484–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits tariff filing per 154.204: Modify: Maintenance Restriction & Notice to be effective 12/2/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5151.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1485–000.
Applicants: CenterPoint Energy—Mississippi River Transmission Corporation.
Description: CenterPoint Energy—Mississippi River Transmission Corporation submits tariff filing per 154.204: Forms of Service Agreements & Housekeeping to be effective 12/1/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5159.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1486–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.203: Compliance Filing—NAESB Version 1.9 to be effective 11/1/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5160.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1487–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Negotiated Rate Capacity Release—Newfield to Targa to be effective 11/1/2010.

Filed Date: 11/01/2010.

Accession Number: 20101101–5162.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1488–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Negotiated Rate Capacity Release Newfield to Tenaska to be effective 11/1/2010.

Filed Date: 11/01/2010.

Accession Number: 20101101–5163.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: RP11–1489–000.

Applicants: PetroLogistics Natural Gas Storage, LLC.

Description: PetroLogistics Natural Gas Storage, LLC submits tariff filing per 154.203: Filing to Comply with October 20, 2010 Letter Order to be effective 9/28/2010.

Filed Date: 11/01/2010.

Accession Number: 20101101–5164.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–28439 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–3–000]

Ross Bachofer v. Calpine Corporation; Notice of Complaint

November 4, 2010.

Take notice that on October 26, 2010, pursuant to sections 206 of the Rules and Practice and Procedure, 18 CFR 385.206 and section 206 of the Federal Power Act, 16 U.S.C. 2824c, Ross Bachofer (Complainant) filed a complaint against Calpine Corporation (Respondent), alleging that damages to the Complainant's property are due to flooding caused by the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 24, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28480 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filing

November 5, 2010.

Ameren Services Company, Northern Indiana Public Service Company v. Midwest Independent Transmission System Operator, Inc.	Docket No. EL07–86–014.
Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, Wisconsin Public Power Inc. v. Midwest Independent Transmission System Operator, Operator, Inc.	Docket No. EL07–88–014.
Wabash Valley Power Association, Inc. v. Midwest Independent Transmission System Operator, Inc	Docket No. EL07–92–014.

Take notice that on November 3, 2010, The Midwest Independent Transmission System Operator, Inc. submitted an errata reflecting changes to its October 29, 2010 compliance filing containing proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff, Fourth Revised Volume, pursuant to the Federal Energy Regulatory Commission's (Commission) Order issued August 30, 2010, *Midwest Indep. Trans. Sys. Operator, Inc.,* 132 FERC ¶ 61,186 (2010) (August 30 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 24, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28474 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1005–011]

City of Boulder, CO; Notice of Availability of Environmental Assessment

November 5, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has prepared an environmental assessment (EA) for an application filed by City of Boulder, Colorado (licensee) on March 10, 2009, requesting Commission approval to exempt its currently licensed Boulder Canyon Hydroelectric Project from the licensing requirements of Part I of the Federal Power Act (FPA) and to surrender its license for the project. The project is located on the Middle Boulder Creek, in Boulder County, Colorado. The licensee requests to surrender the following licensed project features: (1) The Barker Reservoir; (2) the Barker Dam; (3) the outlet structure; (4) the concrete tunnel; (5) the valve house; (6) the concrete Barker gravity pipeline; (7) the Kossler Reservoir, including the Southwest Dam, the Northeast Dam, and the West Dam; (8) the concrete outlet structure, including the trash screens and a gate; and (9) the steel penstock. The licensee states that the exempted project would consist of the existing powerhouse containing one generating unit having an installed capacity of 10 MW and appurtenant facilities. The licensee estimates that the project would have an average annual generation of 11.6 megawatt-hours that would be sold to a local utility.

The EA evaluates the environmental impacts that would result from approving the licensee's proposal for surrender of its project license and conversion to a conduit exemption. The EA finds that granting surrender of the license and issuing the exemption for the Boulder Canyon Hydroelectric Project would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission Order titled "Order Granting Exemption From Licensing (Conduit) and Accepting Surrender of License," issued November 5, 2010, and is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–1005) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28475 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2157–188]

Public Utility District No. 1 of Snohomish County, WA; Notice of Availability of Final Environmental Assessment

November 4, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed Public Utility District No. 1 of Snohomish County's application for license for the Henry M. Jackson Hydroelectric Project (FERC Project No. 2157–188), located on the Sultan River 20 miles east of the city of Everett, Snohomish County. The project currently underlies a total of 10.9 acres of federal lands in the Mount Baker-Snoqualmie National Forest administered by the U.S. Department of Agriculture, Forest Service.

Staff prepared a final environmental assessment (EA), which analyzes the potential environmental effects of relicensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact David Turner by telephone at 202–502–6091 or by e-mail at *David.Turner@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28472 Filed 11–10–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8993–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 11/01/2010 Through 11/05/2010 Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100439, Final EIS, USFS, WI, Twin Ghost Project, Proposes to Implement Vegetation and Transportation Management Activities, Great Divide Ranger District, Chequamegon-Nicolet National Forest, Ashland, Bayfield, Sawyer Counties, WI, Wait Period Ends: 12/13/2010, Contact: Debra Proctor 715–634–4821 Ext.325.

EIS No. 20100440, Draft EIS, USFS, MT, Warm Springs Habitat Enhancement Project, Restoring and Promoting Key Wildlife Habitat Components by Managing Vegetation, Reducing Fuels, and Promoting a More Resilient Fire Adapted Ecosystem, Helena Ranger District, Helena National Forest, Jefferson County, MT, Comment Period Ends: 12/27/2010, Contact: Liz Van Genderen 406–495–3749.

EIS No. 20100441, Second Draft EIS (Tiering), NCPC, DC, Tier-2 DEIS—Smithsonian Institution National Museum of African American History and Culture (NMAAHC), Construction and Operation, Between 14th and 15th Streets, NW., and Constitution Avenue, NW., and Madison Drive, NW., Washington, DC, Comment Period Ends: 01/11/2011, Contact: Jane Passman 202–633–6549.

EIS No. 20100442, Draft Supplement, FTA, WA, East Link Rail Transit Project, New and Updated Information, Proposes to Construct and Operate an Extension of the Light Rail System From Downtown Seattle to Mercer Island, Bellevue, and Redmond via Interstate 90, Funding and US Army COE Section 404 and 10 Permits, Seattle, WA, Comment Period Ends: 12/27/2010, Contact: John Witmer 206–220–7950.

EIS No. 20100443, Final EIS, NOAA, WA, PROGRAMMATIC—Incorporation of the Revised Washington Shoreline Management Act Guidelines Into the Federally Approved Washington Coastal Management Program, Amendment No. 4 Approval, Coastal Counties in WA, Wait Period Ends: 12/13/2010, Contact: Bill O'Beirne 301–563–1160.

Amended Notices

EIS No. 20100369, Draft EIS, FTA, CA, Hercules Intermodal Transit Center, Construction to Improve Access to Public Transit, Funding, Contra Costa County, CA, Comment Period Ends: 11/15/2010, Contact: Paul Page 415–744–3133.

Revision to FR Notice Published 09/17/2010: Extending Comment Period from 11/01/2010 to 11/15/2010.

EIS No. 20100386, Draft EIS, BLM, UT, Uinta Basin Natural Gas Development Project, To Develop Oil and Natural Gas Resources within the Monument Butte-Red Wash and West Tavaputs Exploration and Developments Area, Applications for Permit of Drill and Right-of-Way Grants, Uintah and Duchesne Counties, UT, Comment Period Ends: 11/30/2010, Contact: Mark Wimmer 435–781–4464.

Revision to FR Notice Published 10/01/2010: Extending Comment Period from 11/15/2010 to 11/30/2010.

Dated: November 8, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–28503 Filed 11–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9225–4]

Public Water System Supervision Program Revision for the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the State of Montana has revised its Public Water System Supervision (PWSS) Primacy Program by adopting federal regulations for the Lead and Copper Rule Short Term Regulatory Revisions which correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141 and 142. The EPA has completed its review of these revisions in accordance with the SDWA and proposes to approve Montana's primacy revisions for the above stated Rule.

Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public may request a public hearing on this determination by December 13, 2010. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective December 13, 2010. If a hearing is granted, then this determination shall not become effective until such time following the hearing as the RA issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing shall be addressed to: James B. Martin, Regional Administrator, c/o Breann Bockstahler (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Program, 1595 Wynkoop Street, Denver, CO 80202–1129, (2) Montana Department of Environmental Quality (DEQ), Public Water Supply, 1520 East 6th Avenue, Helena, MT 59620–0901.

FOR FURTHER INFORMATION CONTACT: Breann Bockstahler at 303–312–6034.

SUPPLEMENTARY INFORMATION: EPA approved Montana's application for assuming primary enforcement authority for the PWSS Program, pursuant to section 1413 of the SDWA, 42 U.S.C. 300g–2, and 40 CFR Part 142. DEQ administers Montana's PWSS Program.

A. Why are revisions to state programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR Part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)). On October 10, 2007, EPA promulgated the Lead and Copper Rule Short Term Regulatory Revisions and, by this action, the State is following procedures to attain primacy.

B. How does today's action affect Indian country in Montana?

Montana is not authorized to carry out its PWSS Program in "Indian country." This includes, but is not limited to, land within the formal Indian Reservations within or abutting the State of Montana, including the Blackfeet, Crow, Flathead, Fort Belknap, Fort Peck, Northern Cheyenne and Rocky Boy's Indian Reservations, any land held in trust by the United States for an Indian tribe, and any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and newspapers of general circulation in the State. A notice will also be sent to both the person(s) requesting the hearing and the State. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: October 18, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2010–28500 Filed 11–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9225–2]

Public Water System Supervision Program Revision for the State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the State of North Dakota has revised its Public Water System Supervision (PWSS) Primacy Program by adopting federal regulations for the Groundwater Rule, Long Term 2 Enhanced Surface Water Treatment Rule and Stage 2 Disinfection By-Product Rule which correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR Part 141 and 142. The EPA has completed its review of these revisions in accordance with the SDWA, and proposes to approve North Dakota's primacy revisions for the above stated Rules.

Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public may request a public hearing on this determination by December 13, 2010. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective December 13, 2010. If a hearing is granted, then this determination shall not become effective until such time following the hearing, as the RA issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing shall be addressed to: James B. Martin, Regional Administrator, c/o Karen Shirley (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Program, 1595 Wynkoop Street, Denver, CO 80202–1129, (2) North Dakota Department of Health, Division of Municipal Facilities, 918 East Divide, Bismark, North Dakota 58501–1947.

FOR FURTHER INFORMATION CONTACT: Karen Shirley at 303–312–6104.

SUPPLEMENTARY INFORMATION: EPA approved North Dakota's application for assuming primary enforcement authority for the PWSS Program, pursuant to section 1413 of the SDWA, 42 U.S.C. 300g–2, and 40 CFR Part 142. North Dakota's Department of Health administers North Dakota's PWSS Program.

A. Why are revisions to state programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR Part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR Parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How does today's action affect Indian country in North Dakota?

North Dakota is not authorized to carry out its PWSS Program in "Indian country." This includes, but is not limited to, land within the exterior boundaries of Fort Berthold, Spirit Lake, Standing Rock Sioux, and Turtle Mountain Indian Reservations; any land held in trust by the United States for an Indian tribe, and any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and newspapers of general circulation in the State. A notice will also be sent to both the person(s) requesting the hearing and the State. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: September 23, 2010.

James B. Martin

Regional Administrator, Region 8.

[FR Doc. 2010–28501 Filed 11–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9225–5]

Public Water System Supervision Program Revision for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the State of South Dakota has revised its Public Water System Supervision (PWSS) Primacy Program by adopting federal regulations for the Long Term 2 Enhanced Surface Water Treatment Rule, Stage 2 Disinfection By-Product Rule, Groundwater Rule, and the Lead and Copper Short Term Regulatory Revisions which correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141 and 142. The EPA has completed its review of these revisions in accordance with the SDWA, and proposes to approve South Dakota's primacy revisions for the above stated Rules.

Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see Supplementary Information, Item B.

DATES: Any member of the public may request a public hearing on this determination by December 13, 2010. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective December 13, 2010. If a hearing is granted, then this determination shall not become effective until such time following the hearing, as the RA issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing shall be addressed to: James B. Martin, Regional Administrator, c/o Karen Shirley (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Program, 1595 Wynkoop Street, Denver, CO 80202–1129, (2) South Dakota Department of Environmental & Natural Resources, Drinking Water Program, 523 E. Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Karen Shirley at 303–312–6104.

SUPPLEMENTARY INFORMATION: EPA approved South Dakota's application for assuming primary enforcement authority for the PWSS Program, pursuant to section 1413 of SDWA, 42 U.S.C. 300g–2, and 40 CFR Part 142. South Dakota's Department of Environmental & Natural Resources administers South Dakota's PWSS Program.

A. Why are revisions to state programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How does today's action affect Indian country in South Dakota?

South Dakota is not authorized to carry out its PWSS Program in "Indian country." This includes, but is not limited to, land within the formal Indian reservations within or abutting the State of South Dakota, including lands within the exterior boundaries of the Cheyenne River, Crow Creek, Flandreau, Lower Brule, Pine Ridge, Rosebud, Standing Rock and Yankton Indian Reservations; any land held in trust by the United States for an Indian tribe, and any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing.

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and newspapers of general circulation in the State. A notice will also be sent to both the person(s) requesting the hearing and the State. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: September 23, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2010–28502 Filed 11–10–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 2, 2010.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0652.

Title: Section 76.309, Customer Service Obligations; Section 76.1602; Customer Service—General Information; Section 76.1603, Customer Service—Rate and Service Changes—General Information, and Section 76.1619, Information on Subscriber Bills.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 8,260 respondents and 117,510 responses.

Estimated Time per Response: 10 minutes to 1 hour.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 29,235 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature of Response: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i) and 632 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.309 and 47 CFR 76.1603 set forth various customer service obligations and notification requirements for changes in rates, programming services and channel positions.

47 CFR 76.1602(a) states that franchise authorities must provide affected cable operators 90 days written notice of their intent to enforce customer services standards.

47 CFR 76.1603(b) states that customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by Section 76.1602.

47 CFR 76.1603(c) states that in addition to the requirement set forth in Section 76.1603(b) regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (*e.g.* inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.

47 CFR 76.1619(b) states that in case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days. In addition, Section 76.1619 sets forth requirements for information on subscriber bills.

OMB Control Number: 3060–0667.

Title: Section 76.630 Compatibility with Consumer Electronic Equipment; Section 76.1621 Equipment compatibility offer; Section 76.1622 Consumer Education of Equipment Compatibility.

From Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 8,250 respondents and 266,505 responses.

Estimated Hours per Response: 1–3 hours.

Frequency of Response: Recordkeeping and third party disclosure requirements; On occasion reporting requirement.

Total Annual Burden: 266,515 hours.

Total Annual Cost: $5,800.

Privacy Impact Assessment: No impact(s).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 4(i) and 632 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.630(a) states a cable system operator shall not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state: On (date waiver request was filed with

the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business). Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

47 CFR 76.1621 states that cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

47 CFR 76.1622 states that Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: View a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

OMB Control Number: 3060–0960.

Title: 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules; 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection; 47 CFR 76.127, Satellite Sports Blackout Rules.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 12,686 respondents and 12,402 responses.

Estimated Time per Response: 0.5–1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 12,402 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 4(j), 303(r), 339 and 340 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.122, 76.123, 76.124 and 76.127 are used to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network, syndicated, and sports programming in the broadcasters' recognized market areas. Rule sections 76.122 and 76.123 implement statutory requirements to provide rights for in-market stations to assert non-duplication and exclusivity rights.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–28525 Filed 11–10–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 3, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Persons wishing to comment on this information collection should submit their PRA comments January 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review", (3) click the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to *Judith-B.Herman@fcc.gov* or contact her at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0995.

Title: Section 1.2105, Bidding Application and Certification Procedures; Prohibition of Certain Communications.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or Tribal government.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 1.5 hours to 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i) and 309(j).

Total Annual Burden: 50 hours.

Total Annual Cost: $6,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirements) of this information collection. There is no change in the Commission's burden estimates.

Subject to certain exceptions, section 1.2105(c) of the Commission's rules prohibits auction applicants that are eligible to bid on any of the same geographic areas from cooperating or collaborating with respect to, discussing or disclosing to each other in any manner the substance of their bids or bidding strategies from the short-form application filing deadline to the post-auction down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding agreement reported on their short-form applications.

The Commission has found that even when a communication of bids or bidding strategies is limited to one applicant's bids or bidding strategies, it may unfairly disadvantage the other bidders in the market by creating an asymmetry of information. Section 1.2105(c)(1) of the Commission's rules attempts to address this concern by prohibiting auction applicants from communicating their bids or bidding strategies to each other. In enforcing Section 1.2105(c)(1), however, the Commission has encountered auction

applicants engaging in communications prohibited by the rule. In some instances, there has been concern expressed about the obligation of a bidder to report information received from another bidder that potentially violates the rule, and the Commission has previously counseled applicants on the safest course of action for a recipient of a prohibited communication during the period in which Section 1.2105(c)(1) prohibitions are in effect would be to terminate the discussion and promptly report communication to the Commission. The Commission believes that the anti-collusion rule to include such a reporting requirement, as a deterrent to would-be disseminators of prohibited information regarding bids or bidding strategies, will make clear the responsibility to report such behavior and will thereby enhance the competitiveness and fairness of its spectrum auctions. Under the amendment the Commission adopted in the *Seventh Report and Order,* an applicant's failure to report a prohibited communication pursuant to Section 1.2105(c) may constitute a rule violation distinct from any act of collusion that violates Section 1.2105(c)(1).

The information requirement will enable the Commission to ensure that no bidder gains an unfair advantage over other bidders in its spectrum auctions and thus enhance the competitiveness and fairness of its auctions. The information collected will be reviewed, and if warranted, referred to the Commission's Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice (DoJ) for investigation.

OMB Control Number: 3060–0221.

Title: Section 90.155, Time in Which Station Must Be Placed in Operation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, local or Tribal government.

Number of Respondents: 1,589 respondents; 1,589 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

Total Annual Burden: 1,589 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirements) of this information collection. The Commission is reporting a 179 hour burden reduction adjustment in the Commission's previous burden estimates. The reduction is due to fewer respondents and therefore the burden hours have been adjusted.

Section 90.155(b) provides that a period longer than 12 months may be granted to local government entities to place their stations in operation on a case-by-case basis upon a showing of need. This rule provides flexibility to State and local governments. An application for extension of time to commence service may be made on FCC Form 601. Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control.

Section 90.155(d) establishes construction deadlines for Location and Monitoring Service (LMS) licensees in the market-licensed multilateration LMS services. This subsection was amended in 2004 to provide holders of multilateration location service authorizations with five- and ten-year benchmarks to place in operation their base stations that utilize multilateration technology to provide multilateration location service to one-third of the Economic Areas (EAs) population within five years to initial license grant, and two-thirds of the population within ten years. At the five- and ten-year benchmarks, licensees are required to file a map and FCC Form 601 showing compliance with the coverage requirements pursuant to section 1.946 of the Commission's rules.

In 2007 the Commission granted two to three additional years to meet the five-year construction requirement for certain multilateration Location and Monitoring Service Economic Area licensees, and extended the 10-year requirement for such licensees two years.

These requirements will be used by Commission personnel to evaluate whether or not certain licensees are providing substantial service as a means of complying with their construction requirements, or have demonstrated that an extended period of time for construction is warranted.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–28553 Filed 11–10–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Comments Requested

November 4, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 11, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and

to the Federal Communications Commission via e-mail to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0819.

Title: Sections 54.400 through 54.417, Lifeline Assistance (Lifeline) Connection Assistance (Link-Up) Reporting Worksheet and Instructions.

Form No.: FCC Form 497.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 251,400 respondents; 251,400 responses.

Estimated Time per Response: .08 hours–1.5 hours.

Frequency of Response: On occasion, annual, monthly, and one time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 201–205, 214, 254, and 403.

Total Annual Burden: 49,386 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting the respondents submit confidential information to the Commission. If the Commission requests information that the respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised collection to the Office of Management and Budget (OMB) after this comment period to obtain the full three year approval from them. The Commission is revising this information collection to merge OMB Control Number 3060–1112 into this information collection (OMB Control Number 3060–0819). The low-income requirements are applicable to and consistent with this collection. After OMB approval, the Commission will discontinue OMB Control Number 3060–1112 and retain OMB Control Number 3060–0819 as the active control number.

Additionally, the *Lifeline Order* (2004) also requires Eligible Telecommunications Carriers (ETCs) to submit to the Universal Service Administrative Company (USAC or Administrator) proof that they certified that their Lifeline subscribers are eligible for Lifeline, and proof that they verified their subscribers' continued eligibility for Lifeline. Prior to 2009, USAC provided sample certification and verification letters on its website to assist ETCs in complying with the certification and verification requirements. The Annual Lifeline Certification and Verification Letter has been standardized since 2009, and is being revised in this submission to the OMB. Specifically, the Certification and Verification Letter will be updated with an additional check box to accommodate wireless ETCs serving non-federal default states that do not assert jurisdiction over wireless ETCs. Additionally, a column will be added so that carriers may distinguish between "Non-Responding Customers" and "Customers Found to Be Ineligible" in their reports.

Finally, the *Lifeline Order* requires certain ETCs to verify annually that a statistically valid sample of their Lifeline recipients receiving support continue to be eligible under the federal eligibility criteria. The *Lifeline Order's* requirement applies only to those ETCs with Lifeline customers from federal default states. A federal default state is a state or territory that either (1) has adopted the federal eligibility criteria for Lifeline/Link Up, or (2) does not have its own state-based Lifeline/Link Up program.

All the requirements contained in this submission to the OMB are necessary to implement the congressional mandate for universal service. These reporting, recordkeeping and/or third party disclosure requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–28554 Filed 11–10–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 3, 2010.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0311.

Title: 47 CFR 76.54, Significantly Viewed Signals, Method To Be Followed for Special Showings.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 500 respondents and 1,274 responses.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time per Response: 1–60 hours.

Total Annual Burden: 20,610 hours.

Total Annual Costs: $200,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 340 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: This collection of information does not require confidentiality.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.54(b) states significant viewing in a cable television or satellite community for signals not shown as significantly viewed under 47 CFR 76.54(a) or (d) may be demonstrated by an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. 47 CFR 76.54(c) is used to notify interested parties, including licensees or permittees of television broadcast stations, about audience surveys that are being conducted by an organization to demonstrate that a particular broadcast station is eligible for significantly viewed status under the Commission's rules. The notifications provide interested parties with an opportunity to review survey methodologies and file objections. 47 CFR 76.54(e) and (f), are used to notify television broadcast stations about the retransmission of significantly viewed signals by a satellite carrier into these stations' local market.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–28556 Filed 11–10–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB); Comments Requested

November 3, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 13, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0316.

Title: 47 CFR 76.1700, Records to Be Maintained Locally by Cable System Operators; 76.1703, Commercial Records on Children's Programs; 76.1704, Proof-of-Performance Test Data, 76.1707 Leased Access, 76.1711 Emergency Alert System (EAS) Tests and Activation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,000 respondents and 3,000 responses.

Estimated Hours per Response: 26 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 78,000 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 76.1700 exempts cable television systems having fewer than 1,000 subscribers from the public inspection requirements contained in 47 CFR 76.1701 (political file); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof-of-performance test data); 76.1706 (signal leakage logs and repair records); and 76.1715 (sponsorship identifications).

The operator of every cable television system having 1,000 or more subscribers but fewer than 5,000 subscribers shall, upon request, provide the information required by §§ 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof-of-performance test data); 76.1706 (signal leakage logs and repair records); and 76.1715 (sponsorship identifications) but shall maintain for public inspection a file containing a copy of all records required to be kept by 47 CFR 76.1701 (political files).

The operator of every cable television system having 5,000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §§ 76.1701 (political file); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof-of-performance test data); 76.1706 (signal leakage logs and repair records); and 76.1715 (sponsorship identifications).

47 CFR 76.1700(b) requires that the public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such as a public registry for documents or an attorney's office). The public inspection file shall be available for public

inspection at any time during regular business hours.

47 CFR 76.1700(d) requires the records specified in paragraph (a) of this section shall be retained for the period specified in §§ 76.1701, 76.1702, 76.1704(a), and 76.1706.

47 CFR 76.1703 requires that cable operators airing children's programming must maintain records sufficient to verify compliance with 47 CFR Section 76.225 and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

47 CFR 76.1704(a) requires the proof of performance tests required by § 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request.

47 CFR 76.1704(b) requires the provisions of paragraph (a) of this section shall not apply to any cable television system having fewer than 1,000 subscribers, subject to the requirements of § 76.601(d).

47 CFR 76.1707 requires that if a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to § 76.701, such a policy will be considered published pursuant to that rule by inclusion of the written policy in the operator's public inspection file.

47 CFR 76.1711 requires that records be kept of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of 47 CFR part 11 and the EAS Operating Handbook. These records shall be kept for three years.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–28557 Filed 11–10–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 5, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Persons wishing to comment on this information collection should submit their PRA comments January 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your PRA comments by e-mail send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review", (3) click the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an email to *Judith-B.Herman@fcc.gov* or contact her at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0370.

Title: Part 32, Uniform System of Accounts for Telecommunications Companies.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 859 respondents; 859 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 11, 151, 154, 161, 201–205, 215, and 218–220.

Total Annual Burden: 859 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirements and/or recordkeeping requirements) of this information collection. There is no change in the Commission's burden estimates.

The Commission, in 2004, adopted the Joint Conference's recommendations to reinstate the following Part 32 accounts:

Account 5230, Directory revenue;
Account 6621, Call completion services;
Account 6622, Number services;
Account 6623, Customer services;
Account 6561, Depreciation expense—telecommunications plant in service;
Account 6562, Depreciation expense—property held for future telecommunications use;
Account 6563, Amortization expense—tangible;
Account 6564, Amortization expense—intangible; and

Account 6565, Amortization expense—other.

These accounting changes are mandatory only for Class A Incumbent Local Exchange Carriers (ILECs). The reinstatement of these accounts imposed a minor increase in burden only Class A ILECs only.

The Commission also established a recordkeeping requirement that Class A ILECs maintain subsidiary record categories for unbundled network element revenues, resale revenues, reciprocal compensation revenues, and other interconnection revenues in the accounts in which these revenues are currently recorded.

The use of subsidiary record categories allows carriers to use whatever mechanisms they choose, including those currently in place, to identify the relevant amounts as long as the information can be made available to state and federal regulators upon request. The use of subsidiary record categories for interconnection revenue does not require massive changes to the ILECs' accounting systems and is a far less burdensome alternative than the creation of new accounts and/or subaccounts.

The information submitted to the Commission by carriers provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–28555 Filed 11–10–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:32 a.m. on Tuesday, November 9, 2010, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Director John E. Bowman (Acting Director, Office of Thrift Supervision), seconded by Director John G. Walsh (Acting Comptroller of the Currency), concurred in by Vice Chairman Martin J. Gruenberg, Director Thomas J. Curry (Appointive), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 9, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–28629 Filed 11–9–10; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 26, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Robert John Dentel, Victor, Iowa, and Mary P. Howell, Ames, Iowa, individually; and the Robert John Dentel Family (Robert J. Dentel, Patricia A. Dentel, and three minor children) all of Victor, Iowa; and the Mary P. Howell Family (Mary P. Howell, Stephen J. Howell, and three minor)* all of Ames, Iowa; to control voting shares of Dentel Bancorporation, and thereby indirectly control voting shares of Victor State Bank, both of Victor, Iowa; Corydon State Bank, Corydon, Iowa; First State Bank of Colfax, Colfax, Iowa; Maxwell State Bank, Maxwell, Iowa; Pocahontas State Bank, Pocahontas, Iowa; and Panora State Bank, Panora, Iowa.

Board of Governors of the Federal Reserve System, November 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–28463 Filed 11–10–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2010.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer), P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Lonoke Bancshares, Inc.,* Lonoke, Arkansas; to acquire no more than 24.99 percent of the voting shares of Central Bancshares, Inc., and thereby indirectly acquire voting shares of Central Bank, both of Little Rock, Arkansas.

2. *Cross County Bancshares, Inc.,* Wynne, Arkansas; to acquire no more than 24.99 percent of the voting shares

of Central Bancshares, Inc., and thereby indirectly acquire voting shares of Central Bank, both of Little Rock, Arkansas.

3. *Carlson Bancshares, Inc.,* West Memphis, Arkansas; to acquire no more than 9.99 percent of the voting shares of Central Bancshares, Inc., and thereby indirectly acquire voting shares of Central Bank, both of Little Rock, Arkansas.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President), 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Northern Missouri Bancshares, Inc.,* Unionville, Missouri; to acquire at least 51 percent of the voting shares of Exchange Bancorp of Missouri, Inc., and thereby indirectly acquire voting shares of Exchange Bank of Missouri, both of Fayette, Missouri.

Board of Governors of the Federal Reserve System, November 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–28465 Filed 11–10–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2010–28126) published on page 68608 of the issue for Monday, November 8, 2010.

Under the Federal Reserve Bank of New York heading, the entry for First Niagara Financial Group, Inc., Buffalo, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *First Niagara Financial Group, Inc.,* Buffalo, New York; to acquire 100 percent of the voting shares of, and thereby merge with NewAlliance Bancshares, Inc., and thereby indirectly acquire voting shares of, and merge with NewAlliance Bank, both of New Haven, Connecticut.

Comments on this application must be received by December 3, 2010.

Board of Governors of the Federal Reserve System, November 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–28464 Filed 11–10–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10052, CMS–10351 and CMS–R–216]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Recognition of pass-through payment for additional (new) categories of devices under the Outpatient Prospective Payment System and Supporting Regulations in 42 CFR, Part 419; *Form Number:* CMS–10052 (OMB#: 0938–0857); *Use:* Section 201(b) of the Balanced Budget Act of 1999 amended section 1833(t) of the Social Security Act (the Act) by adding new section 1833(t)(6). This provision requires the Secretary to make additional payments to hospitals for a period of 2 to 3 years for certain drugs, radiopharmaceuticals, biological agents, medical devices and brachytherapy devices. Section 402 of the Benefits Improvement and Protection Act of 2000 made changes to the transitional pass-through provision for medical devices. The most significant change is the required use of categories as the basis for determining transitional pass-through eligibility for medical devices, through the addition of section 1833(t)(6)(B) of the Act. This information collection is necessary to determine eligibility of medical devices for establishment of additional device categories for payment under transitional pass-through payment provisions as required by section 1833(t)(6) of the Act. *Frequency:* Once; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 10; Total *Annual Responses:* 10; *Total Annual Hours:* 160. (For policy questions regarding this collection contact Christina S. Ritter at 410–786–4636. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* ESRD PPS Transition Election and attestations of Low-Volume; *Form Number:* CMS–10351 (OMB#: 0938–New); *Use:* The Medicare Improvement for Patients and Providers Act (MIPPA) requires implementation of an End Stage Rental Disease (ESRD) bundled prospective payment system (PPS) effective January 1, 2011. Once implemented, the ESRD PPS will replace the current basic case-mix adjusted composite payment system and the methodologies for the reimbursement of separately billable outpatient ESRD related items and services. The ESRD PPS will provide a single payment to the ESRD facilities that will cover all the resources used in providing an outpatient dialysis treatment. Also, as required my MIPPA, ESRD facilities are eligible to receive a low-volume adjustment when the facility furnished less than 4000 treatments in each of the three years pre-ceding the payment year.

In order for an ESRD facility to receive the low-volume adjustment, CMS will require that an ESRD facility must provide an attestation to the fiscal intermediary or the Medicare administrative contractor (FI/MAC) that it has met the criteria to qualify as a low-volume facility. The FI or MAC would verify the ESRD facility's attestation of their low-volume status using the ESRD facility's final-settled cost reports. Also, an ESRD facility may make a one-time election to be excluded from the four-year transition to the ESRD PPS. A facility may elect to be paid entirely based on the ESRD PPS beginning January 1, 2011. If the ESRD facility fails to submit an election, or the ESRD facility's election is not received by their MAC by November 1, 2010, payments to the ESRD facility for items and services provided during the transition will be paid under the basic case-mix adjusted composite payment system. *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 5,808; Total *Annual Responses:* 2,520;

Total Annual Hours: 563.2. (For policy questions regarding this collection contact Janet Samen at 410–786–4533. For all other issues call 410–786–1326.)

3. *Title of Information Collection:* Issuance of Advisory Opinions Concerning Physicians' Referrals; *Type of Information Collection Request:* Extension of a currently approved collection; *Form Number:* CMS–R–216 (OMB#: 0938–0714); *Use:* Section 1877(g)(6) of the Social Security Act requires that the Department of Health and Human Services accept requests for advisory opinions made after November 3, 1997 and before August 21, 2000. Section 543 of the Benefits Improvement and Protection Act of 2001, Public Law 106–554, extended indefinitely the period during which the Department of Health and Human Services accepts requests for these advisory opinions. CMS promulgated 42 CFR 411.370 through 411.389 to comply with this statutory mandate. The collection of information contained in 42 CFR 411.372 and 411.373 is necessary to allow CMS to consider requests for advisory opinions and provide accurate and useful opinions. ; *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and not- for profit institutions; *Number of Respondents:* 25; Total *Annual Responses:* 25; *Total Annual Hours:* 500. (For policy questions regarding this collection contact John Davis at 410–786–0008. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *December 13, 2010.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: November 4, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–28332 Filed 11–10–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child and Family Services Plan (CFSP), Annual Progress and Services Review (APSR), and Annual Budget Expenses Request and Estimated Expenditures (CFS–101).

OMB No.: 0980–0047.

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act (the Act), States, Territories, and Tribes are required to submit a Child and Family Services Plan (CFSP). The CFSP lays the groundwork for a system of coordinated, integrated, and culturally relevant family services for the subsequent five years (45 CFR 1357.15(a)(1)). The CFSP outlines initiatives and activities the State, Tribe or territory will carry out in administering programs and services to promote the safety, permanency, and well-being of children and families. By June 30 of each year, States, Territories, and Tribes are also required to submit an Annual Progress and Services Report (APSR) and a financial report called the CFS–101. The APSR is a Yearly report that discusses progress made by a State, Territory or Tribe in accomplishing the goals and objectives cited in its CFSP (45 CFR 1357.16(a)). The APSR contains new and updated information about service needs and organizational capacities throughout the five-year plan period. The CFS–101 has three parts. Part I is an annual budget request for the upcoming fiscal year. Part II includes a summary of planned expenditures by program area for the upcoming fiscal year, the estimated number of individuals or families to be served, and the geographical service area. Part III includes actual expenditures by program area, numbers of families and individuals served by program area, and the geographic areas served for the last complete fiscal year.

The Child and Family Services Improvement Act of 2006 amended Title IV–B, subparts 1 and 2, adding a number of requirements that affect reporting through the APSR and the CFS–101. Of particular note, the law added a provision requiring States (including Puerto Rico and the District of Columbia) to report data on caseworker visits (section 424(e) of the Act). States must provide annual data on (1) the percentage of children in foster care under the responsibility of the State who were visited on a monthly basis by the caseworker handling the case of the child; and (2) the percentage of the visits that occurred in the residence of the child. In addition, by June 30, 2008, States must set target percentages and establish strategies to meet the goal that; by October 1, 2011; at least 90 percent of the children in foster care are visited by their caseworkers on a monthly basis and that the majority of these visits occur in the residence of the child (section 424(e)(2)(A) of the Act).

Respondents: States, Territories, and Tribes must complete the CFSP, APSR, and CFS–101. Tribes and territories are exempted from the monthly caseworker visits reporting requirement of the APSR. There are approximately 180 Tribal entities that are eligible for IV–B funding. There are 52 States (including Puerto Rico and the District of Columbia) that must complete the CFSP, APSR, and CFS–101. There are a total of 232 possible respondents.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
APSR	232	1	76.58	17,766.56
CFSP	232	1	120.25	27,898
CFS–101, Parts I, II, and III	232	1	4.38	1,016.16
Caseworker Visits	52	1	99.33	5,165.16

Estimated Total Annual Burden Hours: 51,845.88

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Dated: November 8, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–28447 Filed 11–10–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Community-Based Family Resource and Support Grants (Name changed to Child Abuse Prevention Program—OIS notified 6/2007).

OMB No.: 0970–0155.

Description: The Program Instruction, prepared in response to the enactment of the Community-Based Grants for the Prevention of Child Abuse and Neglect (administratively known as the Community Based Child Abuse Prevention Program, (CBCAP), as set forth in Title II of Public Law 108–36, Child Abuse Prevention and Treatment Act Amendments of 2003, and in the process of reauthorization, provides direction to the States and Territories to accomplish the purposes of (1) supporting community-based efforts to develop, operate, expand, and where appropriate to network, initiatives aimed at the prevention of child abuse and neglect, and to support networks of coordinated resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect, and; (2) fostering an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect. This Program Instruction contains information collection requirements that are found in (Pub. L. 108–36) at sections 201; 202; 203; 205; 206; 207; and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Report	52	1	24	1,248

Estimated Total Annual Burden Hours: 3,328.

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Dated: November 8, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–28445 Filed 11–10–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0555]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for the tracking of medical devices.

DATES: Submit either electronic or written comments on the collection of information by January 11, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

In preparing this notice, the agency reviewed a comment that was posted in response to the 60-day notice of February 5, 2008 (73 FR 6729) (Docket No. FDA–2008–N–0050). FDA transitioned to the Federal Dockets Management System (FDMS) in January 2008, and this comment was not posted to the docket until after the closing of the comment period. The comment responded to item 1 (whether the information collection is necessary) and item 3 (how to enhance quality of ICR). With regard to item 1, the comment emphasized the importance of medical device tracking and supported the information collection request in full. With regard to item 3, the comment said that implementing the unique device identification provision (UDI) of the Food and Drug Administration Modernization Act (FDAMA) would go a long way in enhancing medical device tracking, and the agency is currently undertaking this effort.

Medical Devices; Device Tracking—21 CFR Part 821 (OMB Control Number 0910–0442)—Extension

Section 211 of the Food and Drug Administration Modernization Act (FDAMA) (Pub. L. 105–115) became effective on February 19, 1998. FDAMA amended the previous medical device tracking provisions under section 519(e)(1) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360i(e)(1) and (e)(2)) and were added by the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629). Unlike the tracking provisions under SMDA which required tracking of any medical device meeting certain criteria, FDAMA allows FDA discretion in applying tracking provisions to medical devices meeting certain criteria, and provides that tracking requirements for medical devices can be imposed only after FDA issues an order. In the **Federal Register** of February 8, 2002 (67 FR 5943), FDA issued a final rule which conformed existing tracking regulations to changes in tracking provisions effected by FDAMA under part 821 (21 CFR part 821).

Section 519(e)(1) of the act, as amended by FDAMA, provides that FDA may require by order, that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a "tracked implant"), or (3) the device is life-sustaining or life-supporting (referred to as a "tracked l/s-l/s device") and is used outside a device user facility.

Tracked device information is collected to facilitate identifying the current location of medical devices and patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary), use the data to: (1) Expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, the regulations include provisions for: (1) Exemptions and variances; (2) system and content requirements for tracking; (3) obligations of persons other than device manufacturers, e.g., distributors; records and inspection requirements; (4) confidentiality; and (5) record retention requirements.

Respondents for this collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
821.1(d)	1	1	1	1	1
821.2 and 821.30(e)	1	1	1	1	1
821.25(a)	12	1	12	76	912

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
821.25(d)	1	1	1	1	1
Total					915

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

CFR section	Number of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per record	Total hours
821.25(b)	12	46,260	555,120	1	555,120
821.25(c)[2]	12	1	12	63	756
821.25(c)(3)	12	1,124	13,488	1	13,488
Total					569,364

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One time burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN[1]

21 CFR section	Number of respondents	Annual frequency of disclosure	Total annual disclosures	Hours per disclosure	Total hours
821.30(a) and (b)	17,000	1	17,000	1	17,000
821.30(c) and (d)	17,000	1	17,000	1	17,000
Total Hours					34,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual hourly burden for respondents involved with medical device tracking is estimated to be 604,279 hours per year. The burden estimates cited in tables 1, 2, and 3 of this document are based on the number of device tracking orders issued in the last 3 years.

This regulation also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information found in 21 CFR 821.2(b), 821.25(e), and 821.30(e) have been approved under OMB control number 0910–0183.

Dated: November 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–28441 Filed 11–10–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0319]

Draft Guidance for Industry and Food and Drug Administration Staff on Dear Health Care Provider Letters: Improving Communication of Important Safety Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled "Dear Health Care Provider Letters: Improving Communication of Important Safety Information." Dear Health Care Provider (DHCP) Letters are correspondence—usually in the form of a mass mailing from the manufacturer or distributor of a human drug or biologic, or from FDA—intended to alert physicians and other health care providers to important new information about a marketed drug or biological product. This draft guidance provides recommendations on when to use a DHCP letter, the types of information to include in a DHCP letter, how to organize that information, and formatting techniques to make the information more accessible. The draft guidance is intended to improve the quality of DHCP letters to make them more effective communication tools for new information about marketed products.

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 this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by January 11, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, 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, suite 200N, Rockville, MD 20852–1448. Send one

self-addressed adhesive label to assist those offices in processing your requests. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance 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: Sandy Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4206, Silver Spring, MD 20993–0002, 301–796–2270; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled "Dear Health Care Provider Letters: Improving Communication of Important Safety Information." Important new information about prescription drug and biological products emerges throughout a product's lifecycle. For marketed products, there may be occasions when it is important to communicate new information promptly to health care practitioners involved in prescribing or dispensing a drug, or in caring for patients who receive a drug. The DHCP letter is an important mechanism (one of a number of different mechanisms) used to communicate important new information to health care professionals about a marketed product.

Formal and informal evaluations of DHCP letters have shown that the communication quality of DHCP letters—the extent to which the information is accessible and can be understood—varies widely. A study reported in 2005 evaluated the quality of a group of DHCP letters sent during 2000 and 2001 that were intended to communicate important new drug safety information.[1] The study found that there is a correlation between the quality or perceived quality of a DHCP letter and the extent to which physicians perceive the new information as important. Letters that were evaluated as clearer, more concise, better organized and formatted, and focused on the most important aspects of the new safety information were considered to be more effective in communicating the new information.

FDA believes guidance concerning the format and content of the DHCP letter would be beneficial in improving the effectiveness of DHCP letters in communicating drug information. Accordingly, this draft guidance contains recommendations on when to use a DHCP letter, what types of information to include in a DHCP letter, how to organize that information, and formatting techniques to make the information in the letter more accessible.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the format and content of DHCP letters. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA estimates the burden of this collection of information as follows:

Based on a review of MedWatch Safety Alerts for 2008 and 2009, we identified each Dear Health Care Provider Letter sent and the identity of each sponsor sending out a Dear Health Care Provider Letter for each year. We estimate that we will receive approximately 30 Dear Health Care Provider letters annually from approximately 25 application holders. FDA professionals familiar with Dear Health Care Provider Letters and with the recommendations in the draft guidance estimate that it should take an application holder approximately 100 hours to prepare and send Dear Health Care Provider Letters in accordance with the draft guidance. Therefore we estimate the annual reporting burden as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total responses	Hours per response	Total hours
Annual Average	25	1.20	30	100	3,000

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

[1] Mazor K, S. Andrade, J. Auger, *et al.*, "Communicating Safety Information to Physicians: An Examination of Dear Doctor Letters," *Pharmacoepidemiol Drug Safety,* 14:869–875, 2005.

In the draft guidance, we refer to an earlier guidance for industry entitled "Using Electronic Means to Distribute Certain Product Information" (71 FR 26102, May 3, 2006). That guidance referred to previously approved collections of information found in FDA regulations that are subject to review by OMB. The collections of information in that guidance have been approved under OMB control number 0910–0249.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–28440 Filed 11–10–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Microbicide Innovation Program (MIP VI) (R21/R33).

Date: December 2–3, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chevy Chase Pavilion, 4300 Military Rd. NW., Tenleytown Ballroom, Washington, DC 20015.

Contact Person: Roberta Binder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, Room 3130, Bethesda, MD 20892–7616, (301) 496–7966, *rbinder@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Support for Conference and Scientific Meetings.

Date: December 6–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: B. Duane Price, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, Room 3139, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2592, *pricebd@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Unsolicited R24.

Date: December 6, 2010.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Officer, Division of Extramural Activites, NIAID/NIH/DHHS, 6700B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, *ec17w@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: November 4, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28457 Filed 11–10–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

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 Institute of Dental & Craniofacial Research, 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 Institute of Dental and Craniofacial Research.

Date: December 12–13, 2010.

Time: December 12, 2010, 7 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Time: December 13, 2010, 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Center Drive, 117, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about/CouncilCommittees.asp,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 4, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28460 Filed 11–10–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Clinical Oncology and Chemoprevention.

Date: December 1, 2010.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@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: November 5, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28468 Filed 11–10–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Behavioral Aspects of HIV/AIDS.

Date: December 3, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@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: November 5, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28469 Filed 11–10–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 22, 2010, 1:30 p.m. to November 22, 2010, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 20, 2010, 75 FR 64736.

The meeting will be held November 29, 2010. The meeting time and location remain the same.

The meeting is closed to the public.

Dated: November 4, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28467 Filed 11–10–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; B Cell Responses.

Date: January 11, 2011.

Time: 1 p.m. to 5 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: Lynn Rust, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3120, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–3938, *lr228v@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: November 4, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28459 Filed 11–10–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Supplementing the Guidance Provided in the Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This notice informs the public that the Office of Inspector General (OIG) intends to update the Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs (64 FR 52791; September 30, 1999) and solicits input from the public for OIG to consider in developing the updated bulletin.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on January 11, 2011.

ADDRESSES: In commenting, please refer to file code OIG–115–N. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

- *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)
- *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–115–N, Room 5541, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.
- *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1343.

For information on viewing public comments, please see the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Patrice Drew, Department of Health and Human Services, Office of Inspector General, Office of External Affairs, (202) 619–1368.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on this Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs. Please assist us by referencing the file code OIG–115–N.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 401–2206.

Background

The Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs contains guidance which has proven to be extremely important to excluded individuals and to all of those in the health care industry who are concerned with compliance. The health care industry and health care professionals have now had more than a decade of experience with the ramifications of exclusion since OIG first published this bulletin in 1999. With time it has become even more apparent that exclusion has a significant impact, not only on those who have been excluded but also on entities that have employed or contracted with excluded persons and been faced with liability for overpayments and civil monetary penalties as a result. As OIG's compliance and enforcement activities in this area have increased, many health care providers have discovered that they employ excluded individuals and have self-disclosed to the OIG. Many health care providers have also sought to design compliance programs that will minimize the risk of submitting claims to a Federal health care program for items or services furnished, ordered, or prescribed by an excluded individual. In considering the content of the Special Advisory Bulletin, OIG is soliciting comments, recommendations, and other suggestions from concerned parties and organizations on how best to supplement the guidance provided in the Special Advisory Bulletin to address relevant issues and to provide useful guidance to the industry. For example, OIG seeks comments on areas in which clarification and further guidance on the effect of exclusion may be helpful.

Dated: November 5, 2010.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2010–28366 Filed 11–10–10; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–21]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Housing Authority of the County of Cook (HACC) for the purchase and installation of through-the-wall air conditioning units and Ground Fault Circuit Interrupter (GFCI) outlets for the Riverdale Senior Apartments project.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency

finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on October 20, 2010, upon request of the HACC, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Riverdale Senior Apartments project. The exception was granted by HUD on the basis that the relevant manufactured goods (GFCI outlets and through-the-wall air conditioning units) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: November 4, 2010.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–28417 Filed 11–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5454–N–01]

Emergency Homeowners' Loan Program: Notice of Allocation of Funding for Substantially Similar State Programs

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Emergency Homeowners' Loan program, originally authorized by a 1975 statute, was reauthorized and revised by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which also made $1 billion in funding available for this program. This program, as recently revised, authorizes the Secretary to allow funds to be administered by a state that has an existing program that provides substantially similar assistance to homeowners, as determined by the Secretary.

This notice sets out the key features of HUD's emergency assistance program for homeowners, and solicits applications from states that have programs offering assistance substantially similar to this program.

DATES: *Deadline Date:* The submission deadline date is December 13, 2010 (the "Deadline Date"). Information must be submitted to *EHLStateFundingProgram@hud.gov,* no later than 11:59 a.m. on the Deadline Date.

FOR FURTHER INFORMATION CONTACT: Office of Housing Counseling, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–708–0317 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Overview Information:

A. Federal Agency Name: Department of Housing and Urban Development, Office of Emergency Homeowners' Loan Assistance.

B. Funding Opportunity Title: Emergency Homeowners' Loan program: Funding of Comparable State Programs.

C. Announcement Type: Initial Announcement.

D. Funding Opportunity Number: The **Federal Register** number for this notice is FR–5454–N–01.

E. Dates: The Deadline Date is *December 13, 2010.* Information must be submitted to *EHLStateFundingProgram@hud.gov,* no later than 11:59 a.m. on the Deadline Date.

F. Additional Overview Information:

1. Available Funds. Funds are available to administer existing state programs comparable to the Emergency Homeowners' Loan program.

2. Eligible Applicants. States that are included on the attached Schedule A are eligible to apply for funding under this notice provided that they are administering existing programs comparable to the Emergency Homeowners' Loan program.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description. The Emergency Housing Act of 1975 (12 U.S.C. 2701), signed into law on July 2, 1975, conferred on HUD, through title I of this statute, entitled the "Emergency Homeowners' Relief Act," standby authority to insure or make loans to homeowners to defray mortgage expenses so as to prevent widespread mortgage foreclosures and distress sales of homes resulting from the temporary loss of employment and income. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) revised and reauthorized this 1975 statute, and provided $1 billion to HUD to implement the program authorized by the Emergency Homeowners' Relief Act, referred to by HUD in 2010 as the Emergency Homeowners' Loan program.

B. Authority. Title I (Emergency Homeowners' Relief Act) of the Emergency Housing Act of 1975, as amended (12 U.S.C. 2701).

II. Award Information

A. Available Funds. Through this notice, $1 billion is made available to states in accordance with the state allocations provided in Schedule A, and HUD solicits applications from the states in Schedule A having comparable state programs.[1] The HUD allocation formula in Schedule A targets funds to states based on their population and share of unemployed homeowners with a mortgage. The amounts listed on Schedule A include reasonable administrative costs to administer the assistance made available through the Emergency Homeowners' Loan program. HUD's Emergency Homeowners' Loan program is intended to complement the Department of the Treasury's Hardest Hit Fund by providing assistance to homeowners—who are at risk of foreclosure and have experienced a substantial reduction in income due to involuntary unemployment, underemployment, or a medical condition—in states that are not included in the Hardest Hit target states. Through its Hardest Hit Fund, the Department of the Treasury is providing targeted support to 18 states, and the District of Columbia, struggling with the highest unemployment rates. Together, these two sources of funds form a national effort to help unemployed and underemployed homeowners meet their mortgage obligations.

B. Type of Assistance instrument. Funds will be awarded through a cooperative agreement.

[1] To the extent that a state does not submit information about an existing program that provides substantially similar assistance to homeowners or such submission does not meet the requirements outlined below, the state's allocation described in Schedule A will be administered in that state by the Department of Housing and Urban Development in accordance with HUD's Emergency Homeowners' Loan program.

III. Eligibility Information

A. Eligible Applicants. Eligible applicants are states, including the Commonwealth of Puerto Rico, state housing finance agencies, or other nonprofit entities that are state-administered or state-chartered, and over which a state has effective control, oversight responsibility, and the authority to audit.

B. Eligible State Programs. A state program that is eligible for funding under the Emergency Homeowners' Loan program is one that meets all of the following conditions:

1. State Program. As provided in Section III.A., the program must be administered directly by the state or must be administered by an agency of the state, or other stated-chartered or state-administered entity over which the state has effective control, oversight responsibility, and the authority to audit.

2. Existing Program. The program must have been in existence and in operation no later than July 21, 2010. Eligible state programs are those that already have experience, during this current housing crisis, in providing emergency mortgage assistance to homeowners at the risk of foreclosure. States with existing programs must have the capability, readiness, and ability to immediately implement, and successfully expend, the assistance made available to it by and through this solicitation.

3. Mortgage relief for unemployed or under-employed homeowners. The program must be one that provides mortgage relief for unemployed or under-employed homeowners, as provided in Section III.B.6.

4. Open to all homeowners meeting criteria in Section III.B.6. The program is open to all homeowners meeting the criteria in section III.B.6, without regard to race, color, religion, sex, familial status, national origin, or disability.

5. Operation of the program in a cost-effective manner and administrative costs. The program is administered in a cost-effective manner without excessive salary, overhead, or administrative expense and allows for the commencement of application acceptance by December 31, 2010, and obligation of all funds prior to October 1, 2011.

6. Program Requirements.

a. Eligible homeowners. For a state to administer a program comparable to the Emergency Homeowners' Loan program, the state program must provide assistance to a homeowner who must:

i. Reside in the mortgaged property as principal residence. The mortgaged property must also be a single family residence (1- to 4-unit structure or condominium);

ii. Be involuntarily unemployed or underemployed as the result of adverse economic conditions or have suffered a loss of income due to medical conditions, as specified under the state program;

iii. Have, as of the date of application for assistance to the state program, income that is equal to, or less than, 120 percent of the area median income (AMI), for the area in which the homeowner resides and whose income includes wage, salary, and self-employed earnings and income;

iv. Have current, gross income that is at least 15 percent lower than the homeowner's income previous to the date that the homeowner became unemployed or underemployed, or suffered a medical condition that resulted in a reduction in income;

v. Be delinquent on payments on the first mortgage on the mortgaged property to such an extent that foreclosure is imminent, and the homeowner and/or lender can provide evidence, satisfactory to the state, that the foreclosure is imminent ("delinquent" means that payments under the mortgage have been delinquent for at least 3 months);

vi. Have a reasonable likelihood of being able to resume repayment of the first mortgage obligations, and meet other housing expenses and debt obligations, when the assistance ends and/or borrower regains full employment, as determined by criteria under the state program.

b. Eligible assistance. For a state to administer a program comparable to the Emergency Homeowners' Loan program, the state program must provide assistance that meets the following conditions:

i. Assistance provided to the eligible homeowner must be assistance directed at making payments on the first mortgage of the mortgaged property.

ii. The total amount of assistance provided to the homeowner(s) for one mortgaged property is limited, with a preference for placing a restriction of 24 months on the duration of assistance and a cap of $50,000 on the amount of assistance, comparable to the limit established by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

c. Repayment Terms. The state program must provide for repayment of the emergency mortgage assistance and provide security for such repayment by recordation of a HUD mortgage as a junior lien on the property. Any and all funds received by the program shall be in accordance with the HUD mortgage document.

d. Termination of Monthly Assistance. The state program must provide for termination of assistance under conditions that include but are not limited to conditions comparable to the following:

i. The homeowner no longer resides in, sells, transfers or otherwise conveys, or refinances, in which the borrower draws cash, the mortgaged property; or

ii. The homeowner defaults on that portion of the homeowner's current first lien mortgage loan payments for which the homeowner remains responsible.

IV. Submission of Information

A. There is no required application form. Eligible jurisdictions should submit information and evidence of the program that is comparable to the Emergency Homeowners' Loan program, as specified in this notice. The information submitted must include documentation that the program is a state-administered or state-chartered program as provided in Sections III.B. and Section IV.

B. Capacity of Existing Program. As part of its submission:

- Each state must describe information regarding the number and type of homeowners assisted by its program. The number and type of assisted homeowners identified should cover the period beginning with the inception of the state's program and ending on July 21, 2010.
- Each state must also describe in detail the procedures it will use to ensure that it will be able to begin taking applications from homeowners by December 31, 2010, and will obligate its allocation, provided under this notice, by September 30, 2011. Information regarding the number of full-time staff assigned to the state's program, including the type, tenure, and experience of such staff, and the number of bilingual staff assigned to the program, should be provided. Experience is relevant if it corresponds directly to programs of a similar scale and purpose; for example, real estate or housing finance program experience.
- States also must describe the number of additional staff above and beyond current staffing levels who would need to be hired in order to carry out the HUD portion of the existing state program.

C. Administrative Costs. HUD seeks to ensure that administrative costs incurred by applicants are reasonable and that states are able to implement their homeowner assistance program in a cost-effective manner. As a result, states with comparable programs must

demonstrate that they can administer the program without excessive salary, overhead, or administrative expense. Specifically, the state should describe the administrative costs incurred in operating its current homeowner assistance program. States should also project the administrative costs incurred to implement the program with HUD assistance made available through the Emergency Homeowners' Loan program. Administrative costs include costs related to planning and implementing this program, along with the costs associated with the preparation and submission of HUD reports, etc.

D. Information must be submitted to *EHLStateFundingProgram@hud.gov,* no later than 11:59 a.m. on the Deadline Date.

E. If there is a discrepancy between any materials published by HUD in this notice and other information provided about the program, the published notice prevails.

V. Nondiscrimination and Civil Rights Requirements

States operating existing programs that provide substantially similar assistance to homeowners are considered recipients of federal assistance, and, therefore, must comply with the following federal requirements:

- *Fair Housing Act* (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 and the regulations at 24 CFR part 107.
- *Title VI of the Civil Rights Act of 1964* (42 U.S.C. 2000d *et seq.*) and implementing regulations at 24 CFR part 1.
- *The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107)* and implementing regulations at 24 CFR part 146.
- *Recordkeeping.* Recipients will be required to keep beneficiary records and report beneficiary data to HUD based on protected classes, in accordance with HUD's regulations in 24 CFR part 121 and other applicable HUD civil rights authorities.

VI. Program Administration

A. Cooperative Agreement

After HUD determines that the state's submission is complete and that the state has an existing program that provides substantially similar assistance to HUD's Emergency Homeowners' Loan program, HUD will execute a cooperative agreement with the state, state housing finance agency, or other nonprofit entity that is state-administered or state-chartered, and over which the state has effective control, oversight responsibility, and the authority to audit the entity that will administer the Emergency Homeowners' Loan program for the state. The cooperative agreement will include all applicable requirements specific to the Emergency Homeowners' Loan program, federal grant requirements, and reporting requirements.

B. Commitment and Expenditure Deadline

The Dodd-Frank Wall Street Reform and Consumer Act provides that no loan or advance of credit shall be insured and no emergency mortgage relief payments made after September 30, 2011, except with respect to mortgagors approved to receive the benefit of a loan or advance insured, or mortgage relief payments on that date. To expedite the use of funds, states administering a program that provides substantially similar assistance will be subject to the following commitment and expenditure deadlines on the grantee's use of funds.

- Obligate not less than 75 percent of grant funded under this notice by July 31, 2011; and
- Demonstrate that it will be able to obligate 100 percent of its funds by September 30, 2011.

The grantee must track and report to HUD on a regular basis its progress in committing and expending Emergency Homeowners' Loan program grant funds.

C. Recapture and Reallocation

If HUD determines in its sole discretion, that a state grantee will not be able to obligate 100 percent of its funds by September 30, 2011, HUD may recapture all or any portion of the state's unobligated funds, and reallocate those funds to states that are able to expend funding for substantially similar programs or HUD's Emergency Homeowners' Loan program.

VII. Other Information

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

Dated: November 5, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

SCHEDULE A

State	Allocation amount
Texas	$135,418,959
New York	111,649,112
Pennsylvania	105,804,905
Massachusetts	61,036,001
Washington	56,272,599
Minnesota	55,848,137
Wisconsin	51,540,638
Missouri	49,001,729
Virginia	46,627,889
Colorado	41,286,747
Maryland	39,962,270
Connecticut	32,946,864
Kansas	17,748,782
Arkansas	17,736,991
Iowa	17,379,343
Louisiana	16,691,558
Utah	16,577,582
Oklahoma	15,575,381
Puerto Rico	14,714,668
Idaho	13,284,075
New Hampshire	12,655,243
New Mexico	10,725,515
Maine	10,379,657
West Virginia	8,339,884
Nebraska	8,304,512
Hawaii	6,292,250
Delaware	6,048,577
Montana	5,710,580
Vermont	4,830,215
Alaska	3,890,898
Wyoming	2,346,329
South Dakota	2,051,563
North Dakota	1,320,547
Total	1,000,000,000

[FR Doc. 2010–28552 Filed 11–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* November 12, 2010.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh

Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 4, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–28281 Filed 11–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–08; LLAK964000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Doyon, Limited. The decision will approve the conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of Eagle, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 1 S., R. 31 E.,
Sec. 36.

Containing 640 acres.

Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until December 13, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Linda L. Keskitalo,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2010–28432 Filed 11–10–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8102–14, AA–8102–15, AA–8102–16, AA–8102–17, AA–8102–18, AA–8102–19, AA–8102–20, AA–8102–21, AA–8102–25, AA–8102–27, AA–8102–28, AA–8102–29, AA–8102–30, AA–8102–31, AA–8102–32, AA–8102–33, AA–8102–34, AA–8102–47; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to Koniag, Inc.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits: (1) Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until December 13, 2010 to file an appeal; (2) Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: This decision approves conveyance of the subsurface estate, other than title to or the right to remove gravel and common varieties of minerals and materials, in the lands described below pursuant to the Alaska Native Claims Settlement Act and the Act of January 2, 1976, as amended by the Alaska National Interest Lands Conservation Act. The lands are located on the Alaska Peninsula and are described as:

Seward Meridian, Alaska

T. 37 S., R. 51 W.,
Secs. 1 to 4, inclusive;
Secs. 7 to 36, inclusive.

Containing approximately 22,369 acres.

T. 38 S., R. 51 W.,
Secs. 1 to 5, inclusive;
Secs. 9, 10, 12, and 13;
Secs. 18, 24, and 25.

Containing approximately 7,657 acres.

T. 39 S., R. 51 W.,
Secs. 1, 6, and 7;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.

Containing approximately 5,031 acres.

T. 37 S., R. 52 W.,
Secs. 3 to 36, inclusive.

Containing approximately 22,324 acres.

T. 38 S., R. 52 W.,
Secs. 1 to 26, inclusive;
Sec. 35.

Containing approximately 17,186 acres.

T. 39 S., R. 52 W.,
Secs. 1, 2, 11, and 12;
Secs. 13, 14, 23, and 24.

Containing approximately 5,105 acres.

T. 40 S., R. 52 W.,
Secs. 6 to 10, inclusive;
Secs. 15 to 21, inclusive;
Secs. 27 to 36, inclusive.

Containing approximately 9,918 acres.

T. 41 S., R. 52 W.,
Secs. 7, 8, and 9;
Secs. 16, 17, and 18.

Containing approximately 3,776 acres.

T. 37 S., R. 53 W.,

Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive.

Containing approximately 9,210 acres.

T. 38 S., R. 53 W.,
Secs. 1, 12, 13, and 24.

Containing approximately 2,560 acres.

T. 39 S., R. 53 W.,
Secs. 34, 35, and 36.

Containing approximately 1,920 acres.

T. 40 S., R. 53 W.,
Secs. 1 to 19, inclusive;
Secs. 21 to 28, inclusive;
Sec. 36.

Containing approximately 17,896 acres.

T. 41 S., R. 53 W.,
Secs. 1, 4, and 9;
Secs. 11, 12, and 16.

Containing approximately 3,840 acres.

T. 40 S., R. 54 W.,
Secs. 7 to 34, inclusive.

Containing approximately 17,901 acres.

Aggregating approximately 146,693 acres.

Notice of the decision will also be published four times in the *Kodiak Daily Mirror.*

Eileen Ford,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2010–28433 Filed 11–10–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–048880, LLCAD060000, L51010000.FX0000, LVRWB09B2520]

Notice of Availability of the Record of Decision for the Genesis Solar Energy Project and Amendment to the California Desert Conservation Area Resource Management Plan, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Amendment to the California Desert Conservation Area (CDCA) Plan, the applicable Resource Management Plan (RMP) for the project site and the surrounding areas, located in the California Desert District. The Secretary of the Interior approved the ROD on November 4, 2010, which constitutes the final decision of the Department.

ADDRESSES: Copies of the ROD/Approved Amendment to the CDCA Plan are available upon request from the Field Manager, Palm Springs-South Coast Field Office, Bureau of Land Management, 1201 Bird Center Drive, Palm Springs, California 92262 or via the Internet at the following Web site: *http://www.blm.gov/ca/st/en/fo/palmsprings.html.*

FOR FURTHER INFORMATION CONTACT: Allison Shaffer, BLM Project Manager; *telephone:* (760) 833–7100; *mailing address:* 1201 Bird Center Drive, Palm Springs, California 92262; or *e-mail: CAPSSolarNextEraFPL@blm.gov.*

SUPPLEMENTARY INFORMATION: Genesis Solar, LLC, a wholly owned subsidiary of NextEra Energy Resources, filed right-of-way (ROW) application CACA–048880 for the proposed Genesis Solar Energy Project (GSEP). The GSEP is a concentrated solar electrical generating facility using parabolic trough technology and facilities. The GSEP site is proposed on approximately 1,950 acres of BLM-managed lands in Riverside County, California, approximately 27 miles east of the unincorporated community of Desert Center and 25 miles west of the Arizona-California border city of Blythe. The GSEP consists of 2 independent solar electric generating facilities with a net electrical output of 125 megawatts (MW) each, resulting in a total net electrical output of 250 MW. In addition to the site, the project includes a distribution line, an electrical transmission line, fiber optic lines, a natural gas pipeline, and an access road. A double circuit 230-kilovolt (kV) transmission line will be constructed to connect to the Southern California Edison Colorado River substation via the existing Blythe Energy Project Transmission Line between the Julian Hinds and Buck substations. The linear facilities will encumber approximately 90 acres offsite.

The project site is in the California Desert District within the planning boundary of the CDCA Plan, which is the applicable RMP for the project site and the surrounding areas. The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not already identified in that Plan be considered through the BLM's land use plan amendment process. As a result, prior to approval of a ROW grant for the GSEP, the BLM must amend the CDCA Plan to allow the solar generating project on that site. The approved Amendment to the CDCA Plan specifically revises the CDCA Plan to allow for the development of the GSEP and ancillary facilities on land managed by the BLM.

The BLM preferred alternative would result in the building of 2 adjacent and independent power block units, capable of generating approximately 250 MW of electricity, and the use of dry cooling technology, as well as all associated ancillary facilities. This 250 MW alternative was evaluated in the Final Environmental Impact Statement (EIS). The Notice of Availability of the Final EIS for the GSEP and the proposed CDCA Plan amendment was published in the **Federal Register** on August 27, 2010 (75 FR 52736).

Publication of the Notice of Availability for the Final EIS initiated a 30-day protest period for the proposed amendment to the CDCA Plan and a 30-day comment period on the Final EIS. At the close of the 30-day period on September 27, 2010, 3 timely and complete written protests were received and resolved. Their resolution is summarized in the Director's Protest Summary Report attached to the ROD. The proposed amendment to the CDCA Plan was not modified as a result of the protest resolution. In addition, the BLM received 10 comment letters on the Final EIS. The BLM's responses to these comments are provided in Appendix 1 of the ROD. Simultaneously with the protest period, the Governor of California conducted a 30-day consistency review of the proposed CDCA Plan amendment to identify any inconsistencies with the state or local plan, policies, or programs. The California Governor's office did not identify inconsistencies between the proposed amendment to the CDCA Plan and state or local plan, policies, or programs.

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal (43 CFR 4.410(a)(3)).

Authority: 40 CFR 1506.6.

Robert V. Abbey,

Director, Bureau of Land Management.

[FR Doc. 2010–28434 Filed 11–10–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1526]

Notice of Draft NIJ Law Enforcement Duty Holster Selection and Application Guide

AGENCY: National Institute of Justice.

ACTION: Notice of Draft NIJ Law Enforcement Duty Holster Selection and Application Guide.

SUMMARY: In an effort to obtain comments from interested parties, the

U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public the draft "NIJ Law Enforcement Duty Holster Selection and Application Guide." The opportunity to provide comments on this document is open to industry technical representatives, law enforcement agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are directed to the following Web site: *http://www.justnet.org.*

DATES: Comments must be received on or before December 13, 2010.

FOR FURTHER INFORMATION CONTACT: Vanessa Castellanos, by telephone at 202–514–5272 [**Note:** This is not a toll-free telephone number], or by e-mail at *vanessa.castellanos@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2010–28431 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on August 26, 2010, Formulation Technologies LLC., 11400 Burnet Road, Suite 4010, Austin, Texas 78758, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for analytical characterization, secondary packaging, and for distribution to clinical trial sites.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 13, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28527 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on June 16, 2010, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N–Ethylamphetamine (1475)	I
N,N–Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Gamma Hydroxybutyric Acid (2010)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I

Drug	Schedule
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
N-Benzylpiperazine (7493)	I
Etorphine (except HCl) (9056)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Dextromoramide (9613)	I
Dipipanone (9622)	I
Racemoramide (9645)	I
Trimeperidine (9646)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (9670)	II
Fentanyl (9801).	

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw, and coca leaves. As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act [(21 U.S.C. 952 (a)(2)(B)] may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR § 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 13, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28519 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on September 14, 2010, GE Healthcare, 3350 North Ridge Avenue, Arlington

Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to import small quantities of ioflupane, in the form of three separate analogues of Cocaine, to validate production and quality control systems, for a reference standard, and for producing material for a future investigational new drug (IND) submission.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 13, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28529 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on June 28, 2010, Wildlife Laboratories, 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Etorphine Hydrochloride (9059), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for sale to its customer.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 13, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28526 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 17, 2010, and published in the **Federal Register** on June 28, 2010 (75 FR 36684), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I:

Drug	Schedule
Racemoramide (9645)	I
Tilidine (9750)	I

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Cerilliant Corporation to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28523 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 13, 2010, and published in the **Federal Register** on

September 1, 2010 (75 FR 53719), Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Poppy Straw Concentrate (9670), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance in bulk to manufacture other controlled substances solely in bulk for distribution to the company's customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco Inc. to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28513 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 2, 2010, and published in the **Federal Register** on September 1, 2010 (75 FR 53718), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the basic classes of controlled substances to manufacture a bulk intermediate which will be distributed in bulk to the company's customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Cambrex Charles City, Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28512 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By a Notice dated June 17, 2010, and published in the **Federal Register** on June 28, 2010 (75 FR 36680), Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances in order to bulk manufacture controlled substances in Active Pharmaceutical Ingredient (API) form. The company distributes the manufactured API's in bulk form only to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Rhodes Technologies to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Rhodes Technologies to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28509 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 17, 2010, and published in the **Federal Register** on June 28, 2010, (75 FR 36683), Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to bulk manufacture amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on

May 1, 1971. DEA has investigated Boehringer Ingelheim, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28507 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 17, 2010 and published in the **Federal Register** on June 28, 2010, (75 FR 36681), Alltech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405)	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbo nitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Ecgonine (9180)	II
Meperidine intermediate-B (9233)	II
Noroxymorphone (9668)	II

The company plans to manufacture high purity drug standards used for analytical applications only in clinical, toxicological, and forensic laboratories.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Alltech Associates, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Alltech Associates Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted

registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28536 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 8, 2010, Noramco Inc., 1440 Olympic Dr., Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Codeine-N-Oxide (9053)	I
Morphine-N-Oxide (9307)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 11, 2011.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28524 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 16, 2009, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma-Hydroxybutyric acid (2010)	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3,4-methylendioxyamphetamine (7402)	I
3,4-Methylendioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltyptamine (7439)	I
N-Benzylpiperazine (7493)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I

Drug	Schedule
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661)	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Tapentadol (9780)	II

Drug	Schedule
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 11, 2011.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28516 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 26, 2010, and published in the **Federal Register** on April 30, 2010 (75 FR 22844), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The company plans to manufacture bulk active pharmaceutical ingredients (API's) for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lonza Riverside to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lonza Riverside to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28518 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2010, and published in the **Federal Register** on April 16, 2010, (75 FR 20001), Siemens Healthcare Diagnostics Inc., Attn: RA, 100 GBC Drive, Mail Stop 514, Newark, Delaware 19702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II

The company utilizes the listed controlled substances in bulk to manufacture in-vitro diagnostic test kits. The company distributes the test kits for sale to its customers. The process used in manufacturing the test kits irreversibly alters the controlled substances involved in such a manner that they are no longer classified as controlled substances as defined under the Controlled Substances Act.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siemens Healthcare Diagnostics Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Siemens Healthcare Diagnostics Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28531 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 17, 2010, and published in the **Federal Register** on June 28, 2010, (75 FR 36684), Varian Inc., 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II

Drug	Schedule
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Varian Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Varian Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28515 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 17, 2010, and published in the **Federal Register** on June 28, 2010, (75 FR 36683), Penick Corporation, 33 Industrial Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Penick Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28533 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 17, 2010, and published in the **Federal Register** on June 28, 2010, (75 FR 36683), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Carfentanil (9743), a basic class of controlled substance listed in schedule II.

The company will manufacture the above listed controlled substance for sale to veterinary pharmacies, zoos, and for other animal and wildlife applications.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Wildlife Laboratories, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Wildlife Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28522 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 16, 2010, and published in the **Federal Register** on March 24, 2010, (75 FR 14190), Archimica, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the listed controlled substance in bulk for sale to its customers.

One comment and objection was received. However, after a thorough review of this matter, DEA has concluded that the issues raised in the comment and objection do not warrant the denial of this application.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Archimica, Inc., to manufacture the listed basic class of controlled substance is consistent with

the public interest at this time. DEA has investigated Archimica, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: November 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–28520 Filed 11–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,963]

Dentek.com, D/B/A Nsequence Center for Advanced Dentistry; Reno, NV; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 16, 2010, 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 the subject firm. The determination was issued on June 22, 2010. The Department's Notice of Determination was published in the **Federal Register** on July 7, 2010 (75 FR 39049). Workers are engaged in employment related to the production of dental prosthetics.

The initial determination was based on the findings that worker separations are not attributable to increased imports of articles like or directly competitive with dental prosthetics or a shift/acquisition of these articles to a foreign country by the workers' firm.

In the request for reconsideration, the petitioner provided additional information regarding company imports and operations.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the 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 13th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–28491 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,756]

Progressive Furniture, Inc., Including On-Site Leased Workers From Onin Staffing, a Subsidiary of Sauder Furniture, Claremont, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

On July 19, 2010, the Department issued a determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The Department's Notice of Determination was published in the **Federal Register** on August 6, 2010 (75 FR 47635).

The initial investigation resulted in a negative determination based on the findings that there was no increase in imports or shift to/acquisition from a foreign country of decommissioning services by the workers' firm, and that the workers' firm did not produce an article or supply a service that was used by a firm with workers eligible to apply for TAA in the production of an article or supply of a service that was the basis for TAA-certification.

Subsequent to the issuance of the negative determination, the Department was informed of a mistake in fact in the case at hand.

Based on this new information, the Department has determined that it is appropriate for the Department to conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review, I conclude that a reconsideration of the U.S. Department of Labor's prior decision is appropriate.

Signed at Washington, DC, this 13th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–28489 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,210; TA–W–73,210A]

Metlife Moosic, PA, Metlife Clarks Summit, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated August 2, 2010, the petitioners requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on July 14, 2010, and the Department's Notice of Determination was published in the **Federal Register** on August 2, 2010 (75 FR 45163).

The initial investigation resulted in a negative determination based on the findings that there was no increase in imports or acquisition from a foreign country of software testing and quality assurance services by the workers' firm, and that the workers' firm did not produce an article or supply a service that was used by a firm with workers eligible to apply for Trade Adjustment Assistance (TAA) in the production of an article or supply of a service that was the basis for TAA-certification.

In the request for reconsideration, the petitioners provided additional information alleging the procurement by the subject firm from foreign sources of services like and directly competitive with those produced by the petitioning workers.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the 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 13th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–28488 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,170]

Supermedia, LLC, Formerly Known as Idearc Media, LLC, a Subsidiary of Supermedia Information Services, LLC, Troy, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 16, 2010, 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 the subject firm. The determination was issued on June 21, 2010. The Notice of Determination was published in the **Federal Register** on July 7, 2010 (75 FR 39049).

Workers are engaged in employment related to the production of telephone directories. The initial investigation resulted in a negative determination based on the findings that worker separations are not attributable to increased imports of articles like or directly competitive with telephone directories or a shift/acquisition of these articles to a foreign country by the workers' firm.

In the request for reconsideration, the petitioner provided additional information pertaining to a shift in production abroad.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

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 13th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–28486 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,889]

Health Net, Inc., Claims Processing Group and Systems Configuration Organization, Including On-Site Leased Workers From Kelly Services and Cognizant Technology Solutions, Shelton, CT; 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 May 26, 2010, applicable to workers of Health Net, Inc., Claims Processing Group and Systems Configuration Organization, including on-site leased workers from Kelly Services in Shelton, Connecticut (TA–W–73,889) and Matawan, New Jersey (TA–W–73,889A). The Department's Notice was published in the **Federal Register** on June 16, 2010 (75 FR 34174).

At the request of the State agency, the Department reviewed the certification for workers of Health Net, Inc., Claims Processing Group and Systems Configuration Organization, Shelton, Connecticut (TA–W–73,889). The subject workers are engaged in activities related to the supply of claims processing and system configuration services.

New information shows that workers from Cognizant Technology Solutions were employed on-site at the Shelton, Connecticut location of Health Net, Inc., Claims Processing Group and Systems Configuration Organization and provided application support and information technology services supporting the subject firm.

The Department has determined that on-site workers from Cognizant Technology Solutions were sufficiently under the control of the subject firm to be covered by this certification.

Based on these findings, the Department is amending this certification to include workers from Cognizant Technology Solutions working on-site at the Shelton, Connecticut location of Health Net, Inc., Claims Processing Group and Systems Configuration Organization.

The amended notice applicable to TA–W–73,889 is hereby issued as follows:

All workers of Health Net, Inc., Claims Processing Group and Systems Configuration Organization, including on-site leased workers from Kelly Services and Cognizant Technology Solutions, Shelton, Connecticut (TA–W–73,889) and Health Net, Inc., Claims Processing Group and Systems Configuration Organization, including on-site leased workers from Kelly Services, Matawan, New Jersey (TA–W–73,889A), who became totally or partially separated from employment on or after April 7, 2009 through May 26, 2012, and all workers in the group threatened with total or partial separation from employment on 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 13th day of August 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–28490 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,961; TA–W–70,961A]

LSI Corporation, 1110 American Parkway, Including On-Site Leased Workers From Spinnaker, Allentown, PA; LSI Corporation, 555 Union Boulevard, Including On-Site Leased Workers From Spinnaker, Allentown, PA; 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 January 28, 2010, applicable to workers of LSI Corporation, 1110 American Parkway and 555 Union Boulevard, Allentown, Pennsylvania. The Notice of determination was published in the **Federal Register** on March 5, 2010 (75 FR 10320).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers at the subject facilities are engaged in design, development, and marketing for semiconductor and storage systems.

The company reports that workers leased from Spinnaker were employed

on-site at both Allentown, Pennsylvania locations of LSI Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Spinnaker working on-site at the 1110 American Parkway, Allentown, Pennsylvania and the 555 Union Boulevard, Allentown, Pennsylvania locations of LSI Corporation.

The amended notice applicable to TA–W–70,961 and TA–W–70,961A are hereby issued as follows:

All workers of LSI Corporation, 1110 American Parkway, including on-site leased workers from Spinnaker, Allentown, Pennsylvania (TA–W–70,961) and LSI Corporation, 555 Union Boulevard, including on-site leased workers from Spinnaker, Allentown, Pennsylvania, who became totally or partially separated from employment on or after May 29, 2008, through January 28, 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 13th day of August 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–28484 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,143]

JL French Automotive Castings, LLC, Including On-Site Leased Workers From Labor Ready and Seek Staffing, Sheboygan, WI; 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 4, 2009, applicable to workers of JL French Automotive Castings LLC, including on-site leased workers Labor Ready, Sheboygan, Wisconsin. The Department's Notice of determination was published in the **Federal Register** on January 25, 2010 (75 FR 3935).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of aluminum die cast parts.

The company reports that workers leased from Seek Staffing, were employed on-site at the Sheboygan, Wisconsin location of JL French Automotive Castings LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Seek Staffing, working on-site at the Sheboygan, Wisconsin location of JL French Automotive Castings LLC.

The amended notice applicable to TA–W–70,143 is hereby issued as follows:

All workers of JL French Automotive Castings LLC, including on-site leased workers from Labor Ready and Seek Staffing, Sheboygan, Wisconsin, who became totally or partially separated from employment on or after May 18, 2008, through November 4, 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 13th day of August 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–28483 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,839; TA–W–70,839A; TA–W–70,839B; TA–W–70,839C]

Tele Atlas North America, Inc., Currently Doing Business as Tom Tom Including Off-Site Workers Reporting to This Location, Lebanon, NH; Tele Atlas North America, Inc. Currently Doing Business as Tom Tom, Concord, MA; Tele Atlas North America, Inc. Currently Doing Business as Tom Tom, Detroit, MI; Tele Atlas North America, Inc. Currently Doing Business as Tom Tom, Redwood, CA; 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 19, 2009, applicable to workers of Tele Atlas North America, Inc. in Lebanon, New Hampshire and off-site workers reporting to Lebanon, New Hampshire (TA–W–70,839), Concord, Massachusetts (TA–W–70,839A), Detroit, Michigan (TA–W–70,839B), and Redwood, California (TA–W–70,839C). The Department's notice of determination was published in the **Federal Register** on January 25, 2010 (75 FR 3938).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers produced digital map data, which is used for road navigation.

New information shows that as of January 2010, Tele Atlas North America, Inc. began doing business as Tom Tom. Workers that will be separated from employment at Tele Atlas North America, Inc. will have their wages reported under a separate unemployment insurance (UI) tax account under the name Tom Tom.

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 by a shift in production of digital map data.

The amended notice applicable to TA–W–70,839 is hereby issued as follows:

All workers of Tele Atlas North America, Inc., currently doing business as Tom Tom, including off-site workers reporting to this location, Lebanon, New Hampshire (TA–W–70,839), Tele Atlas North America, Inc., currently doing business as Tom Tom, Concord, Massachusetts (TA–W–70,839A), Tele Atlas North America, Inc., currently doing business as Tom Tom, Detroit, Michigan (TA–W–70,839B), and Tele Atlas North America, Inc., currently doing business as Tom Tom, Redwood, California (TA–W–70,839C), who became totally or partially separated from employment on or after May 20, 2008, through November 19, 2011, and all workers in the group threatened with total or partial separation from employment on November 19, 2009 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 13th day of August 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–28482 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,206]

Smurfit-Stone Container Corporation, Containerboard Mill, Including On-Site Leased Workers From KMW Enterprises, Ontonagon, MI; 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 May 6, 2010, applicable to workers of Smurfit-Stone Container Corporation, Containerboard Mill, Ontonagon, Michigan. The notice was published in the **Federal Register** on May 28, 2010 (75 FR 30070).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of corrugated medium used in the production of corrugated containers.

The company reports that workers leased from KMW Enterprises were employed on-site at the Ontonagon, Michigan location of Smurfit-Stone Container Corporation, Containerboard Mill. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from KMW Enterprises working on-site at the Ontonagon, Michigan location of Smurfit-Stone Container Corporation, Containerboard Mill.

The amended notice applicable to TA–W–73,206 is hereby issued as follows:

All workers of Smurfit-Stone Container Corporation, Containerboard Mill, including on-site leased workers from KMW Enterprises, Ontonagon, Michigan, who became totally or partially separated from employment on or after December 18, 2008, through May 6, 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 13th day of August 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–28487 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,501, TA–W–71,501A, et al.]

Sony Electronics, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–71,501, Sony Electronics, Inc., SEL Headquarters, Including On-Site Leased Workers of Selectremedy, Staffmark, and Payrolling.com, San Diego, California;
TA–W–71,501A, Sony Electronics, Inc., Including On-Site Leased Workers of Selectremedy, Staffmark, and Payrolling.com, San Jose, California;
TA–W–71,501B, Sony Electronics, Inc., Including On-Site Leased Workers of Willstaff, Danco Industrial Contractors, Advantage, Cyclone Automation, and Rjesus Fabrication, Dothan, Alabama;
TA–W–71,501C, Sony Electronics, Inc., Including On-Site Leased Workers of Selectremedy, Itasca, Illinois;
TA–W–71,501D, Sony Electronics, Inc., Including On-Site Leased Workers of Select Staffing, Carson, California;
TA–W–71,501E, Sony Electronics, Inc., Culver City, California;
TA–W–71,501F, Sony Electronics, Inc., Lake Forest, California;
TA–W–71,501G, Sony Electronics, Inc., Los Angeles, California;
TA–W–71,501H, Sony Electronics, Inc., Ft. Myers, Florida;
TA–W–71,501I, Sony Electronics, Inc., Miami, Florida;
TA–W–71,501J, Sony Electronics, Inc., Honolulu, Hawaii;
TA–W–71,501K, Sony Electronics, Inc., Novi, Michigan;
TA–W–71,501L, Sony Electronics, Inc., Including On-Site Leased Workers of Kelly Services, Kansas City, Missouri;
TA–W–71,501M, Sony Electronics, Inc., Park Ridge, New Jersey;
TA–W–71,501N, Sony Electronics, Inc., Including On-Site Leased Workers of Select Staffing, Teaneck, New Jersey;
TA–W–71,501O, Sony Electronics, Inc., Irving, Texas;
TA–W–71,501P, Sony Electronics, Inc., Richmond, Virginia.

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 April 27, 2010, applicable to workers of Sony Electronics, Inc., SEL Headquarters, including on-site leased workers of SelectRemedy, StaffMark, and Payrolling.com, San Diego, California (TA–W–71,501); Sony Electronics, Inc., including on-site leased workers of SelectRemedy, StaffMark, and PayRolling.com, San Jose, California (TA–W–71,501A); Sony Electronics, Inc., including on-site leased workers of WillStaff, Danco Industrial Contractors, Advantage, Cyclone Automation, and Rjesus Fabrication, Dothan, Alabama (TA–W–71,501B); and Sony Electronics, Inc., including on-site leased workers of SelectRemedy, Itasca, Illinois (TA–W–71,501C). The notice was published in the **Federal Register** on July 1, 2010 (75 FR 38143–38144).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to production of electronics and various support operations, including marketing, professional, corporate and customer support, import/export compliance, procurement, and warranty services.

New information shows that worker separations also occurred during the relevant time period at Bentonville, Arkansas; Carson, California; Culver City, California; Lake Forest, California; Los Angeles, California; Boulder, Colorado; Ft. Myers, Florida; Miami, Florida; Honolulu, Hawaii; Novi, Michigan; Troy, Michigan; Eden Prairie, Minnesota; Kansas City, Missouri; Park Ridge, New Jersey; Teaneck, New Jersey; Irving, Texas; Laredo, Texas; and Richmond, Virginia Sony Electronics, Inc. facilities. The relevant data supplied by Sony Electronics, Inc. to the Department during its investigation included the above eighteen locations.

Based on these findings, the Department is amending this certification to include employees of Carson, California, including on-site leased workers of Select Staffing (TA–W–71,501D); Culver City, California (TA–W–71,501E); Lake Forest, California (TA–W–71,501F); Los Angeles, California (TA–W–71,501G); Ft. Myers, Florida (TA–W–71,501H); Miami, Florida (TA–W–71,501I); Honolulu, Hawaii (TA–W–71,501J); Novi, Michigan (TA–W–71,501K); Kansas City, Missouri, including on-site leased workers of Kelly Services (TA–W–71,501L); Park Ridge, New Jersey (TA–W–71,501M); Teaneck, New Jersey, including on-site leased workers of Select Staffing (TA–W–71,501N); Irving, Texas (TA–W–71,501O); and Richmond, Virginia (TA–W–71,501P).

Workers at Bentonville, Arkansas; Boulder, Colorado; Troy, Michigan; Eden Prairie, Minnesota; and Laredo,

Texas were not included in the amended certification because these firms either did not employ worker groups (at least three full-time workers during the year preceding the TAA petition filing date), or fewer than three workers were separated and/or threatened with separations during the relevant period.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of electronics and various support operations, including marketing, professional, corporate and customer support, import/export compliance, procurement, and warranty services, to Mexico, China, India, and Japan.

The amended notice applicable to TA–W–71,501 is hereby issued as follows:

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Sony Electronics, Inc., SEL Headquarters, including on-site leased workers of SelectRemedy, StaffMark, and Payrolling.com, San Diego, California (TA–W–71,501); Sony Electronics, Inc., including on-site leased workers of SelectRemedy, StaffMark, and Payrolling.com, San Jose, California (TA–W–71,501A); Sony Electronics, Inc., including on-site leased workers of WillStaff, Danco Industrial Contractors, Advantage, Cyclone Automation, and Rjesus Fabrication, Dothan, Alabama (TA–W–71,501B); and Sony Electronics, Inc., including on-site leased workers of SelectRemedy, Itasca, Illinois (TA–W–71,501C), Carson, California, including on-site leased workers of Select Staffing (TA–W–71,501D); Culver City, California (TA–W–71,501E); Lake Forest, California (TA–W–71,501F); Los Angeles, California (TA–W–71,501G); Ft. Myers, Florida (TA–W–71,501H); Miami, Florida (TA–W–71,501I); Honolulu, Hawaii (TA–W–71,501J); Novi, Michigan (TA–W–71,501K); Kansas City, Missouri, including on-site leased workers of Kelly Services (TA–W–71,501L); Park Ridge, New Jersey (TA–W–71,501M); Teaneck, New Jersey, including on-site leased workers of Select Staffing (TA–W–71,501N); Irving, Texas (TA–W–71,501O); and Richmond, Virginia (TA–W–71,501P), who are engaged in employment related to production of electronics and various support operations, including marketing, professional, corporate and customer support, import/export compliance, procurement, and warranty services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Sony Electronics, Inc., SEL Headquarters, including on-site leased workers of SelectRemedy, StaffMark, and Payrolling.com, San Diego, California (TA–W–71,501); Sony Electronics, Inc., including on-site leased workers of SelectRemedy, StaffMark, and Payrolling.com, San Jose, California (TA–W–71,501A); Sony Electronics, Inc., including on-site leased workers of WillStaff, Danco Industrial Contractors, Advantage, Cyclone Automation, and Rjesus Fabrication, Dothan, Alabama (TA–W–71,501B); and Sony Electronics, Inc., including on-site leased workers of SelectRemedy, Itasca, Illinois (TA–W–71,501C), Carson, California, including on-site leased workers of Select Staffing (TA–W–71,501D); Culver City, California (TA–W–71,501E); Lake Forest, California (TA–W–71,501F); Los Angeles, California (TA–W–71,501G); Ft. Myers, Florida (TA–W–71,501H); Miami, Florida (TA–W–71,501I); Honolulu, Hawaii (TA–W–71,501J); Novi, Michigan (TA–W–71,501K); Kansas City, Missouri, including on-site leased workers of Kelly Services (TA–W–71,501L); Park Ridge, New Jersey (TA–W–71,501M); Teaneck, New Jersey, including on-site leased workers of Select Staffing (TA–W–71,501N); Irving, Texas (TA–W–71,501O); and Richmond, Virginia (TA–W–71,501P) who became totally or partially separated from employment on or after June 22, 2008, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on 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 in Washington, DC, this 13th day of August 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

Editorial Note: This document was received in the Office of the Federal Register on November 8, 2010.

[FR Doc. 2010–28485 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Preparations for December UN Meetings on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: OSHA invites interested parties to participate in an open, informal public meeting to discuss proposals in preparation for the 20th session of the United Nations Subcommittee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS). The UNSCEGHS meeting will be held December 7–9, 2010, in Geneva, Switzerland. OSHA, along with the U.S. Interagency GHS Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S Government positions for the UNSCEGHS meeting.

DATES: The date for the public meeting is as follows: November 30, 2010, from 1–3 p.m., in Washington, DC.

ADDRESSES: The location for the public meeting is as follows: The U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, Room N4437 C & D.

Conference Call Information: Conference call-in capability will be provided for this meeting. To participate by telephone, dial 1–888–946–7303, and enter participant passcode 34137. During the call, please press *6 to mute/unmute your individual lines.

FOR FURTHER INFORMATION CONTACT: Maureen Ruskin, Director, Office of Chemical Hazards-Metals, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone: (202) 693–1950.

Copies of this **Federal Register** notice can be obtained as follows: Electronic copies are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as other relevant information, is available also on the OSHA Webpage at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Meeting

OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views for consideration in developing U.S. Government positions for the upcoming UNSCEGHS meeting. The public is invited to attend without prior notification.

II. Background

The GHS was formally adopted by the United Nations Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of

Chemicals in December 2002. The GHS is a single, harmonized system for classification of chemicals according to their health, physical, and environmental effects. It also provides harmonized communication elements, including labels and safety data sheets. The GHS is considered to be a living document and is regularly revised and updated as necessary to reflect new technology and scientific developments or to provide additional explanatory text.

The UNSCEGHS is responsible for maintaining and updating the GHS. The U.S has been an active member of the UNSCEGHS for many years, and OSHA currently serves as the head of the U.S delegation for this subcommittee.

In preparation of the bi-annual meetings of the UNSCEGHS, the U.S Interagency GHS Coordinating Group meets to discuss issues related to the GHS and to develop a coordinated U.S position on issues and proposals regarding the GHS. The U.S interagency group consists of U.S agencies that regulate in the area of chemical hazard communication and includes the Consumer Product Safety Commission (CPSC), the Department of Transportation (DOT), the Environmental Protection Agency (EPA), and OSHA.

Information on the work of the UNSCEGHS including meeting agendas, reports, and documents from previous sessions, can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division Web site located at the following web address: *http://www.unece.org/trans/danger/danger.htm*. The UNSCEGHS bases its decisions on working papers. The working papers for the 20th session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c42010.html*. Informal papers submitted to the UNSCEGHS provide information for the subcommittee and are used either as a mechanism to provide information to the subcommittee or as the basis for future working papers. Informal papers for the 20th session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c4inf20.html*.

Authority and Signature

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 4–2010 (75 FR 55355), (Sept. 10, 2010).

Signed at Washington, DC, on November 6, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–28546 Filed 11–10–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

DATES AND TIMES December 2, 2010, 9 a.m.–5 p.m. Eastern.

DECEMBER 3, 2010, 8:30 A.M.–5 P.M. EASTERN. *Place:* Access Board, 1331 F Street, NW., Room 800, Washington, DC 20004.

STATUS: This meeting will be open to the public.

Matters To Be Considered

December 2

9 a.m.–9:30 a.m. Welcome and Introductions
9:30 a.m.–1 p.m. Strategic Planning
1 p.m.–3 p.m. Forum Planning
3 p.m.–5 p.m. Report and Discussion on Health Care Reform Working Group

December 3

8:30 a.m.–9:30 a.m. To Be Determined
9:30 a.m.–2 p.m. NCD Board Attends State Department Event (off-site—not open to the public)
2:30 p.m.–5 p.m. Open Business

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

CONTACT PERSON FOR MORE INFORMATION: Mark Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004, 202–272–2074 (TTY).

Dated: November 9, 2010.

Joan M. Durocher,

Executive Director (Interim).

[FR Doc. 2010–28647 Filed 11–19–10; 4:15 pm]

BILLING CODE 6820–MA–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before December 13, 2010 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 30, 2010 (75 FR 52992). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives Public Vaults Survey.

OMB number: 3095–0062.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals who visit the Public Vaults in Washington, DC.

Estimated number of respondents: 1,050.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when an individual visits the Public Vaults in Washington, DC).

Estimated total annual burden hours: 175 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this voluntary data collection is to (1) Provide baseline data concerning the effectiveness of the Public Vaults and its several exhibits in enhancing visitors' understanding that records matter, (2) measure customer satisfaction with the Public Vaults, and (3) identify additional opportunities for improving the customers' experience.

Dated: November 5, 2010.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2010–28661 Filed 11–10–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of three currently approved information collections. The first is used by researchers who wish to do biomedical statistical research in archival records containing highly personal information. The second is an application that is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. The third is prepared by organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before January 11, 2011 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by these collections. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.

Estimated number of respondents: 1.

Estimated time per response: 7 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 and that the proper safeguards will be made to protect the information.

2. *Title:* Application and Permit for Use of Space in Presidential Library and Grounds.

OMB number: 3095–0024.

Agency form number: NA Form 16011.

Type of review: Regular.

Affected public: Private organizations.

Estimated number of respondents: 1,000.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 333 hours.

Abstract: The information collection is prescribed by 36 CFR 1280.94. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.94 and to schedule the date.

3. *Title:* Request to use personal paper-to-paper copiers at the National Archives at the College Park facility.

OMB number: 3095–0035.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 5.

Estimated time per response: 3 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.86. Respondents are organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.86 and to schedule the limited space available.

Dated: November 5, 2010.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2010–28667 Filed 11–10–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that eleven meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Visual Arts (application review): November 30–December 2, 2010 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. each day, will be closed.

Music (application review): November 30–December 3, 2010 in Room 714. This meeting, from 9 a.m. to 5:30 p.m. on November 30th–December 2nd and from 9 a.m. to 2:30 p.m. on December 3rd, will be closed.

Literature (application review): December 1–2, 2010 in Room 730. A

portion of this meeting, from 1 p.m. to 1:30 p.m. on December 2nd, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6:30 p.m. on December 1st and from 9 a.m. to 1 p.m. and 1:30 p.m. to 5 p.m. on December 2nd, will be closed.

Literature (application review): December 3, 2010 in Room 730. This meeting, from 9 a.m. to 5 p.m., will be closed.

Arts Education (application review): December 6, 2010 in Room 730. This meeting, from 9 a.m. to 6 p.m., will be closed.

Museums (application review): December 6–8, 2010 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on December 6th, from 9 a.m. to 6 p.m. on December 7th, and from 9 a.m. to 4 p.m. on December 8th, will be closed.

Theater (application review): December 7–10, 2010 in Room 714. A portion of this meeting, from 9 a.m. to 10 a.m. on December 9th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 7th, from 9 a.m. to 6 p.m. on December 8th, from 10 a.m. to 6 p.m. on December 9th, and from 9 a.m. to 3 p.m. on December 10th, will be closed.

Media Arts (application review): December 8–10, 2010 in Room 730. This meeting, from 9 a.m. to 5:45 p.m. on December 8th, from 9 a.m. to 6 p.m. on December 9th, and from 9 a.m. to 4 p.m. on December 10th, will be closed.

Opera (application review): December 9–10, 2010 in Room 716. This meeting, from 9 a.m. to 6 p.m. on December 9th and from 9 a.m. to 2 p.m. on December 10th, will be closed.

Opera (application review): December 10, 2010 in Room 716. This meeting, from 3 p.m. to 3:45 p.m., will be closed.

Presenting (application review): December 14–16, 2010 in Room 714. This meeting, from 9 a.m. to 5:30 p.m. on December 14th and 15th and from 9 a.m. to 3:30 p.m. on December 16th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 8, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2010–28481 Filed 11–10–10; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice Regarding Changed Venue for Public Hearing On a Draft Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (PEIS)

AGENCY: National Science Foundation.

ACTION: Notice regarding changed venue for public hearing.

SUMMARY: The National Science Foundation (NSF) and the U.S. Geological Survey (USGS) held public hearings on the Draft Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the US Geological Survey (PEIS) on October 25, 2010 in San Diego, CA and October 27, 2010 in Arlington, VA. The Arlington, VA public hearing location was originally planned to be held at the NSF building located at 4201 Wilson Blvd. Unfortunately, due to a fire in the NSF building on the afternoon of October 27, 2010, the public hearing location was moved to Marine Acoustics Inc., located at 4100 Fairfax Drive (a building two blocks from NSF). Signs were posted on the outside doors of the NSF building announcing the new hearing location, and a security guard stationed at the main NSF entrance outside the meeting room directed hearing attendees who were unaware of the NSF emergency to the new hearing venue. NSF apologizes for any confusion or inconvenience that may have resulted from the emergency situation which prompted the change in public hearing venue. Should you have any questions or concerns about the Public Hearing, or Draft PEIS, please contact Holly Smith, NSF, at 703–292–8583 or *nepacomments@nsf.gov*.

The presentation slides used by NSF at the public hearings are posted on the NSF Web site at: *http://www.nsf.gov/geo/oce/envcomp/index.jsp*. Please note, however, that if there is any perceived inconsistency between the presentation and the Draft PEIS, the language in the Draft PEIS controls. The public comment period will remain open until November 22, 2010.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Draft PEIS contact: Holly Smith, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230; telephone: (703) 292–8583; e-mail: *nepacomments@nsf.gov*.

Dated: November 8, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–28450 Filed 11–10–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0352]

Notice of Public Meeting

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of NRC/DOE joint public meeting.

SUMMARY: The NRC and the DOE announce their intent to conduct a public meeting to discuss agency interactions and activities in accordance with each agency's responsibilities under Section 3116 of the National Defense Authorization Act (NDAA) for Fiscal Year 2005. The meeting date, time, and location are listed below:

Date: Monday, November 15, 2010.

Time: 7 p.m. to 10 p.m.

Location: The Aiken Municipal Building Conference Center, 215 The Alley, Aiken, SC 29801, Phone: 803–642–7654.

Draft Agenda:

7–7:10 Introductions and Opening Remarks.

7:10–8 NDAA Section 3116 Process.

8–9 NDAA Section 3116 Challenges and Accomplishments.

9–10 Opportunity for Public Questions and/or Comment.

Background

On October 9, 2004, the Ronald W. Reagan National Defense Authorization

Act for Fiscal Year 2005 (NDAA) was passed by Congress and was signed by the President on October 28, 2004. Section 3116 of the NDAA allows the DOE to determine that certain incidental waste, stemming from reprocessing of spent nuclear fuel, is not high-level waste (HLW). Should these incidental wastes, or Waste Incidental to Reprocessing (WIR), meet the criteria defined by the NDAA, they will be disposed via near-surface disposal. The NDAA is applicable only in the states of South Carolina and Idaho and does not apply to waste transported out of these States. The NDAA requires that: (1) DOE consult with NRC on its waste determinations in South Carolina and Idaho, and (2) NRC, in coordination with the State, monitor disposal actions taken by DOE for the purpose of assessing compliance with NRC regulations in 10 CFR part 61, subpart C. If the NRC considers any disposal actions taken by the DOE pursuant to subparagraphs (A) or (B) of Section 3116(a)(3) of the NDAA to be not in compliance with those performance objectives, the NRC shall, as soon as practicable after discovery of the noncompliant conditions, inform the DOE, the covered State, and Congress. On November 16, 2006 and July 20, 2007, the NRC and DOE held public meetings to discuss the efficiency and effectiveness of the consultation process. This meeting is part of a series of continuing public lessons learned meetings that the NRC and DOE hold jointly. Since the November 2006 NRC/DOE joint public meeting, many NDAA, Section 3116 consultation and monitoring activities have taken place at the Savannah River Site. NRC is currently fulfilling its monitoring role for disposal actions at the Saltstone Facility at the Savannah River Site and consultation activities are underway as the DOE has recently submitted the F-Tank Farm Performance Assessment and Draft Waste Determination for NRC review. The agencies will provide the public with an update on NDAA Section 3116 activities, provide interested stakeholders a chance to make comments and ask questions, and inform the public of future activities.

After the meeting, a publicly available summary of this meeting will be made available on the NRC's Agencywide Documents Access and Management System at *http://www.nrc.gov* and on the DOE webpage at *http://www.em.doe.gov/pages/3116Summaries.aspx.*

Detailed Agenda

Speakers

Linda Suttora—Office of Environmental Compliance, DOE, *DOE HQ Project Manager for SRS Section 3116 Activities*

Sherri Ross—Savannah River Site, Waste Disposition Programs Division, DOE, *DOE SR Project Manager for Tank Farm Closures*

Gregory Suber—Low-Level Waste Branch Chief, NRC, *Chief of NRC Branch Responsible for WIR Activities*

Frank Marcinowski—Deputy Assistant Secretary for Technical and Regulatory Support, DOE

Larry W. Camper—Director of the Division of Waste Management and Environmental Protection, NRC

Agenda

7–7:10 Introductions and Opening Remarks (Nishka Devaser, NRC Saltstone Project Manager)

7:10–8 NDAA Section 3116 Process (DOE, DOE–SR, and NRC)
Linda Suttora, DOE–HQ
Sherri Ross, DOE–SR
Gregory Suber, NRC

8–9 NDAA Section 3116 Challenges and Accomplishments
NRC and DOE Perspectives on the Challenges Posed by Section 3116 and the Accomplishments Made
Frank Marcinowski, DOE
Larry Camper, NRC

9–10 Opportunity for Public Questions and/or Comment

FOR FURTHER INFORMATION CONTACT: For questions related to this meeting, please contact Nishka Devaser at (301) 415–5196 or *Nishka.Devaser@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of November 2010.

For the Nuclear Regulatory Commission.

Gregory Suber,

Branch Chief, Low-Level Waste Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–28644 Filed 11–10–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:
Rule 17a–4(b)(11); SEC File No. 270–449; OMB Control No. 3235–0506; Rule 17a–3(a)(16).

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Sec. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in the following rule: Rule 17a–4(b)(11) (17 CFR 240.17a–4(b)(11)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–4(b)(11) describes the record preservation requirements for those records required to be kept pursuant to Rule 17a–3(a)(16), including how such records should be kept and for how long, to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulative rules as well as other rules and regulations of the Commission and the self-regulatory organizations.

It is estimated that respondents will incur a total burden of 2,835 hours per year (105 respondents multiplied by 27 burden hours to comply with Rule 17a–3(a)(16). It is estimated that approximately 105 active broker-dealer respondents registered with the Commission will incur a total burden of 315 hours per year to comply with Rule 17a–4(b)(11), (105 respondents multiplied by 3 burden hours per respondent equals 315 total burden hours).

The Commission estimates that an employee of a broker-dealer charged to ensure compliance with Rule 17a–3(a)(16) receives annual compensation of $238,000. This compensation is the equivalent of $119 per hour ($238,000 divided by 2,000 payroll hours per year). Thus, the average cost estimated for each respondent would be $3,213: Rule 17a–3(a)(16); Recordkeeping requirements 27 hours at $119/hr = $3,213.

The Commission estimates that an employee of a broker-dealer charged to ensure compliance with Rule 17a–4(b)(11) receives annual compensation of $238,000. This compensation is the equivalent of $119 per hour ($238,000 divided by 2,000 pay roll hours per year). Thus, the average cost estimated for each respondent would be $357.00: Rule 17a–4(b)(11); Record preservation requirements 3 hours at $119/hr = $ 357.

Accordingly, the annual aggregated hour burden for each broker-dealer required to comply with Rules 17a–

3(a)(16) and 17a–4(b)(11) would be $3,570: ($3,213 + $357 = $3,570).

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

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 agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA, 22312 or by sending an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 4, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28543 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63273; File No. SR–OPRA–2010–03]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment To Revise the Device-Based Professional Subscriber Fees Charged by OPRA for its Basic Service

November 8, 2010.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") [1] and Rule 608 thereunder,[2] notice is hereby given that on October 29, 2010, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").[3] The proposed amendment would revise the device-based professional subscriber fees charged by OPRA in respect of its Basic Service. A conforming revision is proposed to be made to OPRA's Enterprise Rate Professional Subscriber Fee. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Plan Amendment

The purpose of the amendment is to make incremental increases in OPRA's device-based professional subscriber fees in respect of its Basic Service and in the Enterprise Rate charged to those subscribers who elect that rate in place of device-based fees. These increases will be phased in over a four-year period. Specifically, it is proposed to increase the current $23 monthly per device fee by $1.00 in each of the years 2011, 2012, 2013 and 2014. It is also proposed to increase the Enterprise Rate, currently a monthly fee of $23 times the number of a subscriber's U.S.-based registered representatives, by this same amount in each of these years and to make conforming changes to the minimum monthly fee under the Enterprise Rate. These increases will be effective on January 1 in each year. OPRA's Basic Service currently consists of market data and related information pertaining to all of the options listed and traded on its member Exchanges (*i.e.,* equity options and index options, including foreign currency index options) ("OPRA Data"). Professional subscribers are persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers. OPRA's Enterprise Rate is based on the number of a professional subscriber's U.S. registered representatives and independent investment advisers who contract with the subscriber to provide advisory services to the subscriber's customers.

The proposed increases in the device-based professional subscriber fee and in the Enterprise Rate are intended to generate revenues for OPRA and its member exchanges that are needed to cover actual and anticipated increases in the costs of collecting, consolidating, processing and disseminating options market information and assuring the reliability and integrity of that information, as well as increases in OPRA's administrative costs. These increases reflect the higher costs of enhancements to and upgrades of the OPRA system and related exchange systems that are needed in order to enable OPRA, its participant exchanges and its vendors to handle a greater volume of market information as a result of the continuing expansion of listed options trading and to provide a greater degree of redundancy and security in the OPRA system. Increases in administrative costs largely reflect higher employee costs. Assuming the number of fee-liable devices and registered persons remains the same, OPRA estimates that the overall effect of the proposed increases in professional subscriber fees will be to increase revenues derived from these fees by approximately 4% in each of the four years covered by the proposal.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, *http://opradata.com*, and on the Commission's Web site at *http://www.sec.gov*.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 under the Act,[4] OPRA designated this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA Participants in connection with access to or use of OPRA facilities. In order to give persons subject to these fees advance notice of the changes, the first of these changes is not proposed to be put into effect until January 1, 2011. Notice of these fee changes is being sent to OPRA Vendors and Professional Subscribers at or about the date of the filing.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act [5] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The eight participants to the OPRA Plan are BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQW OMX BX, Inc., NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

[4] 17 CFR 242.608(b)(3)(i).

[5] 17 CFR 242.608(b)(2).

markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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–OPRA–2010–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OPRA–2010–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. 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–OPRA–2010–03 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28547 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63246; File No. SR–C2–2010–007]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

November 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2010, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to adopt fees for the use of a front-end order entry workstation, referred to as PULSe, that will be a facility of the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to establish fees relating to the use of the PULSe order entry workstation on C2, which fees are modeled after the fees established for C2 affiliates Chicago Board Options Exchange, Incorporated ("CBOE") and the CBOE Stock Exchange ("CBSX").

The PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of C2.[5] In addition to providing the capability to send orders to the C2 market, the PULSe workstation will also provide a user with the capability to send options orders to other U.S. options exchanges (including CBOE) and stock orders to other U.S. stock exchanges (including CBSX) through a "PULSe Routing Intermediary" as further described below ("away-market routing"). Additionally, the PULSe workstation functionality will include access to consolidated real-time options and stock market data.[6]

The PULSe workstation will be made available by Signal Trading Systems, LLC ("STS"). STS is an affiliate of CBOE that is jointly owned by CBOE and FlexTrade Systems, Inc. ("FlexTrade"), a technology services provider. STS will grant licenses to use the workstation directly to C2 Permit Holders ("Permit Holders") and their customers, including Sponsored Users. STS may

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[6] 17 CFR 200.30–3(a)(29).

[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] The Exchange represents that the PULSe workstation is merely a new front-end system interface to existing C2 trading systems (*i.e.*, it is a new means of connecting to these existing trading systems), and does not require any changes to the Exchange's surveillance or communications rules. Further, there is no change to, or impact on, the Exchange's market structure as a result of the PULSe workstations.

[6] The workstation will also have the capability to enable a user to send orders for commodity futures and commodity options to designated contract markets and other venues of the user's choice at which the user has trading privileges and to futures commission merchants (each, an "FCM") and introducing brokers (each, an "IB") of the user's choice. The workstation may also have the capability to enable a user to send orders in other non-security products to one or more destinations of the user's choice.

also determine to permit Permit Holders to make the workstation available to their customers, including Sponsored Users, through the use of a sublicense. However, whether the workstation technology is obtained through a direct license or sublicense from STS, any order routed to C2 through a PULSe workstation must be routed through a Permit Holder or by a Sponsored User (whose orders are sponsored by a Permit Holder).[7] The Permit Holder will also be responsible for any applicable fees, which are described below.

The Exchange proposes a monthly PULSe workstation fee to Permit Holders of $350 per Permit Holder workstation per month for the first 10 PULSe workstations and $100 per Permit Holder workstation per month for each additional PULSe workstation. As discussed further below, Permit Holders may also make the workstation available to their customers, which may include non-broker dealer public customers and non-Permit Holder broker dealers (referred to herein as "non-Permit Holders"). For such non-Permit Holder workstations, the Exchange proposes to introduce a flat fee of $350/month per workstation. In instances where two or more Permit Holders wish to make a PULSe workstation available to the same non-Permit Holder customer, the Exchange is proposing to introduce a fee reduction. Under the reduction, if two or more Permit Holders make the PULSe workstation available to the same non-Permit Holder customer, then the monthly fee will be $250 per workstation per Permit Holder. The Exchange also proposes an away-market routing fee to the entering Permit Holder of $0.10 per executed options contract (or equivalent share amount in the case of stock) for away-market routing of orders through the PULSe workstation.

The Exchange notes that the PULSe workstation offers the ability to route orders to any market, including CBOE. Therefore, to the extent a C2 TPH that is also a CBOE TPH obtains a PULSe workstation through C2, it is not necessary for that TPH to obtain a separate PULSe workstation through CBOE to route orders to CBOE. When the PULSe workstation is made available through C2 to a C2 TPH that is also a CBOE TPH, the PULSe workstation, away-market routing, and Routing Intermediary fees would be assessed by C2 only (*e.g.*, the monthly fee to a C2 TPH for one PULSe is $350 and the monthly fee for a CBOE TPH for one PULSe workstation is $350; if a PULSe workstation is made available through C2 to a C2 TPH that is also a CBOE TPH, the monthly fee would be $350, not $700). To the extent a C2 TPH is also a CBOE TPH, the away-market routing fee would not apply for the TPH's executions on C2 or CBOE because the fee is only applicable for away-market routing. The TPH would not be routing away, but instead would be submitting orders directly to C2 as a C2 TPH or CBOE as a CBOE TPH, as applicable, where the TPH's activity would be subject to the transaction fee schedule of C2 or CBOE, respectively. However, to the extent a C2 TPH is not a CBOE TPH, the away-market routing fee would apply to the C2 TPH's executions on CBOE.

The Exchange believes the fee structure represents an equitable allocation of reasonable fees in that the same fees are applicable to all users. The Exchange believes the workstation and routing intermediary fees are competitive with fees applicable to similar workstations that offer away-market routing services provided by other exchanges. The Exchange also believes it is reasonable and appropriate to reduce the monthly PULSe workstation fee when two or more TPHs make a workstation available to the same non-Permit Holder because, while we would still establish and maintain PULSe workstation technology arrangements with each TPH, we also anticipate that the non-Permit Holder's use of the workstation would be distributed among the TPHs. In addition, the Exchange believes that the $0.10 away-market routing fee is reasonable and appropriate in light of the fact that it is small in relation to the value to the user of the PULSe workstation and its extensive functionality, including its ability to facilitate the routing of orders to any securities exchange and in relation to the total costs typically incurred in routing and executing orders. The Exchange believes it is not necessary to apply this fee to a C2 TPH's executions on C2 (or to a dual C2 TPH/CBOE TPH's executions on CBOE) because the TPH is not routing away. Instead the TPH is submitting orders directly to C2 (or CBOE, as applicable) where the activity is subject to the transaction fee schedule of C2 (or CBOE, respectively). The Exchange also notes that use of the PULSe workstation and the away-market routing functionality available through the PULSe workstation are not compulsory. The services are to be offered as a convenience to Permit Holders and would not be the exclusive means available to a Permit Holder to send orders to C2, CBOE, CBSX or intermarket.

The PULSe workstation may be configured by the Exchange to cause C2 and/or CBOE to be the default destination exchange(s) for individually executed marketable option orders if C2 and/or CBOE is at the national best bid or offer ("NBBO"), regardless of size or time, but will allow any user to manually override C2 and/or CBOE as the default destination on an order-by-order basis.[8] Similarly, the PULSe workstation may also be configured by the Exchange to cause CBSX to be the default designation exchange for individually executed marketable stock orders if CBSX is at the NBBO, regardless of size or time, but will allow the user to manually override CBSX as the default destination on an order-by-order basis. The workstation also incorporates a function allowing option (stock) orders at a specified price to be sent to multiple exchanges with a single click ("sweep function"). The sweep function may be configured by the Exchange to cause an option order to be sent to C2 and/or CBOE for up to the full size quoted by C2 and/or CBOE if C2 and/or CBOE is at the NBBO.[9] Similarly, the sweep function may be configured by the Exchange to cause a stock order to be sent to CBSX for up to the full size quoted by CBSX if CBSX is at the NBBO. Again, the away-market

[7] The PULSe workstation may be made available by a TPH to its customers on a pass-through basis (where orders pass through the TPH's systems prior to reaching the Exchange) or a sponsored access basis. To the extent that a TPH makes the workstation available to a customer on a sponsored access basis, the customer would be considered a "sponsored user" and the TPH-customer relationship would be considered a Sponsoring Participant/Sponsored User relationship subject to the requirements of Rule 3.15, *Sponsored Users.*

[8] Nothing about the PULSe order routing functionality would relieve any Permit Holder that is using the PULSe workstation from complying with its best execution obligations. Specifically, just as with any customer order and any other routing functionality, a Permit Holder would have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through the PULSe functionality would allow for access to opportunities for price improvement if readily available. Moreover, a Permit Holder would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that would include its use of the PULSe workstation.

[9] For example, if a Permit Holder were to enter an option order to buy 250 contracts using the sweep function at a time when C2 is at the NBBO for 100 contracts, the sweep function will be configured to send an order for 100 contracts to C2, with the balance of the order routed as specified by the Permit Holder entering the order from the configurations offered by the PULSe workstation. Nothing will require a person using the PULSe workstation to use the sweep function, and, in this same example, if the Permit Holder wished to route the entire order for 250 contracts to an exchange other than C2 using the PULSe workstation, the Permit Holder will be free to manually override C2 as the default destination for the entire order.

routing functionality is to be offered as a convenience to Permit Holders and would not be an exclusive means available to a Permit Holder to send orders intermarket.[10]

To use the PULSe workstation to route to other markets, a Permit Holder must either be a PULSe Routing Intermediary or establish a relationship with a PULSe Routing Intermediary. A "PULSe Routing Intermediary" is a C2 Permit Holder that has connectivity to, and is a member of, other options and/or stock exchanges. If a Permit Holder sends an order from the PULSe workstation, the PULSe Routing Intermediary will route that order to the designated market on behalf of the entering Permit Holder. For Permit Holder convenience, CBOE will make available a list of PULSe Routing Intermediaries that provide third-party routing services. The Exchange proposes that each PULSe Routing Intermediary be charged a fee of $20 per PULSe workstation per month for each PULSe workstation that is enabled to send orders through that Routing Intermediary if another Permit Holder requests routing functionality through that Routing Intermediary. The Exchange is proposing that the PULSe Routing Intermediary fee be waived through December 31, 2010, thus this fee will be assessed beginning January 1, 2011.

Finally, the Exchange proposes to introduce a fee for non-standard services provided by STS. Non-standard services may include time and materials for non-standard installations of or modifications to PULSe to accommodate a Permit Holder's use of PULSe with other technologies. The Exchange is proposing a fee of $350 per hour plus costs.

The Exchange believes that the PULSe workstation will constitute a "facility" of C2 [11] to the extent that it is used with respect to orders for options and other securities.[12] A portion of the fees collected by C2 for the use of the workstation will be remitted to STS.[13]

The Exchange notes that FlexTrade engages and will engage in business activities in addition to its provision of services to STS and that these activities include providing other technology services to broker-dealers.[14] The Exchange also notes that STS may in the future engage in business activities in addition to making the PULSe workstation facility available, and that these activities may also include the provision of other technology services to broker-dealers. In this regard: (i) There will be procedures and internal controls in place that are reasonably designed so that FlexTrade does not unfairly take advantage of confidential information relating to PULSe in its other business activities and so that STS will not unfairly take advantage of confidential information relating to PULSe to the extent that STS engages in any other business activities other than providing the PULSe workstation. (ii) The books, records, premises, officers, directors, agents, and employees of STS, with respect to the PULSe workstation, as a facility of C2, will be deemed to be those of C2 for purposes of and subject to oversight pursuant to the Act. (iii) Use of the PULSe workstation will be optional. Permit Holders will not be required to use the PULSe workstation to initiate their orders, and a Permit Holder may use any available order entry system that it selects, including one that it develops itself, for use to initiate its orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(4) of the Act,[16] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Permit Holders in that the same fees and fee waivers are applicable to all users of the PULSe workstation.

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 purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and subparagraph (f)(2) of Rule 19b–4 [18] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[10] With respect to options (stocks), the Exchange also notes that the away-market functionality in the PULSe workstation will not displace the provisions of the Options Order Protection and Locked/Crossed Market Plan (Regulation NMS), which will continue to apply in the circumstances described in the Plan (Regulation NMS).

[11] The Exchange believes that the PULSe workstation will, in the language of Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2), constitute a property or service "for the purpose of effecting or reporting a transaction on an exchange * * *."

[12] The capability of the workstation to initiate orders for commodity futures and commodity options and other non-security products to be sent to a designated contract market, FCM, IB or other destination that does not constitute an "exchange" (as that term is defined in Section 3(a)(1), 15 U.S.C. 78c(a)(1), and used in Section 3(a)(2), 15 U.S.C. 78c(a)(2), of the Act) will not constitute part of the "facility" of CBOE.

[13] FlexTrade is not, and, at least initially, will not be registered as a broker-dealer under Section 15(a) of the Act, 15 U.S.C. 78o. STS also will not, at least initially, be registered as a broker-dealer under Section 15(a) of the Act. In this regard, we note the following: (i) C2 (and/or its affiliate, CBOE) will be primarily responsible for the marketing of the PULSe workstation. In no event will FlexTrade have any role in marketing the PULSe workstation. FlexTrade will not be a party to any agreements with Permit Holders for the PULSe workstation. (ii) In contributing services to STS, FlexTrade will be limited to providing software and systems technology and maintaining proper technical functioning. C2 will be responsible for ensuring that STS's provision of the PULSe workstation, as a facility of C2, meets C2's obligations as a self-regulatory organization. (iii) Unless it becomes registered as a broker-dealer under Section 15(a) of the Act, neither STS nor FlexTrade will hold itself out as a broker-dealer, provide advice related to securities transactions, match orders, make decisions about routing orders, facilitate the clearance and settlement of executed trades, prepare or send transaction confirmations, screen counterparties for creditworthiness, hold funds or securities, open, maintain, administer or close brokerage accounts, or provide assistance in resolving problems, discrepancies or disputes related to brokerage accounts. Should STS or FlexTrade seek to register as a broker-dealer in the future, the Exchange represents that the broker-dealer would not perform any operations without first discussing with the Commission staff whether any of the broker-dealer's operations should be subject to an Exchange rule filing required under the Act, 15 U.S.C. 78s(b)(1).

[14] The Exchange notes that FlexTrade is the sole member of a single member limited liability company named FlexTrade LLC, that FlexTrade LLC is a registered broker-dealer, and that FlexTrade and FlexTrade LLC each currently makes a front-end order entry workstation named "FlexTrader" available. FlexTrade LLC is not a Permit Holder of C2.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

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–C2–2010–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR C2–2010–007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–C2–2010–007 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28418 Filed 11–10–10; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63250; File No. SR–FINRA–2010–053]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Panel Composition Rule, and Related Rules, of the Code of Arbitration Procedure for Customer Disputes

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on October 25, 2010, 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 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 the panel composition rule, and related rules, of the Code of Arbitration Procedure for Customer Disputes ("Customer Code"), to provide customers with the option to choose an all public arbitration panel in all cases.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Under FINRA Dispute Resolution rules, parties in arbitration participate in selecting the arbitrators who serve on their cases. For customer claims of more than $100,000, the Customer Code currently provides for a three arbitrator panel [3] comprised of a chair-qualified public arbitrator, [4] a public arbitrator, [5] and a non-public arbitrator.[6] FINRA uses the computerized Neutral List Selection System ("NLSS") to generate random lists of 10 arbitrators from each of these categories. The parties select their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS. The Customer Code permits the parties to strike the names of up to four arbitrators from each list. The parties then rank the arbitrators remaining on the lists in order of preference. FINRA appoints the panel from among the names remaining on the lists that the parties return.

FINRA is proposing to amend the Customer Code to provide customers with the option to choose between two panel selection methods—the current panel selection method, which would be labeled "Composition Rules for Majority Public Panel" ("Majority Public Panel"), and a new panel selection method, which would be labeled "Composition Rules for Optional All Public Panel" ("Optional All Public Panel"). Under the proposed rule change, customers could choose the panel selection method; neither firms nor associated persons could choose the selection method.

The Majority Public Panel option would continue to provide for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator, and would retain the current limit of four strikes for each arbitrator list. The new Optional All Public Panel provision, if chosen by the customer, would allow parties to select

[3] Rule 12401 provides for a single, chair-qualified public arbitrator if the amount of the claim is not more than $100,000. It provides for a three arbitrator panel if the amount of a claim is more than $100,000, or is unspecified, or if the claim requests non-monetary damages. The parties, in claims of more than $25,000, but not more than $100,000, may agree in writing to have a three arbitrator panel.

[4] Rule 12400(c) specifies the criteria for arbitrator inclusion on the chairperson roster.

[5] Rule 12100(u) specifies the criteria FINRA uses to classify arbitrators as public.

[6] Rule 12100(p) specifies the criteria FINRA uses to classify arbitrators as non-public.

an all public arbitration panel. Under this new provision, FINRA would send the parties the same three lists of randomly generated arbitrators that they would have received under the Majority Public Panel option, but FINRA would allow each party to strike any or all of the arbitrators on the non-public arbitrator list. If individually, or collectively, the parties struck all of the non-public arbitrators, FINRA would complete the panel by appointing a public arbitrator. Thus, by striking all the arbitrators on the non-public list, any party could ensure that the panel would have three public arbitrators.

The proposed rule change would apply only to customer disputes. It would not apply to arbitrator selection in disputes involving only industry parties. FINRA believes giving customers the option of an all public panel will enhance confidence in and increase the perception of fairness in the FINRA arbitration process. All customers will have greater freedom in choosing arbitration panels, and any customer will have the power to have his or her case heard by a panel with no industry participants.

FINRA's Public Arbitrator Pilot Program

Customer advocates argue that the mandatory inclusion of a non-public arbitrator (often referred to as the "industry" arbitrator) in a three arbitrator case raises a perception that FINRA Dispute Resolution's current forum is not fair to customers. In order to address this perception, FINRA launched a pilot program ("the Pilot") that allows parties to choose a panel of three public arbitrators instead of two public arbitrators and one non-public arbitrator.

FINRA designed the Pilot to run for two sequential years, beginning October 6, 2008, and ending October 5, 2010. In Year One, 11 brokerage firms volunteered to participate in the Pilot, each contributing a set number of cases to the Pilot per year for two years. In Year Two, FINRA expanded the number of participating brokerage firms to 14 firms. In addition, several of the original participants increased their respective case commitments for Year Two. Participating firms agreed to extend the Pilot for a third year at the same case levels while the rule making process proceeds. Year Three of the Pilot began October 6, 2010, and ends October 5, 2011, or upon implementation of the proposed rule change, whichever comes first.

Under the Pilot, FINRA only permits a customer bringing the arbitration claim to decide whether his or her case should proceed under Pilot rules; the participating firms cannot select the Pilot cases. The parties receive the same three lists of proposed arbitrators that parties in non-Pilot cases receive. The difference is that, in the Pilot cases, any party can strike any or all of the arbitrators on the non-public list (as opposed to the four-strike limit for each party). If the parties rank one or more of the non-public arbitrators, FINRA appoints the highest ranked non-public arbitrator to the panel. If the parties strike all of the non-public arbitrators or if they are unable to serve, FINRA returns to the public arbitrator lists (the public list first, followed by the chair-qualified public list) to complete the panel. If no public arbitrators remain on the lists, FINRA uses NLSS to appoint randomly an additional public arbitrator. Thus, by striking all proposed non-public arbitrators, any party can choose a panel of three public arbitrators.

Reactions from participants in the Pilot indicate that customer representatives strongly support the right of customers to decide whether to select any non-public arbitrator. That feedback has led FINRA to propose amending the panel composition rule for customer cases to allow the customer party to choose between the current panel selection method and the method used in the Pilot. Unlike the Pilot, however, the proposed rule would apply to all customer disputes against any firm and any individual broker.

Details of the Proposed Rule Change

Currently, Rule 12402 (Composition of Arbitration Panels) specifies the panel composition for all customer cases.[7] Rules 12403 (Generating and Sending Lists to the Parties),[8] 12404 (Striking and Ranking Arbitrators),[9] 12405 (Combining Lists),[10] 12406 (Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List),[11] and 12411 (Replacement of Arbitrators) enumerate the procedures for selecting, appointing, and replacing arbitrators.[12] FINRA is proposing to consolidate these rules into two new rules: New Rule 12402 relating to customer cases with one arbitrator, and new Rule 12403 relating to customer cases with three arbitrators. New Rule 12402 would describe the procedures for selecting, appointing, and replacing the arbitrator in a single arbitrator case. New Rule 12403 would describe the two options that customers have for selecting arbitrators and would include the procedures for appointing and replacing arbitrators. The proposed rule change would apply to all customer cases.

FINRA would delete current Rules 12402, 12403, 12404, 12405, 12406, and 12411 in their entirety. FINRA would renumber the remaining rules in the 12400 series so that the numbering would remain consecutive after FINRA consolidated the rules.

New Rule 12402—Cases With One Arbitrator

New Rule 12402 (Cases with One Arbitrator) would consolidate the content of current Rules 12402, 12403, 12404, 12405, 12406, and 12411, relating to single arbitrator cases. FINRA is not proposing any substantive changes to the current procedures for selecting, appointing, and replacing arbitrators in cases with one arbitrator.

New Rule 12403—Cases With Three Arbitrators

New Rule 12403 (Cases with Three Arbitrators) would provide customers with two options for panel selection in three arbitrator cases. The first option, the Majority Public Panel, would consist of the panel composition method currently provided in the Customer Code. It would ensure that FINRA appoints one non-public arbitrator on a three arbitrator panel. The second

[7] Rule 12402 provides that a single arbitrator panel will consist of a chair-qualified public arbitrator, and that a three arbitrator panel will consist of a chair-qualified public arbitrator, a public arbitrator, and a non-public arbitrator.

[8] Rule 12403 provides that if a panel consists of one arbitrator, NLSS will generate a list of 10 chair-qualified public arbitrators. If a panel consists of three arbitrators, NLSS will generate a list of 10 chair-qualified public arbitrators, 10 public arbitrators, and 10 non-public arbitrators. Under the rule, NLSS excludes arbitrators from the list based on current known conflicts of interest identified in NLSS. The rule also details how NLSS generates the lists, and how FINRA sends lists to the parties and handles requests for additional information about arbitrators.

[9] Rule 12404 states that parties may strike up to four arbitrators from each list, leaving at least six arbitrator names remaining. It also explains the process for ranking arbitrator preferences and returning the lists to FINRA.

[10] Rule 12405 explains how FINRA prepares combined ranked lists of arbitrators based on the parties' numerical rankings.

[11] Rule 12406 explains that FINRA appoints the highest ranked available arbitrator from each of the combined lists and describes FINRA's procedures for appointing an arbitrator when the number of arbitrators available to serve from a combined list is not sufficient to fill the panel. The rule also provides that appointment occurs when FINRA sends notice to the parties of the names of the arbitrators on the panel and that arbitrators must execute FINRA's arbitrator oath or affirmation before making any decision as an arbitrator or attending a hearing.

[12] Rule 12411 provides that if FINRA removes an arbitrator, or an arbitrator becomes otherwise unable or unwilling to serve, FINRA appoints as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator from the applicable combined list. It also states the procedure for replacing an arbitrator if there aren't any arbitrators left on a combined list.

option, the Optional All Public Panel (based on the Pilot), if selected by the customer, would guarantee that any party could select an all public panel. As stated above, the proposed rule change allows only customers to make the election between the two panel selection methods. If implemented as proposed, FINRA will allow any customer that has not been sent lists of arbitrators to choose between the two panel selection methods. Except as outlined below, FINRA would incorporate into new Rule 12403 the contents of current Rules 12403, 12404, 12405, 12406, and 12411, that are pertinent to three arbitrator cases.

Under the proposed rule change, the customers could elect either arbitrator selection method within 35 days from service of the Statement of Claim. If the customers declined to make an affirmative election by the 35-day deadline, FINRA would apply the composition rule for a Majority Public Panel.

Under either panel selection option, the parties would receive three lists—*i.e.,* one with 10 chair-qualified public arbitrators, one with 10 public arbitrators, and one with 10 non-public arbitrators. FINRA would permit each party to strike up to four arbitrators on the chair-qualified public and public lists, leaving at least six arbitrator names remaining on each party's list. However, the process for striking arbitrators on the non-public list would be different for each method, as detailed below.

Majority Public Panel—This is the current method for panel composition. Under this method:

- Each separately represented party could exercise up to four strikes on the non-public list.
- FINRA would appoint the highest-ranked available non-public arbitrator from the combined rankings.
- In cases in which the parties struck all of the arbitrators appearing on the non-public list or when all remaining arbitrators on the non-public list were unable or unwilling to serve for any reason, FINRA would appoint a non-public arbitrator selected randomly by NLSS.

Optional All Public Panel—Under this method of panel composition:

- All parties would have unlimited strikes with respect to the non-public list (meaning that any party may strike up to all names on the non-public list).
- FINRA would not appoint a non-public arbitrator if the parties (individually or collectively) struck all the arbitrators appearing on the non-public list or if all remaining arbitrators on the non-public list were unable or unwilling to serve for any reason.
- If all non-public arbitrators were stricken or unavailable to serve, FINRA would select the next highest-ranked public arbitrator to complete the panel.
- If all public arbitrators were stricken or unavailable to serve, FINRA would select the next highest-ranked arbitrator on the public chair-qualified list.
- If all public chair-qualified arbitrators were stricken or unavailable to serve, FINRA would appoint a public arbitrator selected randomly by NLSS.

Additional Clarifying Provisions

FINRA proposes to add clarity to Rules 12402 and 12403 by stating that parties are not required to send a copy of their ranking list to opposing parties.

In addition, under the Optional All Public Panel method, FINRA would appoint a non-public arbitrator to a panel if the Director did not receive a party's ranked lists within the timeframe for returning lists to FINRA because the Director would proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. FINRA proposes to add clarity to the Optional All Public Panel provision by alerting parties that a failure to comply with the required timeframe for returning lists to FINRA may result in the appointment of a panel consisting of two public arbitrators and one non-public arbitrator.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] 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 believes that providing customers with choice on the issue of including a non-public arbitrator on the panel deciding their case will enhance customers' perception of the fairness of FINRA's rules and of its securities arbitration process.

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.

[13] 15 U.S.C. 78o–3(b)(6).

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–2010–053 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–2010–053. 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 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 Number SR–FINRA–2010–053 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28419 Filed 11–10–10; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63255; File Nos. SR–BATS–2010–025; SR–BX–2010–66; SR–CBOE–2010–087; SR–CHX–2010–22; SR–FINRA–2010–049; SR–NASDAQ–2010–115; SR–NSX–2010–12; SR–NYSE–2010–69; SR–NYSEAmex–2010–96; SR–NYSEArca–2010–83]

Self-Regulatory Organizations; BATS Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Board Options Exchange, Incorporated; The Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendment No. 1, To Enhance the Quotation Standards for Market Makers

November 5, 2010.

I. Introduction

On September 17, 2010, each of BATS Exchange, Inc. ("BATS"), NASDAQ OMX BX, Inc. ("BX"), Chicago Board Options Exchange, Incorporated ("CBOE"), The Chicago Stock Exchange, Inc. ("CHX"), The NASDAQ Stock Market LLC ("Nasdaq"), New York Stock Exchange LLC ("NYSE"), National Stock Exchange, Inc. ("NSX"); NYSE Amex LLC ("NYSE Amex"); NYSE Arca, Inc. ("NYSE Arca"), and the Financial Industry Regulatory Authority, Inc. ("FINRA," and together with BATS, BX, CBOE, CHX, Nasdaq, NYSE, NSX, NYSE Amex and NYSE Arca, the "SROs") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder,[2] proposed rule changes to amend certain of their respective rules to enhance minimum quoting standards for market makers registered with the exchange or, in the case of FINRA, market makers that quote on the Alternative Display Facility ("ADF"). The purpose of these rule changes is to require equity market makers to post continuous two-sided quotations within a designated percentage of the inside market to eliminate market maker "stub quotes," that are so far away from the prevailing market that they are not intended to be executed (such as an order to buy at a penny or sell at $100,000).

The proposed rule changes were published for comment in the **Federal Register** on September 24 and September 27, 2010.[3] In addition, each of the SROs filed an Amendment No. 1 to their respective proposed rule changes.[4] The Commission received no comments on the proposed rule changes. This order approves the proposed rule changes on an accelerated basis.

II. Description of the Proposals

On May 6, 2010, the U.S. equity markets experienced a severe disruption.[5] Among other things, the prices of a large number of individual securities suddenly declined by significant amounts in a very short time period, before suddenly reversing to prices consistent with their pre-decline levels. This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices and subsequently broken.

As noted in the May 6 Staff Report, executions against stub quotes represented a significant proportion of broken trades on May 6. To address this aspect of the events of May 6, in coordination with the Commission, the SROs filed proposals to address stub quotes by introducing minimum quoting standards for market makers.[6] The proposals require market makers to maintain continuous two-sided quotations throughout the trading day[7] that are within a certain percentage band of the national best bid and offer ("NBBO"). These requirements apply to all NMS stocks[8] during normal market hours. For stocks subject to the individual stock circuit breaker pilot program (*i.e.,* stocks that are included in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 62945 (September 20, 2010), 75 FR 58460 (September 24, 2010) (SR–BATS–2010–025); 62954 (September 20, 2010), 75 FR 59305 (September 27, 2010) (SR–BX–2010–66); 62951 (September 20, 2010), 75 FR 59309 (September 27, 2010) (SR–CBOE–2010–087); 62949 (September 20, 2010), 75 FR 59315 (September 27, 2010) (SR–CHX–2010–22); 62953 (September 20, 2010), 75 FR 59300 (September 27, 2010) (SR–FINRA–2010–049); 62950 (September 20, 2010), 75 FR 59311 (September 27, 2010) (SR–NASDAQ–2010–115); 62952 (September 20, 2010), 75 FR 59316 (September 27, 2010) (SR–NSX–2010–12); 62948 (September 20, 2010), 75 FR 58455 (September 24, 2010) (SR–NYSE–2010–69); 62947 (September 20, 2010), 75 FR 58453 (September 24, 2010) (SR–NYSEAmex–2010–96); 62946 (September 20, 2010), 75 FR 58462 (September 24, 2010) (SR–NYSEArca–2010–83).

[4] The SROs filed their respective Amendments No. 1 on November 4, 2010. Each of the Amendments No. 1 modifies the proposals so that a market maker is not expected to enter a quote based on the prior day's last sale at the commencement of regular trading hours if there is no National Best Bid ("NBB") or National Best Offer ("NBO"). As amended, in such a circumstance, the quoting obligation would commence as soon as there has been a regular-way transaction on the primary listing market in the security, as reported by the responsible single plan processor. In addition, the Amendment modifies the proposals so that a market maker's quoting obligations shall be suspended during a trading halt, suspension or pause, and shall not re-commence until after the first regular-way transaction on the primary listing market following that halt, suspension or pause, as reported by the responsible single plan processor. Finally, so that the markets may coordinate implementation upon approval of the proposed rule changes, in Amendment No. 1 the SROs stated that the planned implementation date for the proposed rule changes would be December 6, 2010.

[5] The events of May 6 are described more fully in the report of the staffs of the Commodity Futures Trading Commission ("CFTC") and the Commission, titled *Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues,* "Findings Regarding the Market Events of May 6, 2010," dated September 30, 2010 ("May 6 Staff Report").

[6] *See supra* note 3.

[7] As noted, Amendment No. 1 modifies the proposals so that the quoting obligation would commence as soon as there has been a regular-way transaction on the primary listing market in the security, as reported by the responsible single plan processor. The Amendment also modifies that the market maker's quoting obligations shall be suspended during a trading halt, suspension or pause, and shall not re-commence until the first-regular way print on the primary listing market following that halt, suspension or pause, as reported by the responsible single plan processor. *See supra* note 4.

[8] *See* 17 CFR 242.600 (defining NMS stock as "any NMS security other than an option" and NMS security as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options").

the S&P 500, stocks that are included in the Russell 1000, and certain exchange-traded products),[9] market makers must enter quotes that are not more than 8% away from the NBBO. A quote that is entered at or within 8% away from the NBBO is allowed to drift a certain additional amount away from the NBBO before it must be adjusted by the market maker. However, if the NBBO moves to a point such that the quote is 9.5% away from the NBBO, that quote must be adjusted so that it is no further than 8% away from the NBBO. During times in which a single-stock circuit breaker is not applicable (*i.e.,* before 9:45 a.m. and after 3:35 p.m.), market makers for such securities must maintain a quote no further than 20% away from the NBBO. Similar to the requirements when the single-stock circuit breakers are in effect, a market maker's quote may drift an additional 1.5% away from the NBBO without adjustment (*i.e.,* until it is 21.5% away from the NBBO), at which point it would need to be adjusted to a quote no further than 20% away from the NBBO. In the absence of an NBBO, the same percentages apply, but the market maker must use the consolidated last sale instead of the NBBO.

For securities that are not subject to the single-stock circuit breakers, market makers must maintain quotes that are no more than 30% away from the NBBO. Like securities subject to the single-stock circuit breakers, if the NBBO moves to a point such that the quote is 31.5% away from the NBBO, the quote must be adjusted to a quote no further than 30% away from the NBBO.

Nothing in the proposals precludes a market maker from voluntarily quoting at price levels that are closer to the NBBO than required under the proposals.

The planned implementation date for the proposed rule changes is December 6, 2010.

As part of their rule proposals, certain SROs proposed additional amendments to conform their rules to those of the other SROs with respect to these market maker obligations. For example, FINRA proposed to amend its rule to explicitly state that the duties of a market maker include assisting in the maintenance of fair and orderly markets, while NYSE and NYSE Amex proposed to amend their respective rules to explicitly state that the duties of a market maker include maintaining a continuous two-sided quote with a displayed size of at least one round lot.

In addition, BATS, BX and Nasdaq proposed functionalities to automatically update market makers' quotes on their exchanges. Under the BATS proposal, such functionality would be optional. Upon the request of a market maker, the BATS system would automatically enter and adjust quotes in accordance with the proposed quotation requirements. If a market maker cancelled the quotations entered by BATS through this functionality, the market maker would remain responsible for complying with the minimum quotation requirements imposed by the new rule.

For both BX and Nasdaq, the exchange would automatically create a quote to comply with the proposed quoting requirements for each issue in which a market maker is registered. BX and Nasdaq would adjust one of these automated quotations when it drifts to within 4% of the NBBO (or, if greater, one-quarter of the applicable percentage necessary to trigger an individual stock trading pause), or if the quote drifts to within the applicable percentage necessary to trigger an individual stock trading pause less 0.5%. If this occurs, BX or Nasdaq would adjust and display a quotation for the market maker at the appropriate percentage away from the NBBO. Other quotations directly entered by market makers would be allowed to move freely towards the NBBO for potential execution. If a quotation automatically entered by BX or Nasdaq on behalf of a market maker is executed, BX or Nasdaq would refresh the market maker's quote on the executed side of the market at the applicable percentage away from the NBBO or, if there is no NBBO, the last reported sale.

Finally, NYSE Arca proposed making conforming changes to its Q Order type. Specifically, NYSE Arca proposed to eliminate the "standard Q," an order that has a price of $0.01 for the bid and two times the previous day's close for the offer, as an available order type. NYSE Arca also proposed to add to its Rule 7.31(k) that, to the extent that other types of Q Order functionality remain, nothing in the rule relating to Q Orders would be construed to relieve market makers of their obligations under the revised NYSE Arca Rule 7.23, which includes the proposed market maker quoting obligations.[10]

III. Commission Findings

The Commission finds that the proposed rule changes implementing enhanced market maker quotation standards are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and national securities associations. In particular, with respect to the proposals submitted by the national securities exchanges, the Commission finds that the proposals are consistent with Section 6(b)(5) of the Act,[11] which, among other things, requires that the rules of national securities exchanges be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[12] Similarly, the Commission finds that the FINRA proposal is consistent with Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the proposals are consistent with Section 11A(a)(1) of the Act[14] in that they seek to assure fair competition among brokers and dealers and among exchange markets.

By requiring market makers to maintain quotes that are priced within a broad range around the NBBO, the proposed rules should help assure that quotations submitted by market makers to an exchange or FINRA's ADF, and displayed to market participants, bear some relationship to the prevailing market price, and thus should promote fair and orderly markets and the protection of investors. In addition, by precluding market makers from submitting "stub" quotes that are so far

[9] *See* Securities Exchange Act Release Nos. 62283 (September 10, 2010), 75 FR 56608 (September 16, 2010); 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010).

[10] NYSE Arca has represented that it will separately file a proposed rule change to delete the text of Rule 7.31(k)(1)(B)(1), which states that a "Q Order entered with reserve size * * * will automatically repost with the original display size and $10 below the original bid or $10 above the original offer, but never below $0.01," and to remove the accompanying Q Order functionality. The proposed date of implementation for this change will be December 6, consistent with the implementation date for the new market maker quoting requirements. *See* e-mail from Clare F. Saperstein, Vice President, Regulatory Policy and Management, NYSE Regulation, Inc., to David Liu, Senior Special Counsel, and Andrew Madar, Special Counsel, Commission, dated November 5, 2010.

[11] 15 U.S.C. 78f(b)(5).

[12] In approving the proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78k–1(a)(1).

away from the prevailing market price that they are not intended to be executed, the proposed rules should reduce the risk that trades will occur at irrational prices. As noted above, a large number of trades were executed at irrational prices on May 6, 2010 and were ultimately broken. In this respect, the proposals also should promote the goals of investor protection and fair and orderly markets. Finally, because the SROs are proposing uniform rules with respect to these market maker quoting obligations, the proposed rule changes as a whole will assure these baseline standards are applied throughout the equity markets.

The Commission also finds that the functionality proposed by BATS, BX and Nasdaq is consistent with Section 6(b)(5) of the Act,[15] which, among other things, requires that the rules of national securities exchanges be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposed functionality should assist market makers on BATS, BX and Nasdaq in maintaining continuous, two-sided limit orders within the prescribed limits in the securities in which they are registered to satisfy their new quoting obligations.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed Amendments No. 1 on an accelerated basis. These amendments reflect the concern that the proposed market maker quoting obligations should not apply during times when market makers should be permitted to absorb material information affecting a security for which they are registered as a market maker, whether before or during the trading day, *i.e.,* until there has been a regular-way transaction on a security's primary listing market or during a trading halt. Approving these amendments on an accelerated basis would allow these provisions to be effective as of the implementation date of the new market maker requirements.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule changes (SR–BATS–2010–025; SR–BX–2010–66; SR–CBOE–2010–087; SR–CHX–2010–22; SR–FINRA–2010–049; NASDAQ–2010–115; SR–NSX–2010–12; SR–NYSE–2010–69; SR–NYSEAmex–2010–96; SR–NYSEArca–2010–83), as modified by Amendment No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28443 Filed 11–10–10; 8:45 am]

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[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63208A; File No. SR–DTC–2010–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a Disincentive Fee Associated With the Deposit Automation Management System

November 5, 2010.

Correction

In FR Document No. 2010–27856 beginning on page 68013 for Thursday, November 4, 2010, the paragraph under which The Depository Trust Company ("DTC") filed the proposed rule change was incorrectly identified as section 19(b)(3)(A)(iii) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 19b–4(f)(3) thereunder. The correct paragraph under which DTC filed the proposed rule change is section 19(b)(3)(A)(ii) of the Exchange Act and Rule 19b–4(f)(2).

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63252; File No. SR–Phlx–2010–150]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Fee Schedule

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on October 29, 2010, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange to amend its Fee Schedule to: (i) Delete a symbol from the list of "Select Symbols" included in the "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" section of the Fee Schedule; (ii) change the symbol of a Select Symbol to reflect a recent corporate action; (iii) add the KBW Bank Index ("BKX") to the list of symbols in the Equity Options Fees and assess an Options Surcharge on BKX; (iv) delete the Cancellation Fee for electronically delivered customer orders from Section I of the Fee Schedule; and (v) amend the fees for electronic auctions and opening process.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after November 1, 2010.

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, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule, specifically Section I, Rebates and Fees for Adding and Removing Liquidity In Select Symbols, and Section II, Equity Options Fees.

Section I

BIDU and UAUA

The Exchange is proposing to amend Section I of the Fee Schedule to remove the symbol for Baidu Inc. ("BIDU") from the list of Select Symbols subject to the Rebates and Fees for Adding and Removing Liquidity. The Exchange also proposes to change the symbol for UAL Corporation from "UAUA" to "UAL" to reflect a recent corporate action.[3]

Cancellation Fee

Currently, the Exchange assesses a Cancellation Fee on electronically delivered customer and Professional AON orders that are submitted by a member. The Exchange assesses $2.10 per order for each cancelled electronically delivered customer order and $1.10 per order for each cancelled electronically delivered AON order submitted by a Professional in excess of the number of customer or AON orders submitted by a Professional executed on the Exchange by a member organization in a given month.[4] A Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered customer or AON orders submitted by a Professional, respectively, are cancelled.[5]

The Exchange is proposing to amend the Cancellation Fee in Section I so that the Cancellation Fee would not apply to customer orders in the Select Symbols.[6] The Cancellation Fee would continue to apply to Professional All-or-None ("AON") orders in the Select Symbols. The Cancellation Fee for both customer and Professional AON orders would continue to apply for all other symbols.

The Exchange believes the Cancellation Fee is no longer required for customers in the Select Symbols to cover the cost of system utilization due to planned capacity investments. In addition, the requirement to mark Professional orders has also alleviated some of the capacity issues that resulted from customer cancel orders.[7] The Exchange believes that by removing the Cancellation Fee for customer orders in the Select Symbols only will encourage trading in those Select Symbols. The Exchange intends to evaluate the customer Cancellation Fee for non-Select Symbols as well to determine if the volume from cancelled customer orders contributes to the system congestion.

Electronic Auction and Opening Process

The Exchange proposes to amend and clarify its Fee Schedule with respect to electronic auctions. Currently, complex orders executed electronically in the Exchange's Complex Order Live Auction ("COLA")[8] are assessed the Fees set forth in Part B of the Fee Schedule. Orders other than complex orders executed in electronic auctions (such as the Exchange's Quote Exhaust and Market Exhaust Auctions)[9], and in the Exchange's opening process, are currently assessed the fees set forth in Part A of the Fee Schedule. The Exchange is proposing to assess all orders executed in any of the Exchange's electronic auctions, and the opening process, the fees set forth in Part B of the Fee Schedule.

BKX

The Exchange is proposing to add BKX to the list of symbols that are subject to: (i) The fees set forth in Section II, and (ii) the options surcharge.[10] The Exchange proposes to assess a $.10 per contract Option Surcharge on Specialists[11], Registered Option Traders[12], Streaming Quote Trader[13], Remote Streaming Quote Trader[14], Broker-Dealers and Firms. The Exchange believes that the addition of BKX will encourage order flow to the Exchange.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after November 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(4) of the Act[16] 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 removal of one symbol from the Fee Schedule regarding Rebates and

[3] On October 1, 2010, UAL Corporation announced that as a result of a merger between UAL Corporation and Continental Airlines, Inc. that it would change its name and underlying symbol. UAL Corporation is now known as United Continental Holding, Inc.

[4] All customer and AON orders submitted by a Professional from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period are aggregated and counted as one executed customer or AON option order submitted by a Professional.

[5] A Cancellation Fee does not apply to pre-market cancellations, Complex Orders that are submitted electronically, unexecuted Immediate-or-Cancel (IOC) customer orders or cancelled customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the customer orders were received by the Exchange.

[6] The Select Symbols are listed in Section I of the Fee Schedule.

[7] *See* Securities Exchange Act Release No. 61802 (April 5, 2010), 75 FR 17193 (March 30, 2010) (SR–Phlx–2010–05).

[8] COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) Following a COOP, or (2) during normal trading if the Phlx XL II system receives a Complex Order that improves the cPBBO. *See* Exchange Rule 1080. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL."

[9] Market Exhaust occurs when there are no Phlx XL II participant (specialist, SQT or RSQT) quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the Phlx XL II system, using Market Exhaust, will initiate a Market Exhaust auction for the initiating order. Under Market Exhaust, any order volume that is routed to away markets will be marked as an Intermarket Sweep Order or "ISO." *See* Exchange Rule 1082. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL."

[10] This footnote contained an inaccuracy and was deleted. *See* E-mail from Angela Saccomandi Dunn, Assistant General Counsel, Phlx to Ronesha A. Butler, Special Counsel, Division of Trading and Markets ("Division"), Commission dated November 2, 2010.

[11] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[12] A Registered Option Trader or 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. A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. *See* Exchange Rule 1014 (b)(i) and (ii).

[13] A Streaming Quote Trader or SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned.

[14] A Remote Streaming Quote Trader or RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

Fees for Adding and Removing Liquidity will apply to all categories of participants in the same manner. Also, the amendment to the UAUA symbol is for ease of reference in identifying symbols.

The Exchange believes that the proposed amendments to the customer Cancellation Fee, with respect to Select Symbols, are reasonable because they are no longer required to recover costs associated with excessive order cancellation activity. The Exchange believes that the proposed rule change will enable the Exchange to determine the impact, if any, on system capacity when there is no fee to cancel certain order types. The Exchange believes that there should not be increased system congestion as a result of removing the customer Cancellation Fee in the Select Symbols. The Exchange will assess the impact to the system after the removal of the fee to determine if the number of cancellation does not once again increase. The Exchange removed the customer Cancellation Fee only in Select Symbols to make such a determination.

The Exchange believes that the Cancellation Fee is still necessary with respect to Professional AON orders because those orders are treated as customer orders for purposes of priority. Member organizations must indicate whether orders are for Professionals. The Exchange believes that this requirement to mark an order as Professional has shifted the source of the system congestion from the customer orders to the Professional AON orders. By continuing to assess a Cancellation Fee for Professional AON orders in all symbols will continue to ease system congestion and allow the Exchange to recover costs associated with excessive order cancellation activity.

The Exchange's proposal to assess all electronic auctions and the opening process the fees in Part B will simplify the Fee Schedule so that all participants will equally be assessed the complex order fees. The fees in Part B are reasonable because they are equal to or lower than the fees currently assessed on the various market participants. Customers will receive a higher rebate as a result of amending the fees.[17]

The Exchange believes that assessing a $.10 Options Surcharge on BKX and adding BKX to Section II, Equity Options, is equitable since it is similar to option surcharges [18] assessed by the International Securities Exchange, LLC ("ISE") [19] and NYSEArca, Inc. ("NYSE Arca") [20].

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.[21] 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–Phlx–2010–150 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–150. 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,[22] 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–150 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28454 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

[17] The Commission notes that firms and broker-dealers will also receive rebates under the proposed Fee Schedule.

[18] The Exchange revised the text to more accurately describe which Phlx fees were similar to ISE and NYSE Arca fees. *See* E-mail from Angela Saccomandi Dunn, Assistant General Counsel, Phlx to Ronesha A. Butler, Special Counsel, Division, Commission dated November 2, 2010.

[19] *See* ISE's Schedule of Fees.

[20] *See* NYSE Arca's Fee Schedule.

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] The text of the proposed rule change is available on Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's Web site at *http://www.sec.gov,* at Phlx, and at the Commission's Public Reference Room.

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63270; File No. SR–NASDAQ–2010–141]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add New Rule 7014 To Enable NASDAQ Members To Qualify for a Monthly Fee Credit

November 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to add new Rule 7014 (Investor Support Program) to enable NASDAQ members to qualify for a monthly fee credit.

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. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C 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 adding new Rule 7014 to establish an Investor Support Program ("ISP"), which would enable NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities.[3] The goal of the ISP is to incentivize members to provide such targeted liquidity to the Nasdaq Market Center.[4] Maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) [5] would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.[6]

The first step for a NASDAQ member wishing to participate in the ISP is to designate one or more of its NASDAQ ports for ISP use.[7] Orders entered through ISP-designated ports will be used for ISP credit calculations.

Subsection (b) of Rule 7014 describes how the ISP credit will be calculated. The ISP credit formula provides for a monthly credit of 3 cents per 100 shares of displayed liquidity provided through an ISP-designated port to the extent that such liquidity results in an increase (compared with August 2010) in the overall level of liquidity that the member provides to NASDAQ measured as a proportion of the consolidated share volume traded by all market participants across all trading venues. To this end, a member's "Baseline Participation Ratio" is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume of System Securities [8] traded in August 2010.[9] To determine whether a member added liquidity to NASDAQ in a given month, NASDAQ would perform the same calculation on a monthly basis for the then-current month and compare the resulting ratio to the Baseline Participation Ratio. If the member's then-current month's ratio is higher than the Baseline Participation Ratio, then the member's "Added Liquidity" for that month would be calculated by multiplying the difference between the two ratios by such month's consolidated average daily share volume of System Securities traded across all venues (if the result is a negative number, then Added Liquidity would be deemed zero).[10] To determine the amount of the ISP credit, NASDAQ would multiply $0.0003 by the lower of: (1) The number of shares of displayed liquidity provided in orders entered by the member thorough its ISP-designated ports and executed in the Nasdaq Market Center during the given month, or (2) the amount of Added Liquidity for the given month. Any ISP credit issued pursuant to Rule 7014 will be in addition to (and will not replace) any other credit or rebate for which a member may qualify.

Subsection (c) contains requirements designed to limit ISP credit eligibility to targeted orders. This is accomplished by establishing a maximum ratio (set at 10) of (i) liquidity-providing orders placed from all of given member's ISP-designated ports to (ii) liquidity-providing orders placed from such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The liquidity would, as discussed below, emanate from members that have a low order to execution ratio.

[4] The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). *See also* Mary L. Schapiro, *Strengthening Our Equity Market Structure* (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors).

[5] In the January 2010 Concept Release, the Commission noted that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume. *See* Concept Release, Figure 6. In her September 2010 speech, Chairman Schapiro referenced that figure and the fact that it continued to grow: "today, nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public. The percentage executed by these dark, non-public markets is increasing nearly every month." Schapiro Speech.

[6] The Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. *See* Concept Release. Moreover, Chairman Schapiro identified "two concerns that go to the core of our equity market structure: First, whether the quality of price discovery has declined, and second, whether these changes in our market structure could undermine the fair and level playing field essential to investor protection, capital formation and vibrant capital markets generally." Schapiro Speech.

[7] Subsequent to initial port designation, a member may add or remove designated ports for ISP use no later than the first trading day of the month when the desired change is to become effective.

[8] The term "System Securities" is defined as all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan. Rule 4751(b).

[9] *See* Proposed Rule 7014(d)(2).

[10] *See* Proposed Rule 7014(d)(1).

member's ISP-designated ports and actually executed (at least partially) in the Nasdaq Market Center. If in a given month this ratio is 10 or higher for a given member (usually because the member cancelled a large portion of the orders placed), then the member would not receive ISP credit for that month. In calculating the ratio, NASDAQ will exclude pegged, odd-lot and System Hours and Market Hours Immediate-or-Cancel orders,[11] and will not double-count in the event of multiple partial executions of a single order.

The rule sets 10 million shares daily on average as the minimum qualifying volume of shares in executed liquidity-providing orders entered from a member's ISP-designated ports. This is done to attract firms with substantive amounts or retail and institutional order flow that may provide such targeted liquidity to NASDAQ. If, in a given month, this daily average is lower than 10 million shares, the member would not qualify for ISP credit. It is expected that both the execution ratio and the volume minimum would serve to encourage members to enter orders that are likely to be executed.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The rule change establishes a program that enables NASDAQ members to earn a monthly fee credit for increasing the NASDAQ-traded volume of what are generally retail and institutional investor orders in exchange-traded securities. The goal of the program is to encourage members to enter such orders in the Nasdaq Market Center.

While the program distinguishes among orders, such distinctions "are not designed to permit unfair discrimination"[14] but, rather, are intended to promote submission of liquidity-providing orders to NASDAQ, which would benefit all NASDAQ members and all investors. Maintaining and increasing the proportion of retail and institutional orders in exchange-listed securities executed on a registered national securities exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Furthermore, setting a minimum monthly volume of eligible ISP orders as a condition for any fee credit eligibility (and therefore establishing a minimum threshold amount for any monthly credit) is not designed to discriminate unfairly, but rather to attract targeted retail and institutional investor liquidity. Likewise, the program is consistent with the Act's requirement "for the equitable allocation of reasonable dues, fees, and other charges."[15] As explained in the immediately preceding paragraphs, members who choose to increase the volume of ISP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore an additional credit, as contemplated in the proposed program, is equitable.

Finally, NASDAQ notes that the intense competition among several national securities exchanges and numerous OTC venues effectively guarantees that fees and credits for the execution of trades in NMS securities remain equitable and are not unfairly discriminatory.[16]

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17] 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–NASDAQ–2010–141 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 Number SR–NASDAQ–2010–141. 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,[18] 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

[11] *See* Nasdaq Rule 4751(f)(4), (g)(3) and (h)(1) and (5).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

[15] *See* Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4).

[16] *See, e.g.,* Concept Release (discusses the various venues where trades are executed).

[17] 15 U.S.C. 78s(b)(3)(a)(ii).

[18] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–141 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28545 Filed 11–10–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63266; File No. SR–NYSE–2010–67]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by New York Stock Exchange LLC Changing the NYBX Order Execution Sequence

November 5, 2010.

I. Introduction

On September 9, 2010, the New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] to change the execution of algorithm of the New York Block Exchange ("NYBX" or the "Facility"), an electronic trading facility of the NYSE. The proposed rule change was published for comment in the **Federal Register** on September 24, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYBX is an electronic facility of the Exchange for the trading of undisplayed orders in NYSE-listed securities.[4] NYSE Rule 1600 governs the operation of the NYBX.

When an order enters the Facility, the Facility scans its own book, the NYSE's Display Book ("DBK") (both displayed and undisplayed orders), and the protected quotations of automated trading centers to identify marketable contraside interest.[5] Following this review, if marketable contraside interest exists and the applicable minimum triggering volume threshold of the incoming order is met, the Facility will commence a sequential process for executing the incoming order. As part of this process, the full remaining size of the incoming order will be routed back and forth between the Facility and the DBK at each price point, even though only a small portion of the order might be filled at a particular price point. This "oversizing" allows any CCS interest in the DBK, which the Facility is not aware of, to be triggered at each price point. During the sequential routing process, portions of the incoming order will be routed away to hit protected quotations of automated trading centers as necessary to avoid trade throughs.

The NYSE proposes to change the order execution method from the current sequential, "oversizing" process to a simultaneous process. When a market evaluation indicates that sufficient marketable liquidity exists to meet the incoming order's minimum trading volume threshold, the Facility will divide the incoming order into separate orders that will be routed simultaneously to execute against marketable contraside liquidity in the DBK and/or other automated trading centers up to the price of the incoming order. The orders routed to the DBK will no longer be oversized. The remainder of the original order will execute, to the extent possible, against contraside interest in the Facility at the same or better prices. Using this approach, any orders sent by the Facility to the DBK would not trigger any CCS interest. In addition, the Exchange is proposing to amend the Facility's order-routing algorithm to route away to hit the protected quotations of automated trading centers even in some cases where it would not be necessary to do so to avoid a trade through.[6]

The Exchange states that the proposal is designed to allow a NYBX order to better capture the available contra side liquidity revealed during the Facility's initial market evaluation. According to the NYSE, some NYBX orders currently are not able to execute against available contra side liquidity, because of "the disappearance or the adjustment of a substantial portion of the available contra side liquidity that shows up on the initial market evaluation, before the NYBX order is able to execute against that liquidity." [7]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder are applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that an exchange have rules designed 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 Commission believes that the proposal is reasonably designed to increase the fill rates of NYBX orders in a manner consistent with Regulation NMS, by capturing a higher percentage of the marketable contra side liquidity that may be available for execution, as revealed by the Facility's initial market evaluation. The proposal should also benefit market participants whose orders are displayed at automated trading centers, by increasing their fill rates against NYBX orders. Accordingly, the Commission finds that the proposal is reasonably designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is also consistent with the protection of investors and the public interest.

IV. Conclusion

It is therefore ordered, that pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2010–67) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28542 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

[19] 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. 62955 (September 20, 2010), 75 FR 58456 ("Notice").

[4] *See* Securities Exchange Act Release No. 59282 (January 22, 2009), 74 FR 5009 (January 28, 2009) (NYSE–2008–119).

[5] *See* NYSE Rule 1600(d)(1)(B).

[6] *See* proposed NYSE Rule 1600(d)(1)(C)(iii).

[7] *See* Notice, *supra* note 3.

[8] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63259; File No. SR–BX–2010–075]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Assessed for Use of the Testing Facility

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2010, NASDAQ OMX BX, Inc. ("BX"), 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 BX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX proposes to amend the fees assessed for use of the Testing Facility. BX will implement the proposed rule change on November 1, 2010.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7030. Other Services

(a)–(c) No change.

(d) Testing Facility

(1) Subscribers that conduct tests of their Exchange access protocols connection or market data vendor feeds through the Exchange's Testing Facility (Testing Facility) shall pay *$300 per port, per month.*[the following charges:

$285/hour—For Active Connection testing using current Exchange access protocols during the normal operating hours of the Testing Facility;

No Charge—For Idle Connection testing using current Exchange access protocols;

$333/hour—For Active Connection testing using current Exchange access protocols at all times other than the normal operating hours of the Testing Facility.]

(2) No change.

(3) The foregoing [hourly] fees shall not apply to [market data vendor feed testing, or] testing occasioned by:

(A) New or enhanced services and/or software provided by the Exchange;

(B) Modifications to software and/or services initiated by the Exchange in response to a contingency; or

(C) Testing by a subscriber of an Exchange service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Exchange service.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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

BX proposes to amend the fees assessed for use of the Testing Facility. The Testing Facility provides subscribers with a virtual BX System test environment that closely approximates the production environment, on which they may test their automated systems that integrate with BX. Subscribers may test upcoming BX releases and product enhancements, as well as test software prior to implementation. Currently, BX assesses a fee of $285 per hour for active connection testing using current BX access protocols during the normal operating hours, and $333 per hour for such testing after hours.

BX does not currently assess a fee for idle test ports. Subscribers often have test ports assigned to them through which no testing is conducted for extended periods, yet BX must maintain and constantly monitor these idle testing ports for purposes of billing under the current rule. Such monitoring represents a cost to BX with no off-setting fee. Further, subscribers have no incentive to notify BX when they have completed testing and no longer require a test port. Accordingly, BX is proposing to eliminate the current hourly fee structure and assess a flat fee of $300 per test port, per month. This fee will cover the cost of maintaining these test ports and provide an incentive to firms to cancel test ports when they have completed testing.

BX notes that it will continue to allow new subscribers and existing subscribers to test new services and modifications initiated by BX, and to test new services not previously accessed for the first 30 days at no cost pursuant to Rule 7030(d)(3). This 30-day fee waiver includes testing for subscribers that are accessing BX through a service bureau for the first time. Subscribers must cancel the test port prior to the expiration of the 30-day free period in order to avoid future charges for test ports under the new rule. In addition, current subscribers will be able to cancel their idle ports at no cost at any point during the first month that the fee is effective. Further, BX is eliminating the word "hourly" from Rule 7030(d)(3), since the fees for the Testing Facility no longer include hourly fees. Last, BX is eliminating from Rule 7030(d)(3) language concerning market data feed testing, since it is superfluous given that the rule already references fees that include such testing.

2. Statutory Basis

BX 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)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The amended fee schedule applies to all subscribers equally based on the number of test ports subscribed. This proposed charge would apply to both members that obtain test ports for direct access and non-member service bureaus that act as a conduit for orders entered by BX members that are their customers. The proposed fees will cover the costs associated with separately offering the service, responding to customer requests, configuring BX's systems, programming to user specifications, and administering the service, among other things, and may provide BX with a profit to the extent costs are covered. BX believes that the proposed fee structure strikes a balance between covering these costs, and providing incentives to subscribers to make efficient use of Test Facility ports.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

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 Regarding 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] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] 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–BX–2010–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–075. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2010–075 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28541 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(a)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63257; File No. SR–Phlx–2010–155]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Assessed for Use of the Testing Facility

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on October 29, 2010, NASDAQ OMX PHLX LLC ("PHLX" 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 PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

PHLX proposes to amend the fees assessed for use of the Testing Facility. PHLX will implement the proposed rule change on November 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site, 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, PHLX 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. PHLX 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

PHLX proposes to amend the fees assessed for use of the Testing Facility. The Testing Facility provides subscribers with a virtual PHLX System test environment that closely approximates the production environment, on which they may test their automated systems that integrate with PHLX. Subscribers may test upcoming PHLX releases and product enhancements, as well as test software prior to implementation. Currently, PHLX assesses a fee of $285 per hour for active connection testing using current PHLX access protocols during the normal operating hours, and $333 per hour for such testing after hours.

PHLX does not currently assess a fee for idle test ports. Subscribers often have test ports assigned to them through which no testing is conducted for extended periods, yet PHLX must maintain and constantly monitor these idle testing ports for purposes of billing under the current rule. Such monitoring represents a cost to PHLX with no off-setting fee. Further, subscribers have no incentive to notify PHLX when they have completed testing and no longer require a test port. Accordingly, PHLX is proposing to eliminate the current hourly fee structure and assess a flat fee of $300 per test port, per month. This

fee will cover the cost of maintaining these test ports and provide an incentive to firms to cancel test ports when they have completed testing.

PHLX notes that it will continue to allow new subscribers and existing subscribers to test new services and modifications initiated by PHLX, and to test new services not previously accessed for the first 30 days at no cost pursuant to paragraph (c) of the Testing Facility rule. This 30-day fee waiver includes testing for subscribers that are accessing PHLX through a service bureau for the first time. Subscribers must cancel the test port prior to the expiration of the 30-day free period in order to avoid future charges for test ports under the new rule. In addition, current subscribers will be able to cancel their idle ports at no cost at any point during the first month that the fee is effective. Further, PHLX is eliminating the word "hourly" from paragraph (c) of the Testing Facility rule, since the fees for the Testing Facility no longer include hourly fees. Last, PHLX is eliminating language concerning market data feed testing from paragraph (c) of the Testing Facility rule, since it is superfluous given that the rule already references fees that include such testing.

2. Statutory Basis

PHLX 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)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which PHLX operates or controls. The amended fee schedule applies to all subscribers equally based on the number of test ports subscribed. This proposed charge would apply to both members that obtain test ports for direct access and non-member service bureaus that act as a conduit for orders entered by PHLX members that are their customers. The proposed fees will cover the costs associated with separately offering the service, responding to customer requests, configuring PHLX's systems, programming to user specifications, and administering the service, among other things, and may provide PHLX with a profit to the extent costs are covered. PHLX believes that the proposed fee structure strikes a balance between covering these costs, and providing incentives to subscribers to make efficient use of Test Facility ports.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX 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 Regarding 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] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] 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–Phlx–2010–155 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–155. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2010–155 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28540 Filed 11–10–10; 8:45 am]

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[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(a)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63267; File No. SR–NYSEArca–2010–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the ETFS Asian Gold Trust

November 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 25, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The 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 Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the ETFS Asian Gold Trust (the "Trust") pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ETFS Physical Asian Gold Shares ("Shares") of the Trust under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."[3] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of the ETFS Gold Trust,[4] ETFS Platinum Trust[5] and ETFS Palladium Trust (collectively, the "ETFS Trusts").[6] In addition, the Commission has approved listing on the Exchange of streetTRACKS Gold Trust and iShares COMEX Gold Trust.[7] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange ("NYSE") and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.[8] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust and on the Exchange pursuant to UTP.[9] The Commission also has approved listing of the iShares Silver Trust on the Exchange[10] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC (now known as "NYSE Amex LLC").[11]

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations.[12] ETFS Securities USA LLC is the sponsor of the Trust ("Sponsor"), The Bank of New York Mellon is the trustee of the Trust ("Trustee"),[13] and JPMorgan Chase Bank, N.A. is the custodian of the Trust ("Custodian").[14]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[15]

Operation of the Gold Bullion Market

According to the Registration Statement, the global trade in gold consists of Over-the-Counter ("OTC") transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The OTC market trades on a 24-hour per day continuous basis and accounts for most global gold trading.

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making members of the LBMA, the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market. The nine market-making members of the LBMA are: Barclays Bank plc, Deutsche Bank AG, HSBC Bank USA, N.A. (through its London branch), Goldman Sachs International, JPMorgan Chase Bank, ScotiaMocatta (a division of the Bank of Nova Scotia), Société Générale, Mitsui & Co Precious Metals Inc, and UBS AG. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery and other factors. Bullion dealers customize transactions to meet clients' requirements. The OTC market has no formal structure and no open-outcry meeting place.

The main centers of the OTC market are London and New York. Mining companies, central banks, manufacturers of jewelry and industrial products, together with investors and speculators, tend to transact their

[3] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[4] Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

[5] Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95).

[6] Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR–NYSEArca–2009–94).

[7] *See* Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[8] *See* Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[9] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[10] *See* Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust).

[11] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[12] *See* the Registration Statement for the Trust on Form S–1, filed with the Commission on July 22, 2010 (No. 333–168277) ("Registration Statement"). The descriptions of the Trust, the Shares and the gold market contained herein are based on the Registration Statement.

[13] The Trustee is generally responsible for the day-to-day administration of the Trust. This includes (1) transferring the Trust's gold as needed to pay the Sponsor's fee in gold (gold transfers are expected to occur approximately monthly in the ordinary course); (2) calculating the net asset value ("NAV") of the Trust and the NAV per Share; (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and The Depository Trust Company ("DTC"); and (4) selling the Trust's gold as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor.

[14] The Custodian is responsible for the safekeeping of the Trust's gold deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian also facilitates the transfer of gold in and out of the Trust through gold accounts it will maintain for Authorized Participants and the Trust. The Custodian is a market maker, clearer and approved weigher under the rules of the London Bullion Market Association ("LBMA"). The Custodian will hold the Trust's allocated gold at the Custodian's Singapore vaulting premises on a segregated basis.

[15] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange of 1934 ("Act") (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

business through one of these market centers. Centers such as Dubai and several cities in the Far East also transact substantial OTC market business, typically involving jewelry and small bars (1 kilogram or less) and will hedge their exposure by selling into one of these main OTC centers. Bullion dealers have offices around the world and most of the world's major bullion dealers are either members or associate members of the LBMA. Of the nine market-making members of the LBMA, six offer clearing services. There are a further 59 full members, plus a number of associate members around the world.

In the OTC market, the standard size of gold trades between market makers ranges between 5,000 and 10,000 ounces. Bid-offer spreads are typically 50 U.S. cents per ounce. Certain dealers are willing to offer clients competitive prices for much larger volumes, including trades over 100,000 ounces, although this will vary according to the dealer, the client and market conditions, as transaction costs in the OTC market are negotiable between the parties and therefore vary widely. Cost indicators can be obtained from various information service providers as well as dealers.

According to the Registration Statement, liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's "buy" and "sell" prices. The period of greatest liquidity in the gold market generally occurs at the time of day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York and other centers coincides with futures and options trading on the COMEX. This period lasts for approximately four hours each New York business day morning.

The London Bullion Market

According to the Registration Statement, although the market for physical gold is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the "London Good Delivery Lists," which are the lists of LBMA accredited melters and assayers of gold. The LBMA also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.[16]

The terms "loco London" gold and "loco Singapore" gold refer to gold physically held in London and Singapore, respectively, that meets the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of a LBMA acceptable refiner) and appearance set forth in "The Good Delivery Rules for Gold and Silver Bars" published by the LBMA. Gold bars meeting these requirements are described in the Trust's prospectus from time to time as "London Good Delivery Bars." The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams = 32.1507465 troy ounces and 1 troy ounce = 31.1034768 grams. A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as 400-ounce bars, a London Good Delivery Bar must contain between 350 and 430 fine troy ounces of gold, with a minimum fineness (or purity) of 995 parts per 1,000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar. A London Good Delivery Bar must also bear the stamp of one of the melters and assayers who are on the LBMA approved list. Unless otherwise specified, the gold spot price always refers to that of a London Good Delivery Bar. Business is generally conducted over the phone and through electronic dealing systems.

Twice daily during London trading hours there is a fix which provides reference gold prices for that day's trading. Many long-term contracts will be priced on the basis of either the morning (AM) or afternoon (PM) London fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations. The London fix is the most widely used benchmark for daily gold prices and is quoted by various financial information sources.

Formal participation in the London fix is traditionally limited to five members, each of which is a bullion dealer and a member of the LBMA. The chairmanship now rotates annually among the five member firms. The morning session of the fix starts at 10:30 a.m. London time and the afternoon session starts at 3 p.m. London time. The members of the gold fixing are currently The Bank of Nova Scotia—ScotiaMocatta, Deutsche Bank AG, HSBC Bank USA, N.A., Société Générale and Barclays Bank plc. Any other market participant wishing to participate in the trading on the fix is required to do so through one of the five gold fixing members.

Orders are placed either with one of the five fixing members or with another bullion dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a "trying price," reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The gold price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. The London fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

The Singapore Bullion Market

After London and Zurich, Singapore is one of the key regional cities for physical gold trading and one of the largest gold trading centers in Asia. In 2010, the Singapore Mercantile Exchange launched the first locally settled gold futures contract, and Singapore opened its first free-trade zone for the custody and storage of precious metals.

Futures Exchanges

According to the Registration Statement, the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange ("TOCOM"). The COMEX is the largest exchange in the world for trading precious metals futures and options and has been trading gold since 1974. The TOCOM has been trading gold since 1982. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. As a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit trading on margin. Margin trading can add to the speculative risk involved

[16] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

given the potential for margin calls if the price moves against the contract holder. The COMEX operates through a central clearance system. On June 6, 2003, TOCOM adopted a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

Other Exchanges

There are other gold exchange markets, such as the Istanbul Gold Exchange (trading gold since 1995), the Shanghai Gold Exchange (trading gold since October 2002), the Hong Kong Chinese Gold & Silver Exchange Society (trading gold since 1918) and the Singapore Mercantile Exchange (trading gold since 2010).

Market Regulation

The global gold markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority ("FSA") as provided by the Financial Services and Markets Act 2000 ("FSM Act"). Under this act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls.

The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England.

The TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry, the regulatory authority that oversees the operations of the TOCOM.

The Trust will not trade in gold futures contracts on the COMEX or on any other futures exchange. The Trust will take delivery of physical gold that complies with the LBMA gold delivery rules. Because the Trust will not trade in gold futures contracts on any futures exchange, the Trust will not be regulated by the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act ("CEA") [17] as a "commodity pool," and will not be operated by a CFTC-regulated commodity pool operator. Investors in the Trust will not receive the regulatory protections afforded to investors in regulated commodity pools, nor may the COMEX or any futures exchange enforce its rules with respect to the Trust's activities. In addition, investors in the Trust will not benefit from the protections afforded to investors in gold futures contracts on regulated futures exchanges.

The activities of the Trust will be limited to (1) issuing baskets in exchange for the gold deposited ("Basket") with the Custodian as consideration, (2) delivering gold as necessary to cover the Sponsor's Fee and selling gold as necessary to pay Trust expenses not assumed by the Sponsor and other liabilities and (3) delivering gold in exchange for Baskets surrendered for redemption. The Trust will not be actively managed. It will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of gold.

Custody of the gold bullion deposited with and held by the Trust will be provided by the Custodian at its Singapore vaults, and by other subcustodians on a temporary basis. The Custodian is a market maker, clearer and approved weigher under the rules of the LBMA.

According to the Registration Statement, the investment objective of the Trust is for the Shares to reflect the performance of the price of gold bullion, less the Trust's expenses. The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in gold. An investment in physical gold requires expensive and sometimes complicated arrangements in connection with the assay, transportation, warehousing and insurance of the metal. Although the Shares will not be the exact equivalent of an investment in gold, they provide investors with an alternative that allows a level of participation in the gold market through the securities market.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940 [18] and is not required to register under such act.

Secondary Market Trading

While the Trust's investment objective is for the Shares to reflect the performance of gold bullion, less the expenses of the Trust, the Shares may trade in the secondary market on NYSE Arca at prices that are lower or higher relative to their net asset value ("NAV") per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the COMEX, London, Zurich and Singapore. While the Shares will trade on NYSE Arca until 8 p.m., Eastern Time ("E.T."), liquidity in the global gold market will be reduced after the close of the COMEX at 1:30 p.m., E.T. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Trust Expenses

The Trust's only ordinary recurring charge is expected to be the remuneration due to the Sponsor ("Sponsor's Fee"). In exchange for the Sponsor's Fee, the Sponsor has agreed to assume the ordinary administrative and marketing expenses that the Trust is expected to incur. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the Shares, including the applicable SEC registration fees.

The Sponsor's Fee will accrue daily and will be payable monthly in arrears. The Sponsor, from time to time, may temporarily waive all or a portion of the Sponsor's Fee at its discretion for a stated period of time.

The Sponsor's Fee shall be paid by delivery of gold to an account maintained by the Custodian for the Sponsor on an unallocated basis, monthly on the first business day of the month in respect of fees payable for the prior month. The delivery shall be of that number of ounces of gold which equals the daily accrual of the Sponsor's Fee for such prior month calculated at the London PM Fix.

The Trustee will, when directed by the Sponsor, and, in the absence of such direction, may, in its discretion, sell gold in such quantity and at such times as may be necessary to permit payment in cash of Trust expenses not assumed by the Sponsor. The Trustee is authorized to sell gold at such times and in the smallest amounts required to permit such payments as they become due, it being the intention to avoid or minimize the Trust's holdings of assets other than gold.

[17] 7 U.S.C. 1 *et seq.*

[18] 15 U.S.C. 80a.

Creation and Redemption of Shares

The Trust will create and redeem Shares daily, but only in one or more Baskets (a Basket equals a block of 50,000 Shares). The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of gold and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are not required to register as broker-dealers to engage in securities transactions, and (2) participants in DTC. To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Sponsor and the Trustee. The Authorized Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of the gold and any cash required for such creations and redemptions.

All gold will be delivered to the Trust and distributed by the Trust in unallocated form through credits and debits between authorized participant unallocated accounts ("Authorized Participant Unallocated Accounts") and the trust unallocated account ("Trust Unallocated Account") (as further described in the Registration Statement). Gold transferred from an Authorized Participant Unallocated Account to the Trust in unallocated form will first be credited to the Trust Unallocated Account. Thereafter, the Custodian will allocate specific bars of gold representing the amount of gold credited to the Trust Unallocated Account (to the extent such amount is representable by whole gold bars) to the Trust Allocated Account. The movement of gold is reversed for the distribution of gold to an Authorized Participant in connection with the redemption of Baskets.

All gold bullion represented by a credit to any Authorized Participant Unallocated Account and to the Trust Unallocated Account and all gold bullion held in the Trust Allocated Account with the Custodian must be of at least a minimum fineness (or purity) of 995 parts per 1,000 (99.5%) and otherwise conform to the rules, regulations, practices and customs of the LBMA, including the specifications for a London Good Delivery Bar.

Authorized Participants can elect to deliver gold loco London or loco Singapore in connection with the creation of a Basket. Authorized Participants can elect to receive delivery gold loco London or loco Singapore in connection with the redemption of a Basket.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. Creation and redemption orders will be accepted on "business days" the NYSE Arca is open for regular trading. Settlements of such orders requiring receipt or delivery, or confirmation of receipt or delivery, of gold in the United Kingdom, Singapore or another jurisdiction will occur on "business days" when (1) banks in the United Kingdom, Singapore or such other jurisdiction and (2) the London or Singapore gold markets are regularly open for business. If such banks or the London or Singapore gold markets are not open for regular business for a full day, such a day will only be a "business day" for settlement purposes if the settlement procedures can be completed by the end of such day. Redemption settlements involving gold deliveries loco London may be delayed longer than three business days following the redemption order date. Settlement of orders requiring receipt or delivery, or confirmation of receipt or delivery, of Shares will occur, after confirmation of the applicable gold delivery, on "business days" when the NYSE Arca is open for regular trading. Purchase orders must be placed no later than 3:59:59 p.m. (E.T.) on each business day the NYSE Arca is open for regular trading. The day on which the Trustee receives a valid purchase order is the purchase order date.

By placing a purchase order, an Authorized Participant agrees to deposit gold with the Trust, as described below. Prior to the delivery of Baskets for a purchase order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the purchase order.

The amount of the required gold deposit is determined by dividing the number of ounces of gold held by the Trust by the number of Baskets outstanding, as adjusted for the amount of gold constituting estimated accrued but unpaid fees and expenses of the Trust. Fractions of a fine ounce of gold smaller than 0.001 of a fine ounce which are included in the gold deposit amount are disregarded in the foregoing calculation. All questions as to the composition of a Creation Basket Deposit will be finally determined by the Trustee. The Trustee's determination of the Creation Basket Deposit shall be final and binding on all persons interested in the Trust.

An Authorized Participant who places a purchase order is responsible for crediting its Authorized Participant Unallocated Account with the required gold deposit amount by the third business day in London or Singapore following the purchase order date. Upon receipt of the gold deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer on the third business day following the purchase order date the gold deposit amount from the Authorized Participant Unallocated Account to the Trust Unallocated Account and the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account. If gold is to be delivered other than as described above, the Sponsor is authorized to establish such procedures and to appoint such custodians and establish such custody accounts in addition to those described in the Registration Statement, as the Sponsor determines to be desirable.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed no later than 3:59:59 p.m. (E.T.) on each business day NYSE Arca is open for regular trading. A redemption order so received is effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket, or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust not later than the third business day following the effective date of the redemption order. Prior to the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction

fee due for the redemption order. The redemption distribution from the Trust will consist of a credit to the redeeming Authorized Participant's Authorized Participant Unallocated Account representing the amount of the gold held by the Trust evidenced by the Shares being redeemed.

Authorized Participants can elect to deliver gold loco London or loco Singapore in connection with the creation of a Basket. Authorized Participants can also elect to receive delivery of gold loco London or loco Singapore in connection with the redemption of a Basket. A Basket creation order that elects a loco London delivery of gold will cause the Custodian to effect a transfer of gold to Singapore from the Trust Unallocated Account maintained by the Custodian in London to the Trust Unallocated Account maintained by the Custodian in Singapore. Likewise, a Basket redemption order that elects a loco London delivery of gold will cause the Custodian to effect a transfer of gold from the Trust Unallocated Account maintained by the Custodian in Singapore to the Authorized Participant Unallocated Account maintained in London.

Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than $350 million (as adjusted for inflation) at any time after the first anniversary after the Trust's formation and the Trustee receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares owning at least 75% of the outstanding Shares.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Valuation of Gold, Definition of Net Asset Value and Adjusted Net Asset Value ("ANAV")

On each day that NYSE Arca is open for regular trading, as promptly as practicable after 4 p.m. (E.T.), on such day ("Evaluation Time"), the Trustee will evaluate the gold held by the Trust and determine both the ANAV and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust's gold on the basis of that day's London PM Fix or, if no London PM Fix is made on such day or has not been announced by the Evaluation Time, the next most recent London gold price fix (AM or PM) determined prior to the Evaluation Time will be used, unless the Sponsor determines that such price is inappropriate as a basis for evaluation. In the event the Sponsor determines that the London PM Fix or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's gold is not an appropriate basis for evaluation of the Trust's gold, it shall identify an alternative basis for such evaluation to be employed by the Trustee. Neither the Trustee nor the Sponsor shall be liable to any person for the determination that the London PM Fix or such other publicly available price is not appropriate as a basis for evaluation of the Trust's gold or for any determination as to the alternative basis for such evaluation provided that such determination is made in good faith.

Once the value of the gold has been determined, the Trustee will subtract all estimated accrued but unpaid fees (other than the fees accruing for such day on which the valuation takes place computed by reference to the value of the Trust or its assets), expenses and other liabilities of the Trust from the total value of the gold and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor's Fee.

All fees accruing for the day on which the valuation takes place computed by reference to the value of the Trust or its assets shall be calculated using the ANAV calculated for such day on which the valuation takes place. The Trustee shall subtract from the ANAV the amount of accrued fees so computed for such day and the resulting figure is the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE Arca (which includes the net number of any Shares created or redeemed on such evaluation day).

The Shares will be book-entry only and individual certificates will not be issued for the Shares.

Liquidity

According to the Registration Statement, the Shares may trade at, above or below the NAV per Share. The NAV per Share will fluctuate with changes in the market value of the Trust's assets. The trading price of the Shares will fluctuate in accordance with changes in the NAV per Share as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the major gold markets. While the Shares will trade on the NYSE Arca until 8 p.m. (E.T.), liquidity in the market for gold will be reduced after the close of the major world gold markets, including London and the COMEX. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Availability of Information Regarding Gold Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging

from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at or http://*www.thebulliondesk.com.*

The Trust Web site will provide an intraday indicative value ("IIV") per share for the Shares updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., (E.T.). The IIV will be calculated based on the amount of gold required for creations and redemptions and a price of gold derived from updated bids and offers indicative of the spot price of gold.[19] The Trust Web site will also provide the Creation Basket Deposit and the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) The mid-point of the bid-ask price[20] at the close of trading in relation to the NAV as of the time the NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site will provide the last sale price of the Shares as traded in the US market. The Exchange will provide on its Web site (http://*www.nyx.com*) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

It is anticipated that a minimum of 100,000 Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the ETFS Trusts, streetTRACKS Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust and exchange-traded funds. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[21]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.[22] COMEX and Hong Kong

[19] The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[20] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[21] *See* NYSE Arca Equities Rule 7.12.

[22] A list of ISG members is available at *http://www.isgportal.org.* The Exchange notes that the Hong Kong Chinese Gold & Silver Exchange Society, Shanghai Gold Exchange, Shanghai Futures Exchange, Singapore Mercantile Exchange, and TOCOM are not members of ISG and the Exchange

Exchanges and Clearing Limited are members of ISG.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the ITV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[23] of the Act, in general, and furthers the objectives of Section 6(b)(5),[24] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of the proposed rule change. The Commission is considering granting accelerated approval of the proposal at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–95. 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–2010–95 and should be submitted on or before November 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

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does not have in place a comprehensive surveillance sharing agreement with such markets.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63258; File No. SR–NASDAQ–2010–145]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Assessed for Use of the Testing Facility

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2010, The NASDAQ Stock Market LLC ("NASDAQ"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to amend the fees assessed for use of the Testing Facility. NASDAQ will implement the proposed rule change on November 1, 2010.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

7030. Other Services

(a)–(c) No change.

(d) Nasdaq Testing Facility

(1) *The following fees are assessed for access to the Nasdaq Testing Facility:*

(A) Subscribers that conduct tests of the[ir] [Nasdaq access protocols connection (which includes] computer-to-computer interface (CTCI)[,] *and the* Financial Information Exchange (FIX) interface *to ACT and ACES access protocols*[, and Nasdaq Information Exchange (QIX) interface) or market data vendor feeds] through the Nasdaq Testing Facility (NTF) shall pay the following charges:

$285/hour—For Active Connection testing [using current Nasdaq access protocols] during the normal operating hours of the NTF;

No Charge—For Idle Connection testing [using current Nasdaq access protocols];

$333/hour—For Active Connection testing [using current Nasdaq access protocols] at all times other than the normal operating hours of the NTF.

(B) *Subscribers that conduct tests of all Nasdaq access protocol connections not included in paragraph (A) above or of market data vendor feeds through the Nasdaq Testing Facility shall pay $300 per port, per month.*

(2) No change.

(3) The foregoing [hourly] fees shall not apply to [market data vendor feed testing, or] testing occasioned by:

(A) New or enhanced services and/or software provided by Nasdaq;

(B) Modifications to software and/or services initiated by Nasdaq in response to a contingency; or

(C) Testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.

(4)–(6) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to amend the fees assessed for use of the Testing Facility.[3] The Testing Facility provides subscribers with a virtual NASDAQ System test environment that closely approximates the production environment, on which they may test their automated systems that integrate with NASDAQ. Subscribers may test upcoming NASDAQ releases and product enhancements, as well as test software prior to implementation. Currently, NASDAQ assesses a fee of $285 per hour for active connection testing using current NASDAQ access protocols during the normal operating hours, and $333 per hour for such testing after hours.

NASDAQ does not currently assess a fee for idle test ports. Subscribers often have test ports assigned to them through which no testing is conducted for extended periods, yet NASDAQ must maintain and constantly monitor these idle testing ports for purposes of billing under the current rule. For all but CTCI and FIX connections to ACT and ACES, which are structurally different than other connections, such monitoring represents a cost to NASDAQ with no off-setting fee. Further, subscribers have no incentive to notify NASDAQ when they have completed testing and no longer require a test port. Accordingly, NASDAQ is proposing to eliminate the current hourly fee structure and assess a flat fee of $300 per test port, per month for all but CTCI and FIX connections to ACT and ACES. This fee will cover the cost of maintaining these test ports and provide an incentive to firms to cancel test ports when they have completed testing.

NASDAQ notes that it will continue to allow new subscribers and existing subscribers to test new services and modifications initiated by NASDAQ, and to test new services not previously accessed for the first 30 days at no cost pursuant to Rule 7030(d)(3). This 30-day fee waiver includes testing for subscribers that are accessing NASDAQ through a service bureau for the first time. Subscribers must cancel the test port prior to the expiration of the 30-day free period in order to avoid future charges for test ports under the new rule. In addition, current subscribers will be able to cancel their idle ports at no cost at any point during the first month that the fee is effective. Further, NASDAQ is eliminating the word "hourly" from Rule 7030(d)(3), since the fees for the Testing Facility include both hourly and monthly fees. Last, NASDAQ is eliminating from Rule 7030(d)(3) language concerning market data feed testing, since it is superfluous given that the rule already references fees that include such testing.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[4] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The amended fee schedule applies to all

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See http://www.nasdaqtrader.com/Trader.aspx?id=TestingFacility* for a description of the Testing Facility.

[4] 15 U.S.C. 78f(b)(4).

subscribers equally based on the number of test ports subscribed. This proposed charge would apply to both members that obtain test ports for direct access and non-member service bureaus that act as a conduit for orders entered by NASDAQ members that are their customers. The proposed fees will cover the costs associated with separately offering the service, responding to customer requests, configuring NASDAQ's systems, programming to user specifications, and administering the service, among other things, and may provide NASDAQ with a profit to the extent costs are covered. NASDAQ believes that the proposed fee structure strikes a balance between covering these costs, and providing incentives to subscribers to make efficient use of Test Facility ports.

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 Regarding 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] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] 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–2010–145 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–145. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2010–145 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28466 Filed 11–10–10; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(a)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63256; File No. SR–FINRA–2010–055]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 6140 (Other Trading Practices)

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 6140 to eliminate the provisions regarding the handling of stop orders, delete definitions relating to stop stock transactions and to relocate the definition of "initial public offering."

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 6140(h) (the "Rule") addresses the handling of stop orders in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS.[3] Specifically, the Rule provides that members may, but are not obligated to, accept stop orders. The Rule further provides that a stop order becomes a market order (or a stop limit order becomes a limit order) when a transaction takes place at or above the stop price (in the case of a buy stop order) or at or below the stop price (in the case of a sell stop order). Thus, as defined in the Rule, a stop order cannot be triggered by the publication of a quotation at the stop price (only by a transaction). However, members have stated that they believe quotations may be a better indicator of the current price of a security than transactions, and requested that FINRA provide members the flexibility to determine whether the trigger of a stop order will be based on transactions or quotations in the subject security at the stop price.

FINRA rules do not typically define the parameters of the various order types that members may accept and we agree that members should have the ability to define the triggering event for stop orders as well as to design their systems consistent with such determination.[4] Therefore, FINRA is proposing to delete Rule 6140(h). FINRA is also deleting Rule 6140(i), which defines the terms "stop stock price" and "stop stock transaction."

Members that also are members of another self-regulatory organization ("SRO") will continue to be subject to any applicable provisions adopted by such other SRO with respect to the handling of stop orders. FINRA expects that, irrespective of whether a transaction or quotation is used as the trigger for a customer stop order, each member will apply the approach consistently firm-wide to all customer orders and fully disclose its practice to its customers.

FINRA also is proposing to move the definition of "initial public offering" from Rule 6220 (Definitions) to Rule 6130 (Transactions Related to Initial Public Offerings).[5] FINRA is not proposing substantive changes to the definition of "initial public offering." FINRA believes that Rule 6130 is the more appropriate location for the definition of "initial public offering" and that relocating this definition, as proposed, will reduce confusion for members.

FINRA will announce the implementation date of the proposed rule change no later than 30 days following Commission approval. The implementation date will be no more than 60 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,[6] 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 believes that adopting the proposed rule change will provide members with the flexibility to determine whether the execution of stop orders will be triggered by transactions or quotations in the subject security without compromising investor protection. In addition, FINRA believes that relocating the definition of "initial public offering" to Rule 6130 is appropriate and will reduce member confusion.

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 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–2010–055 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–2010–055. 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,[7] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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

[3] Stop buy orders generally are entered by investors with short positions to limit losses should the stock price increase. Stop sell orders generally are entered in a stock whose price has increased substantially in order to protect the investor's profits should the stock price decline.

[4] These requirements were initially adopted by NASD (and the national securities exchanges) in 1975. *See Notice to Members* 75–42 (June 10, 1975) (Rules Governing Reporting of Transactions to Consolidated Tape).

[5] For the purposes of Rule 6130(a), "initial public offering" means: (1) The offering of the security is registered under the Securities Act; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Act.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–055 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28462 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63253; File No. SR–NASDAQ–2010–144]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC Relating To Access Service Fees

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange Rule 7053, related to fees governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, the Exchange proposes to adopt a tiered fee structure for certain Access Services fees.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2010.

The text of the proposed rule change is set forth below. Proposed new text is underlined and deleted text is in brackets.

* * * * *

7053. NASDAQ Options Market—Access Services

The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market.

(a) Financial Information Exchange (FIX)

[Ports]	[Price]
[FIX Trading Port]	[$500/port/month].
[FIX Port for Services Other than Trading].	[$500/port/month].

Ports	*Quantity*	*Price*
FIX Trading Port	*First 25 ports*	*$500/port/month.*
	Additional ports above 25	*$250/port/month.*
FIX Port for Services Other than Trading	*First 25 ports*	*$500/port/month*
	Additional ports above 25	*$250/port/month.*

(b) TradeInfo

• Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of $95 per user per month.

(c) Other Port Fees

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

[• $500 per month for each port pair.]

Quantity	*Price*
First 25 ports	*$500 per month for each port pair.*
Additional ports above 25.	*$250 per month for each port pair.*

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend Rule 7053, titled NASDAQ Options Market—Access Services, to create a tiered fee structure for its Financial Information Exchange ("FIX")[3] Fees and Other Port Fees[4] pricing.

Currently Rule 7053 contains fees assessed by Nasdaq for connectivity to NOM. Access Services fees relate to ports used to: Enter orders into the NASDAQ trading systems; receive market data; and enter quotes.

The Exchange proposes to amend the current FIX fees, which are currently $500 per month/per port for a Fix Trading Port or a FIX Port for Services Other than Trading. The Exchange proposes to assess the following tiered fees:

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FIX is a protocol used by NOM market participants for order entry, modification and cancellation and message transmittal.

[4] Other Port Fees refer to non-Fix ports used by NOM market participants for order entry and quotes.

Ports	Quantity	Price
FIX Trading Port	First 25 ports	$500/port/month.
	Additional ports above 25	$250/port/month.
FIX Port for Services Other than Trading	First 25 ports	$500/port/month.
	Additional ports above 25	$250/port/month.

These tiered fees would allow NOM members to incur a lower fee after the first 25 ports. The NOM member would continue to be assessed a $500 per month, per port fee for the first 25 ports.[5]

The Exchange is also proposing to amend the Other Port Fee pricing. Currently, NOM members are assessed the $500 per month fee for each port pair. The Exchange proposes to assess the following tiered fees:

Quantity	Price
First 25 ports	$500 per month for each port pair.
Additional ports above 25.	$250 per month for each port pair.

These tiered fees would allow NOM members to incur a lower fee after the first 25 port pairs.[6] The NOM member would continue to be assessed a $500 per month, per port [sic] fee for the first 25 port pairs. The Exchange does not intend to amend the TradeInfo fee.[7]

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes the proposed amendments to Rule 7053 to established tiered pricing for FIX and Other Port Fees pricing is reasonable to incentivize members by proving [sic] a discount for the quantity of ports or port pairs to which they subscribe. Also, the Exchange believes that the pricing proposal is equitable because all NOM members are assessed the same rates.

2. Statutory Basis [sic]

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(4) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes the proposed amendments to Rule 7053 to establish tiered pricing for FIX and Other Port Fees pricing is reasonable to incentivize members by proving a discount for the quantity of ports or port pairs to which they subscribe. Also, the Exchange believes that the pricing proposal is equitable because all NOM members are assessed the same rates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] 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–NASDAQ–2010–144 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–144. 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

[5] According to the Exchange, the tiered fee structure is being proposed in light of the nature of the NOM architecture, which makes it necessary for liquidity providers in options to utilize more ports in comparison to liquidity providers on the NASDAQ Stock Market. Liquidity providers on NOM may provide liquidity in up to 140,000 different symbols versus approximately 8,500 symbols in equities. Moreover, several options symbols for a given underlying may be directly correlated and may require updates to a large number of symbols simultaneously. For example, a liquidity provider in SPY options may need to update all 2401 SPY options simultaneously due to a change in the price of SPY in the equity market.

Further, a NASDAQ Stock Market member, who is both an equity and options member, is required to have a distinct port(s) for each market and would be billed according to whether the particular port was assigned to the equity or options infrastructure. *See* e-mail from Angela Dunn, Assistant General Counsel, Exchange, to Richard Holley, Assistant Director, and Terri Evans, Special Counsel, Division of Trading and Markets, Commission, on November 4, 2010.

[6] *Id.*

[7] Currently, NOM members not subscribing to the Nasdaq Workstation using TradeInfo are charged a fee of $95 per user per month.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2010–144 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28461 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63251; File No. SR–NSX–2010–14]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NSX Fee and Rebate Schedule

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2010, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Stock Exchange, Inc. ("NSX®" or the "Exchange") is proposing a rule change, operative at commencement of trading on November 1, 2010, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") with respect to certain rebates payable in the Automatic Execution mode of order interaction.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule to adjust volume threshold necessary to obtain rebates with respect to displayed orders in Tape A and C securities priced one dollar and above that add liquidity in the Automatic Execution mode of order interaction ("AutoEx").[3]

For executions of displayed orders in Tape A and C securities priced one dollar and above that add liquidity in AutoEx, the proposed rule modifies the volume thresholds necessary to achieve rebates. Prior to the effective date of the proposed rule change, the Fee Schedule provides a rebate of $0.0026 per share if an ETP Holder's liquidity adding average daily volume (as fully defined in Endnote 3 of the Fee Schedule, "Liquidity Adding ADV") is less than 25 million shares ("Tier 1"); a rebate of $0.0027 per share if Liquidity Adding ADV is at least 25 million shares and less than 40 million shares ("Tier 2"); and a rebate of $0.0028 per share if Liquidity Adding ADV is at least 40 million shares ("Tier 3").

The proposed rule change modifies the rebate measurement criteria from a set number of shares to a percentage, expressed in basis points, of Total Consolidated Average Daily Volume ("TCADV"). As set forth in Explanatory Endnote 13, TCADV means average daily volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B and C securities. The proposed rule change also eliminates a rebate tier. Accordingly, after the effective date, an ETP Holder would receive a rebate of $0.0026 per share with respect to its displayed Tape A and C orders priced one dollar or higher that add liquidity in AutoEx if such ETP Holder's Liquidity Adding ADV is less than 20 basis points of TCADV. The Tier 2 rebate of $0.0027 is proposed to be deleted entirely. An ETP Holder would receive a rebate of $0.0028 per share if such ETP Holder's Liquidity Adding ADV is equal to or exceeds 20 basis points of TCADV.

The proposed rule change does not modify other rebates or fees that are contained in the Fee Schedule.

Rationale

The Exchange has determined that these changes are necessary to create further incentive for ETP Holders to submit increased order volumes and, ultimately, to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange has further determined that the proposed fee adjustments are necessary for competitive reasons. The Exchange believes that these rebate changes will not impair the Exchange's ability to fulfill its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to those ETP Holders that submit orders in Tape A and C securities in AutoEx, and are not discriminatory because qualified ETP Holders are free to elect whether or not to send such orders. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective on filing of this proposed rule, operative for trading on November 1, 2010. Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed rule change is not discriminatory in that all qualified ETP Holders are eligible to submit (or not submit) trades and quotes at any price in AutoEx and Order Delivery in all tapes, as either displayed or undisplayed and as liquidity adding or liquidity taking, and may do so at their discretion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because, as provided in (f)(2), it changes "a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2010–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2010–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2010–14 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28453 Filed 11–10–10; 8:45 am]

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63260; File No. SR–FINRA–2010–034]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filings of Amendments No. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended, To Adopt FINRA Rule 4530 (Reporting Requirements) in the Consolidated FINRA Rulebook

November 5, 2010.

I. Introduction

On July 30, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 proposal to (i) adopt NASD Rule 3070 (Reporting Requirements) as FINRA Rule 4530 in the Consolidated FINRA Rulebook, with certain amendments and the addition of a supplementary material section, and (ii) delete paragraphs (a) through (d) of Incorporated NYSE Rule 351 and Incorporated NYSE Rules 351.10 and 351.13. The proposal was published for comment in the **Federal Register** on August 9, 2010.[3] The Commission received seven comments on the proposal.[4] On October 18, 2010, FINRA

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62621 (July 30, 2010), 75 FR 47863 (August 9, 2010) ("Notice").

[4] *See* letter from Brendan Daly, Legal and Compliance Counsel, Commonwealth Financial Network, to Elizabeth M. Murphy, Secretary, Commission, dated August 27, 2010 ("Commonwealth Letter"); letter from Kristin Bulls, Products and Broker-Dealer Compliance Director, State Farm VP Management Corp., to Elizabeth M. Murphy, Secretary, Commission, dated August 30, 2010 ("State Farm Letter"); letter from Joan Hinchman, Executive Director, President and CEO, National Society of Compliance Professionals, to Elizabeth M. Murphy, Secretary, Commission, dated August 30, 2010 ("NSCP Letter"); letter from Clifford E. Kirsch and Susan S. Krawczyk, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, Commission, dated August 30, 2010 ("CAI Letter"); letter from Michael Lesutis, Assistant General Counsel, PFS Investments, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 1, 2010 ("PFS Letter"); letter from James T. McHale, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated September 1, 2010 ("SIFMA Letter"); letter from Dale E. Brown, President and CEO, Financial Services Institute, to Elizabeth M. Murphy, Secretary, Commission, dated September 15, 2010 ("FSI Letter").

responded to the comments and filed Amendment No. 1 to the proposed rule change.[5] On October 22, 2010, FINRA filed Amendment No. 2 to the proposed rule change.[6] The Commission is publishing this notice and order to solicit comments on Amendments No. 1 and 2 and to approve the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendments No. 1 and 2

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"), FINRA proposes to (i) adopt NASD Rule 3070 (Reporting Requirements) as FINRA Rule 4530 in the Consolidated FINRA Rulebook, subject to certain amendments described below and the addition of a supplementary material section as detailed below and (ii) delete paragraphs (a) through (d) of Incorporated NYSE Rule 351 and Incorporated NYSE Rules 351.10 and 351.13 from the Transitional Rulebook.

NASD Rule 3070 and Incorporated NYSE Rule 351 require members to report to FINRA certain specified events (*e.g.,* regulatory actions, certain customer settlements, securities-related law suits or arbitrations, etc.), to file with FINRA documents related to such events, and to report to FINRA quarterly statistical and summary information regarding written customer complaints. FINRA uses the reported information for regulatory purposes; the information, among other things, assists FINRA in identifying and investigating firms, offices and associated persons that may pose a regulatory risk.[7]

Because proposed FINRA Rule 4530 is based upon NASD Rule 3070, the following description sets forth a summary of the ways in which proposed FINRA Rule 4530 differs from NASD Rule 3070.

A. Reporting Deadline (Proposed FINRA Rules 4530(a) and 4530.03)

The substantive changes to proposed FINRA Rule 4530(a) clarify that a firm must report to FINRA after the firm "knows or should have known" of the existence of any of the events specified in paragraph (a) of the proposed rule and extends the time period for reporting the events from 10 business days (as provided under NASD Rule 3070(b)) to no later than 30 calendar days after the firm knows or should have known of the event. FINRA states that the proposed 30-calendar-day reporting deadline is consistent with Incorporated NYSE Rule 351[8] and the reporting deadlines for disclosing information on forms BD (Uniform Application for Broker-Dealer Registration),[9] U4 (Uniform Application for Securities Industry Registration or Transfer)[10] and U5 (Uniform Termination Notice for Securities Industry Registration)[11] (collectively referred to as the "Uniform Forms").

B. External Findings (Proposed FINRA Rule 4530(a)(1)(A))

NASD Rule 3070(a)(1) requires a firm to report findings of violations of "any provision of any securities laws, or regulation, any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization." Proposed FINRA Rule 4530(a)(1)(A) would instead require a firm to report findings of violations of any "securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, self-regulatory organization or business or professional organization" and eliminates the requirement for firms to report findings that a member or associated person has engaged in conduct inconsistent with just and equitable principles of trade.[12] Proposed Supplementary Material .03 clarifies the meaning of the term "found" for the purpose of determining when a firm or associated person has been "found to have" engaged in violative conduct.

C. Civil Litigation or Arbitration; Claims for Damages (Proposed FINRA Rules 4530(a)(1)(G), 4530.06 and 4530.09)

As proposed, FINRA Rule 4530(a)(1)(G) extends the reporting requirement relating to securities- and commodities-related civil suits and arbitrations and claims for damages by customers and broker-dealers disposed of by judgment, award or settlement (in an amount exceeding certain monetary thresholds) to include "any financial-related insurance civil litigation or arbitration" but limits the requirement to report claims for damages by customers, brokers or dealers to those claims for damages that relate to the provision of financial services or a financial transaction.[13] Proposed Supplemental Material .06 clarifies that for purposes of determining whether a civil suit, arbitration or claim for damages exceeds the monetary threshold and must be reported pursuant to proposed FINRA Rule 4530(a)(1)(G), (1) members must take into account awards of attorneys fees and interest, and (2) if parties are subject to "joint and several" liability, each party is considered separately liable for the aggregate amount.[14] Proposed Supplemental Material .09 defines the term "financial related" to mean "related to the provision of financial services."[15]

D. Statutory Disqualifications (Proposed FINRA Rule 4530(a)(1)(H))

Proposed FINRA Rule 4530(a)(1)(H) modifies the reporting requirement in NASD Rule 3070(a)(9) relating to statutory disqualifications to clarify that a member must report to FINRA whenever the member itself is subject to a "statutory disqualification," or whenever an associated person of the firm is subject to a "statutory disqualification." While NASD Rule 3070(a)(9) requires a member to report to FINRA if the member or an associated person of the member "is associated in any business or financial activity" with a person subject to a "statutory

[5] *See* Amendment No. 1, dated October 18, 2010 ("Amendment No. 1"). The text of Amendment No. 1 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml.* In Amendment No. 1, FINRA responded to the comment letters received regarding the Notice and revised the proposed rule change. Among other things, FINRA proposes to amend (i) proposed FINRA Rule 4530(a)(1)(G) to require the reporting of any claims for damages by a customer, broker or dealer that relates to the provision of financial services or relates to a financial transaction; (ii) proposed Supplementary Material .01 to provide clarity on what internal conclusions of violative conduct a member must report pursuant to proposed FINRA Rule 4530(b); (iii) proposed Supplementary Material .07 to clarify the circumstances under which a firm would not be required to report information relating to a former associated person; (iv) proposed Supplementary Material .08 to clarify a member's reporting obligations regarding customer complaints pursuant to proposed FINRA Rules 4530(a)(1)(B) and 4530(d); and (v) proposed Supplementary Material .09 to provide a definition for the term "financial-related."

[6] *See* Amendment No. 2 dated October 22, 2010 ("Amendment No. 2"). The text of Amendment No. 2 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml.* In Amendment No. 2, FINRA proposes to further amend proposed Supplementary Material .07 to clarify the circumstances under which a firm would not be required to report information relating to a former associated person.

[7] *See* Notice, *supra* note 3, 75 FR at 47863.

[8] *See* Incorporated NYSE Rule 351(b); NYSE Information Memo 90–17, "Timely and Complete Filings and Responses to Enforcement Inquiries" (April 30, 1990) (defining "prompt" filing as occurring within 30 days of the reportable event).

[9] *See* Article IV, Section 1 of FINRA's By-Laws.

[10] *See* Article V, Section 2 of FINRA's By-Laws.

[11] *See* Article V, Section 3 of FINRA's By-Laws.

[12] FINRA members would still be required to report findings of violations of an SRO's just and equitable principles of trade rule, such as FINRA Rule 2010. *See* Notice, *supra* note 3, 75 FR at 47864.

[13] *See* proposed FINRA Rule 4530(a)(1)(G), as modified by Amendment No. 1.

[14] *See* proposed FINRA Rule 4530.06.

[15] *See* proposed FINRA Rule 4530.09, as modified by Amendment No. 1.

disqualification," proposed FINRA Rule 4530(a)(1)(H) instead requires a member to report to FINRA whenever the member or an associated person of the member "is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities" with a person subject to a "statutory disqualification." [16]

E. Internal Disciplinary Actions Against Associated Persons (Proposed FINRA Rule 4530(a)(2))

Similar to NASD Rule 3070(a)(10), proposed FINRA Rule 4530(a)(2) requires a firm to report certain disciplinary actions taken by the firm against its associated persons. Proposed FINRA Rule 4530(a)(2) states that disciplinary actions involving the withholding of compensation or of any other remuneration in excess of $2,500 are reportable events (as opposed to just the withholding of commissions, as provided by NASD Rule 3070(a)(10)).

F. Internal Conclusions (Proposed FINRA Rules 4530(b), 4530.01 and 4530.02)

Proposed FINRA Rule 4530(b) requires firms to report internal conclusions of certain enumerated violative conduct.[17] Specifically, a firm would be required to report to FINRA no later than 30 calendar days after the firm has concluded, or reasonably should have concluded, that an associated person of the firm or the firm itself has violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or SRO.

Pursuant to proposed Supplementary Material .01, if a firm disciplines an associated person in the manner described in proposed FINRA Rule 4530(a)(2), the firm would be required to report the event under proposed FINRA Rule 4530(a)(2).[18] In addition, proposed Supplementary Material .01 clarifies that FINRA only expects a member to report internal conclusions pursuant to proposed FINRA Rule 4530(b) relating to violative conduct that has widespread or potentially widespread effect on the member, its customers or markets, or, in the case of violative conduct of the member, that arises from a material failure of the member's systems, policies or practices involving numerous customers, multiple errors or significant dollar amounts, or, in the case of violative conduct by an associated person, has a significant monetary result with respect to a member(s), customer(s) or market(s) or where there are multiple instances of any violative conduct.[19]

In addition, proposed Supplementary Material .02 states that proposed FINRA Rule 4530(b) only requires reporting where a member has concluded or reasonably should have concluded *on its own* that violative conduct has occurred, as opposed to where there has been a finding of violative conduct by an external body, such as a court, domestic or foreign regulatory body, SRO or business or professional organization (which would be reportable pursuant to proposed FINRA Rule 4530(a)(1)(A)).[20]

G. Reporting Obligation (Proposed FINRA Rule 4530(e))

Similar to NASD Rule 3070(d), proposed FINRA Rule 4530(e) provides that proposed FINRA Rule 4530 does not relieve a firm or an associated person from other obligations, such as the requirement to disclose information on the Uniform Forms, as applicable. In addition, proposed FINRA Rule 4530(e) clarifies that a firm must comply with the reporting obligations under proposed FINRA Rules 4530(a) and (b) and must report quarterly statistical and summary information regarding written customer complaints pursuant to proposed FINRA Rule 4530(d), regardless of whether such information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD or U4.[21]

H. Elimination of the Exemption for Dual Members Subject to Another SRO's Rule

Proposed FINRA Rule 4530 does not include the exemption set forth in NASD Rule 3070(e) for firms subject to substantially similar reporting requirements of another SRO because this provision was intended to exempt Dual Members subject to the reporting requirements of NASD Rule 3070 and the reporting requirements of Incorporated NYSE Rule 351.[22]

I. Filing of Related Documents With FINRA (Proposed FINRA Rule 4530(f))

Consistent with NASD Rule 3070(f), proposed FINRA Rule 4530(f) requires a firm to file copies of certain criminal and civil complaints and arbitration claims with FINRA. However, proposed FINRA Rule 4530(f) expands the filing requirement to include (1) copies of any complaint in which a member is named as a defendant or respondent in any "financial-related insurance private civil litigation" and (2) any "financial-related insurance arbitration claim" filed against a member in any forum other than the FINRA Dispute Resolution forum.

J. Additional Supplementary Material (Proposed FINRA Rules 4530.05, .07 and .08)

In addition to the supplementary material discussed above, FINRA also proposes as supplementary material the following clarifications: (1) For purposes of proposed FINRA Rules 4530(a) and (b), firms should not report a single event under more than one paragraph or subparagraph; however, members may be required to report related events under more than one paragraph or subparagraph; [23] (2) for purposes of proposed FINRA Rules 4530(a), (b) and (d), firms should report an event relating to a former associated person if the event occurred while the individual was associated with the member; however, a member is not required to report such an event where, based on its records or information available through Web CRD, the member cannot determine that the person was an associated person of the member; [24] and (3) any written customer complaint reported under proposed FINRA Rule 4530(a)(1)(B) must also be reported pursuant to proposed FINRA Rule 4350(d); [25] however, for the purpose of reporting under proposed FINRA Rule 4350(d), a member must report (1) any written grievance involving the member or its associated person by a person,

[16] FINRA notes that this provision is consistent with Incorporated NYSE Rule 351(a)(9). *See* Notice, *supra* note 3, 75 FR at 47864.

[17] FINRA notes that this proposed rule is generally based on Incorporated NYSE Rule 351(a)(1), which requires a firm to report whenever it or its associated persons have violated any provision of any securities law or regulation, any agreement with or rule or standard of conduct of any governmental agency, self-regulatory organization ("SRO"), or business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade or detrimental to the interests or welfare of the NYSE. *See* Notice, *supra* note 3, 75 FR at 47864.

[18] *See* proposed FINRA Rule 4530.01, as modified by Amendment No. 1.

[19] *Id.*

[20] *See* proposed FINRA Rule 4530.02.

[21] Proposed FINRA Rule 4530(e) provides that a firm is not required to report an event otherwise required to be reported under proposed FINRA Rules 4530(a) or (b) if the firm discloses the event on a Form U5, consistent with the requirements of that form.

[22] *See* Notice, *supra* note 3, 75 FR at 47865.

[23] *See* proposed FINRA Rule 4530.05.

[24] *See* proposed FINRA Rule 4530.07.

[25] Proposed FINRA Rule 4530(a)(1)(B) is identical to NASD Rule 3070(a)(2) and requires a member to report to FINRA if the member or an associated person of the member is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery.

other than a broker or dealer, with whom the member has engaged in securities activities and (2) any securities-related written grievance involving the member or its associated person and any written complaint reportable under proposed Rule 4530(a)(1)(B) by a person other than a broker or dealer, with whom the member has sought to engage in securities activities.[26]

K. Deletion of Certain Incorporated NYSE Provisions

FINRA proposes to delete paragraphs (a) through (d) of Incorporated NYSE Rule 351 and NYSE Rules 351.10 and 351.13 because these provisions are substantially similar to, otherwise incorporated in, or rendered obsolete by proposed FINRA Rule 4530, or addressed by other rules.[27]

III. Summary of Comments and FINRA's Response

The Commission received seven comment letters to the proposed rule change.[28] FINRA responded to the comments and modified the proposed rule change in Amendments No. 1 and 2.

A. Reporting of Insurance-Related External Findings Under Proposed FINRA Rule 4530(a)(1)(A)

FINRA Rule 4350(a)(1)(A) requires members to report, among other things, external findings of violations of insurance-related laws, rules, or regulations. One commenter believes that the requirement to report insurance-related external findings is unwarranted, burdensome, and outside the scope of FINRA's authority.[29] The commenter argues that reportable external findings should be limited to those that derive from a transaction with a customer.[30] FINRA responds that current NASD Rule 3070(a)(1) requires a member to report external findings relating to violations of any rule or standard of conduct of any governmental agency, SRO, or financial business or professional organization.[31] Therefore, members are currently required to report external findings related to insurance matters and the proposed rule simply continues this requirement and is consistent with other provisions of FINRA's rules.[32] Finally, FINRA states that this information is relevant because it assists FINRA in identifying members and associated persons that may pose a regulatory risk.[33]

In response to a comment that FINRA should provide additional guidance regarding what members should identify and report pursuant to proposed FINRA Rule 4530(a)(1)(A),[34] FINRA notes that proposed Supplementary Material .02, which states that FINRA Rule 4530(a)(1)(A) is limited to situations where there has been a finding of violative conduct by an external body, such as a court, domestic or foreign regulatory body, SRO or business or professional organization.[35]

B. Civil Litigation or Arbitration and Other Claims for Damages Under Proposed FINRA Rule 4350(a)(1)(G)

Proposed Rule 4530(a)(1)(G) requires that members report any "insurance" civil litigation or arbitration that is "financial-related." Three commenters opined that the term "financial-related" is ambiguous and needs greater clarification.[36] In response, FINRA amended its proposal to add Supplementary Material .09, which defines the term "financial-related" to mean "related to the provision of financial services."[37]

Two commenters believe that the reporting of insurance-related civil litigation and arbitration should be limited to insurance products that are securities.[38] FINRA clarifies that the proposed rule would exclude civil litigation and arbitration related to certain insurance products, such as traditional auto and health insurance, but would include civil litigation and arbitration involving non-securities insurance products related to the provision of financial services.[39] FINRA does not believe that the proposed rule should be limited to insurance products that are securities.[40]

As initially proposed, proposed Rule 4530(a)(1)(G) required the reporting of claims for damages by customers that were "financial or transactional in nature."[41] Two commenters requested further clarification to effectively identify and report insurance matters relevant to FINRA.[42] In response to these comments, FINRA revised the language of proposed Rule 4530(a)(1)(G) to require reporting of any claim for damages that relates to the provision of financial services or relates to a financial transaction.[43]

C. Reporting of Internal Conclusions Under Proposed FINRA Rule 4530(b)

Proposed FINRA Rule 4350(b) requires members to report to FINRA certain internal conclusions of violative conduct.[44] As initially proposed, Supplementary Material .01 stated that FINRA Rule 4530(b) would not require a member to report an isolated violation by the member or an associated person of the member that could be reasonably viewed as a ministerial violation that did not result in customer harm and was remedied promptly upon discovery.[45]

Four commenters argued that the provisions of proposed FINRA Rules 4530(b) and Supplementary Material .01 are unduly burdensome, overly broad and costly,[46] and two requested elimination of the reporting requirement.[47] In response, FINRA notes that NYSE Rule 351(a)(1) requires firms to report internal conclusions of violative conduct and that FINRA's examination programs use this information as part of their assessment processes and risk-based analyses.[48]

All commenters believe that the requirements of proposed FINRA Rule 4530(b) and the language in Supplementary Material .01 are vague and that FINRA should clarify and provide examples of what internal conclusions are required to be reported.[49] Some of these commenters suggest that FINRA should adopt the reporting standard and interpretive guidance set forth in NYSE *Information*

[26] *See* proposed FINRA Rule 4530.08.

[27] *See* Notice, *supra* note 3, 75 FR at 47866.

[28] *See supra,* note 4.

[29] *See* State Farm Letter.

[30] *Id.*

[31] *See* Amendment No. 1 at 7.

[32] *Id.* FINRA points to NASD Rule 3070(a)(3) and NYSE Rule 351(a)(3) (requiring reporting where a firm or an associated person is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any insurance laws, rules or regulations), NASD Rule 3070(a)(4) and NYSE Rule 351(a)(4) (requiring reporting where a firm or an associated person is disciplined by any insurance regulatory or self-regulatory body, is denied membership or continued membership in any such self-regulatory body, or is barred from becoming associated with any member of any such self-regulatory body), and NASD Rule 3070(a)(6) and NYSE Rule 351(a)(6) (requiring reporting where a firm or an associated person is a director, controlling stockholder, partner, officer, sole proprietor, or an associated person of an insurance company that was suspended, expelled or had its registration denied or revoked).

[33] *Id.*

[34] *See* NSCP Letter.

[35] *See* Amendment No. 1 at 7–8.

[36] *See* CAI Letter, NSCP Letter and State Farm Letter.

[37] *See* proposed FINRA Rule 4530.09.

[38] *See* CAI Letter and NSCP Letter.

[39] *See* Amendment No. 1 at 8.

[40] *Id.*

[41] *See* Notice, *supra* note 3, 75 FR at 47864.

[42] *See* NSCP Letter and State Farm Letter.

[43] *See* proposed FINRA Rule 4350(a)(1)(G), as modified by Amendment No. 1.

[44] *See* proposed FINRA Rule 4350(b).

[45] *See* Notice, *supra* note 3, 75 FR at 47865.

[46] *See* CAI Letter, Commonwealth Letter and NSCP Letter.

[47] *See* CAI Letter and State Farm Letter.

[48] *See* Amendment No. 1 at 10.

[49] *See* CAI Letter, Commonwealth Letter, FSI Letter, NSCP Letter, PFS Letter, SIFMA Letter and FSI Letter.

Memorandum 06–11.[50] In response to these comments, FINRA noted that it continues to believe the standard set forth in NYSE *Information Memorandum* 06–11 is too narrow [51] but amended Supplementary Material .01 to further clarify what internal conclusions of violative conduct FINRA expects a member to report.[52]

Two commenters believe that the term "concluded" is vague.[53] FINRA responds that a firm is free to determine the persons responsible for concluding that a violation has occurred. FINRA stated that a firm cannot defend against a failure to report such conduct by asserting that the conduct was of a nature that did not merit consideration by a person of seniority.[54] In addition, FINRA notes that if someone within a firm reaches a conclusion of violation, but upon review, senior management reaches a different conclusion, a firm could rely on senior management's determination, provided it is reasonable.[55]

A number of commenters took issue with the requirement to report violative conduct pursuant to proposed FINRA Rule 4350(b) if a member "reasonably should have concluded" a violation occurred, arguing it will create uncertainty, result in inconsistent application, and could be used in hindsight by FINRA to pursue a firm if FINRA concludes after-the-fact that the firm should have reported.[56] In response, FINRA clarifies that if a reasonable person would have concluded that a violation occurred, then the matter is reportable, and if a reasonable person would not have concluded that a violation occurred, then the matter is not reportable; FINRA will rely on a firm's good-faith reasonable determination.[57]

Numerous commenters expressed concern that FINRA's statement that the existence of internal audit findings creates a strong presumption that a matter is reportable [58] could undermine the internal audit process at member firms.[59] Similarly, commenters believe FINRA's statement [60] that matters subject to a firm's internal review processes as required under other FINRA rules are subject to being reported as internal conclusions under proposed FINRA Rule 4530(b) could be problematic.[61] One commenter believes this could result in firms diluting their internal control findings.[62] Two commenters point out that this runs counter to previous guidance by NASD that it would not use the reports and review processes contemplated by NASD Rules 3012 and 3013 as a roadmap for disciplinary action against firms.[63] FINRA responds that the reporting obligation under proposed FINRA Rule 4350(b) and the internal review processes set forth under other rules (*e.g.,* FINRA Rule 3130) are mutually exclusive and that, while internal review processes may inform a member's determination that a violation occurred, they do not by themselves lead to the conclusion that a matter is reportable under proposed FINRA Rule 4350(b).[64] FINRA notes that it would not view a discussion in an internal audit report regarding the need for enhanced controls in a particular area alone as determinative of a reportable violation under proposed FINRA Rule 4350(b).[65] FINRA also clarifies that, rather than creating a strong presumption, an internal audit finding would serve only as one factor, among others, that a firm should consider in determining whether violative conduct occurred.[66] Furthermore, FINRA has stated that it believes that the goals of customer protection and market integrity necessitate the reporting of such conduct to FINRA.[67]

D. Customer Complaints

Proposed FINRA Rule 4530(d) requires members to submit monthly reports to FINRA regarding written customer complaints received by the member. A member would not be required to report written complaints relating to non-securities products, if such complaints are not from customers that the member has engaged, or has sought to engage, in securities activities.[68] If a member has engaged, or has sought to engage, in securities activities with a person, then any written complaint from that person is reportable, regardless of whether it relates to non-securities products.[69] One commenter stated that it would be difficult to determine with whom a firm has "sought to engage" in securities activities, and also expressed concern regarding the potential number of non-securities related complaints it would have to report in connection with customers it "sought to engage" in securities activities.[70] In response, FINRA notes that the definition of "customer" under NASD Rule 3070(c) includes persons with whom a member has "sought to engage" in securities activities and, therefore, firms should currently have procedures to identify whether a person submitting a written complaint is someone that the firm has sought to engage in securities activities. In addition, FINRA amended proposed Supplementary Material .08 to clarify circumstances under which a member would be required to report, pursuant to proposed FINRA Rules 4530(d) and 4530(a)(1)(B), complaints from persons with whom the member has engaged in securities activities versus persons with whom the member has sought to engage in securities activities.[71]

E. Duplicative Reporting

Three commenters believe that FINRA should completely eliminate duplicative reporting requirements under proposed FINRA Rule 4530(e) and Forms U4, U5 and BD.[72] FINRA responds that it will work toward this goal and that proposed FINRA Rule 4530(e) will eliminate duplicative reporting of information disclosed on the Form U5.[73]

F. Former Associated Persons

Two commenters argued that the requirement to report certain events related to former associated persons would be unduly burdensome and recommend that the requirement be amended to conform to the record retention requirements of Rule 17a–4 of the Act [74] and the reporting period for formerly associated persons be capped at three years.[75] In response, FINRA revised proposed Supplementary Material .07 to state that a firm is not required to report information with respect to a former associated person where, based on its records or information available through Web CRD,

[50] *See* CAI Letter, Commonwealth Letter, FSI Letter and PFS Letter.

[51] *Id.* at 15.

[52] *See* proposed FINRA Rule 4350.01, as modified by Amendment No. 1.

[53] *See* NSCP Letter and State Farm Letter.

[54] *See* Amendment No. 1 at 11.

[55] *See* Amendment No. 1 at 11–12.

[56] *See* CAI Letter, Commonwealth Letter, FSI Letter, NSCP Letter and SIFMA Letter.

[57] *See* Amendment No. 1 at 13.

[58] *See* Notice, supra note 3, 75 FR at 47867.

[59] *See* Commonwealth Letter, NSCP Letter and SIFMA Letter.

[60] *See* Notice, supra note 3, 75 FR at 47867.

[61] *See* CAI Letter, Commonwealth Letter and SIFMA Letter.

[62] *See* SIFMA Letter.

[63] *See* CAI Letter and Commonwealth Letter.

[64] *See* Amendment No. 1 at 14–15.

[65] *See* Amendment No. 1 at 15.

[66] *Id.*

[67] *See* Notice, *supra* note 3, 75 FR at 47867.

[68] *See* Notice, *supra* note 3, 75 FR at 47868. Proposed Supplementary Material .08 defines "customer" as any person, other than a broker or dealer, with whom a member has engaged, or has sought to engage, in securities activities. This definition is identical to the definition of "customer" contained in NASD Rule 3070(c).

[69] *Id.*

[70] *See* State Farm Letter.

[71] *See* proposed FINRA Rule 4530.08, as modified by Amendment No. 1.

[72] *See* CAI Letter, FSI Letter and SIFMA Letter.

[73] *See* Amendment No. 1 at 18.

[74] 17 CFR 240.17a–4.

[75] *See* CAI Letter and FSI Letter.

the member cannot determine whether the person was an associated person.[76]

G. Other Comments

One commenter urges the Commission to reject the rule and require FINRA to provide a detailed analysis to support its claim that the proposed rule will advance customer protection and market integrity without placing an undue burden on firms.[77] FINRA responds that the proposed rule change would enhance FINRA's ability to detect and investigate violative conduct.

One commenter argues that the current dollar thresholds in the rule that trigger a reporting obligation are too low and outdated.[78] While FINRA does not address this comment in Amendment No. 1, FINRA previously responded that it believes the current dollar thresholds in proposed FINRA Rule 4350 continue to be consistent with the purposes of the rule, and that the $ 15,000 reporting threshold for an associated person is consistent with the Forms U4 and U5 current reporting thresholds.[79]

Two commenters argue that FINRA does not have the jurisdiction to require firms to report information required under the proposed rule, such as matters relating to insurance laws and commodities laws.[80] As discussed above, FINRA notes that the requirement to report insurance matters is consistent with other provisions of the current rules and that this information is relevant to FINRA's programs as it assists FINRA in identifying members and associated persons that may pose a regulatory risk.[81]

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the comment letters, and FINRA's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[82] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[83] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because it would enhance FINRA's ability to detect and investigate violative conduct and to identify members and associated persons of member firms that may pose a regulatory risk. The proposed rule change streamlines the rules governing reporting requirements in NASD Rule 3070 and Incorporated NYSE Rule 351 while maintaining the disclosure requirements in Incorporated NYSE Rule 351(a)(1) relating to internal conclusions.

The Commission believes that the changes made in Amendments No. 1 and 2 should provide greater clarity to members regarding when a reporting requirement arises pursuant to proposed FINRA Rule 4350 and the types of external findings, internal conclusions and customer complaints that must be reported. The Commission believes the proposed rule further strengthens FINRA's ability to effectively detect violative conduct by members and associated persons and protect investors. Further, as the proposed rule change consolidates the NYSE and NASD reporting requirement rules into one rule in the Consolidated FINRA Rulebook, it should simplify reporting requirements for broker-dealers and their associated persons.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[84] for approving the proposed rule change, as amended, prior to the 30th day after publication of Amendments No. 1 and 2 in the **Federal Register**. The changes proposed in Amendments No. 1 and 2 respond to specific concerns raised by commenters and do not raise additional issues. The rule change should enhance FINRA's ability to oversee the conduct of its members and their associated persons, which should further investor protection and the public interest. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendments No. 1 and 2, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendments No. 1 and 2 to the proposed rule change are 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–2010–039 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–2010–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 filings 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 you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–034 and should be submitted on or before December 3, 2010.

[76] *See* proposed FINRA Rule 4530.07, as modified by Amendments No. 1 and 2, which applies only if a firm has kept its records in accordance with Rule 17a–4(e)(1) of the Act.

[77] *See* PFS Letter.

[78] *See* FSI Letter.

[79] *See* Notice, *supra* note 3, 75 FR at 47867.

[80] *See* CAI Letter and FSI Letter.

[81] *See supra* notes 32–33 and accompanying text.

[82] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[83] 15 U.S.C. 78*o*–3(b)(6).

[84] 15 U.S.C. 78s(b)(2).

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[85] that the proposed rule change (SR–FINRA–2010–034), as modified by Amendments No. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[86]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28444 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

[85] 15 U.S.C. 78s(b)(2).

[86] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63254; File No. SR–DTC–2010–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend the Certificate of Organization To Authorize Additional Shares of Preferred Stock and Designate Shares as Series A Preferred Stock

November 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] notice is hereby given that on October 22, 2010, The Depository Trust Company ("DTC") 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 primarily by DTC.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend DTC's Certificate of Organization to authorize an additional 1,750,000 shares of preferred stock and to designate such shares as Series A preferred stock.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1999, DTC's Certificate of Organization was amended ("1999 Amendment") to provide for the authorization and issuance of 1,500,000 shares of preferred stock, par value $100 per share.[5] The 1999 Amendment also provided that the preferred stock could be issued in one or more classes having such designations, relative rights, preferences, or limitation as fixed by the Board of Directors of DTC at the time of issuance of any such preferred stock. DTC's Certificate of Organization has been amended three times thereafter to provide for the issuance of variable rate, noncumulative, nonvoting shares of Series A preferred stock, par value $100 per share, which are preferred over DTC's common stock as to dividends and in the event of liquidation ("Series A Preferred Stock"). The first such amendment (filed in 2000) provided for the issuance of 750,000 shares of the Series A Preferred Stock. The second amendment (filed in 2006) provided for the issuance of an additional 500,000 shares of Series A Preferred Stock. The third amendment (filed in 2009) provided for the issuance of an additional 250,000 shares of Series A Preferred Stock.[6]

DTC participants are required to purchase and own shares of the Series A Preferred Stock in proportion to their use of DTC services. DTC treats the Series A Preferred Stock held by participants substantially the same as it treats the mandatory cash deposits made by participants to the Participants Fund for purposes of collateralizing securities transactions, limiting net debit positions, implementing default procedures, and allocating unrecovered losses.

In order that DTC may further increase its capital,[7] DTC is proposing to amend its Certificate of Organization [8] to authorize an additional 1,750,000 shares of preferred stock at the par value of $100 per share and to designate such shares as Series A Preferred Stock with such rights, preferences, and limitations as provided in its Certificate of Organization.[9]

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended, ("Act") and the rules and regulations thereunder applicable to DTC, as well as CPSS/IOSCO Recommendations for Securities Settlement Systems applicable to DTC because the proposed rule change will not affect the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within forty-five days of the date of publication of this notice in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text of the proposed rule change is attached as Exhibit 5 to DTC's filing, which is available at *http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010-14.pdf.*

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] The amendment was the subject of a DTC proposed rule change approved by the Commission. Securities Exchange Act No. 34–41529 (June 15, 1999), 64 FR 33333 (June 22, 1999) [File No. SR–DTC–1999–08]. The amendment was also approved by the New York State Superintendent of Banks.

[6] Securities Exchange Release Nos. 34–43197 (August 23, 2000), 65 FR 52459 (August 29, 2000) [File No. SR–DTC–2000–02]; 34–54775 (November 17, 2006), 71 FR 68662 (November 27, 2006) [SR–DTC–2006–14]; 34–59612 (March 20, 2009), 74 FR 13488 (March 27, 2009) [File No. SR–DTC–2009–06].

[7] DTC, as a member institution of the Federal Reserve System, is subject to capital guidelines issued by the Board of Governors of the Federal Reserve System. To be considered "well-capitalized" under these guidelines, DTC must, among other things, maintain a Total Risk-Based Capital Ratio of at least 10%, a Leverage Ratio of at least 5%, and a Tier 1 Risk-Based Capital Ratio of at least 6%. The issuance of the additional Series A preferred stock will enable DTC to continue to meet these requirements.

[8] In order to amend its Certificate of Organization to increase the authorized preferred stock, DTC is also required to seek approval from the New York State Banking Department. DTC has sought such approval concurrently with this rule filing. On October 20, 2010, DTC's sole stockholder, The Depository Trust & Clearing Corporation, authorized DTC to make this amendment, as required by Section 8003 of the Banking Law of the State of New York.

[9] The authorization of an additional 1,750,000 shares will increase the number of authorized shares of Preferred Stock and of Series A Preferred stock to a total of 3,250,000 shares with a par value of $100 per share and a total value of $325 million.

Register or within such longer period (i) as the Commission may designate up to ninety 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 the 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–DTC–2010–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2010–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-11.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2010–14 and should be submitted on or before December 3, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28442 Filed 11–10–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed 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, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

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 January 11, 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 email address.

1. *Reporting Events-SSI—20 CFR 416.701–416.732—0960–0128.* Supplemental Security Income (SSI) applicants, recipients, or their representative payees must report any change in circumstances that could affect eligibility for SSI payments or the payment amount. SSA uses Form SSA–8150 for this purpose. The information assists us in determining if we should continue SSI payments or change a payment amount. The respondents are applicants for or recipients of SSI payments, or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 27,320.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 2,277 hours.

2. *Request for Review of Hearing Decision/Order—20 CFR 404.967–404.981, 416.1467–416.1481—0960–0277.* Claimants have a statutory right under the Social Security Act and implementing regulations to request review of an administrative law judge's (ALJ) hearing decision or dismissal of a hearing request on Title II and Title XVI claims. Claimants may request Appeals Council review by filing a written request using Form HA–520. SSA uses the information to establish the claimant filed her or his request for review within the prescribed time and to ensure the claimant completed the requisite steps permitting the Appeals Council review. The Appeals Council uses the information to: (1) Document the claimant's reason(s) for disagreeing with the ALJ's decision or dismissal; (2) determine whether the claimant has additional evidence to submit; and (3) determine whether the claimant has a representative or wants to appoint one. The respondents are claimants requesting review of an ALJ's decision or dismissal of hearing.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 145,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 24,167 hours.

3. *Development for Participation in a Vocational Rehabilitation or Similar Program—20 CFR 404.316(c), 404.337(c), 404.352(d), 404.1586(g),*

404.1596, 404.1597(a), 404.327, 404.328, 416.1338(c)(d), 416.1320(d), 416.1331(a)–(b), and 416.1338–0960–0282. State Disability Determination Services (DDS) must determine if Social Security disability payment recipients, whose disability ceased and who participate in vocational rehabilitation programs, may continue to receive disability payments. To do this, DDSs need information about the recipients, the types of program participation, and the services they receive under the rehabilitation program. SSA uses Form SSA–4290 to collect this information. The respondents are State employment networks, vocational rehabilitation agencies, or other providers of educational or job training services.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 750 hours.

4. *Modified Benefit Formula Questionnaire—0960–0395.* The Windfall Elimination Provision of the Social Security Act removes an unintended advantage in computing Social Security benefits for persons with substantial pensions from non-covered employment. SSA collects information on Form SSA–150 to determine the correct formula to use in computing the Social Security benefit for someone who receives a pension from employment not covered by Social Security. The respondents are applicants for Title II benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 90,000.

Frequency of Response: 1.

Average Burden per Response: 8 minutes.

Estimated Annual Burden: 12,000 hours.

5. *Acknowledgement of Receipt (Notice of Hearing)—20 CFR 404.938 & 416.1438—0960–0671.* SSA uses Forms HA–504 and HA–504–OP1 to inform claimants of a scheduled hearing. Claimants complete the form to acknowledge they will attend the hearing or to request the ALJ reschedule the hearing. The ALJ uses the information to prepare for the scheduled hearing or to reschedule the hearing to a different date or location. The only difference between the two forms is the exclusion of the video teleconferencing option on the HA–504–OP1. We exclude video teleconferencing when it is not feasible, based on certain circumstances, for the ALJ to use it. The respondents are applicants for Social Security benefits who request a hearing to appeal an unfavorable entitlement or eligibility determination.

Type of Request: Revision of an OMB-approved information collection.

Version of the HA–504	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
HA–504 (with teleconferencing)	70,000	1	30	35,000
HA–504–OP1	630,000	1	30	315,000
Total	700,000			350,000

Dated: November 8, 2010.

Liz Davidson,

Center Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–28510 Filed 11–10–10; 8:45 am]

BILLING CODE 4191–02–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. 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. *Fax:* 410–965–6400. *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 January 11, 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. *Advanced Notice of Termination of Child's Benefits & Student's Statement Regarding School Attendance—20 CFR 404.350–404.352, 404.367–404.368—0960–0105.* SSA collects information on Forms SSA–1372–BK and SSA–1372–BK–FC to determine whether children of an insured worker meet the eligibility requirements for student benefits. The data we collect allows SSA to determine student entitlement and whether to terminate benefits. The respondents are student claimants for Social Security benefits, their respective schools, and, in some cases, their representative payees.

Type of Request: Revision of an OMB-approved information collection.

SSA–1372–BK:

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Individuals/Households	99,850	1	8	13,313

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
State/Local/Tribal Government	99,850	1	3	4,993
Totals	199,700			18,306

SSA–1372–BK–FC:

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Individuals/Households	150	1	8	20
State/Local/Tribal Government	150	1	3	8
Totals	300			8

Total Burden: 18,334 hours.

2. *Agreement to Sell Property—20 CFR 416.1240–1245—0960–0127.* Individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) benefits, but their resources exceed the allowable limit, may receive conditional payments if they agree to dispose of the excess non-liquid resources and (in the case of current recipients) return excess SSI payments. SSA uses Form SSA–8060–U3 to document this agreement and to ensure the individuals understand their obligations. Respondents are applicants for and recipients of SSI payments who agree to dispose of excess non-liquid resources.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

3. *Epidemiological Research Report—20 CFR 401.165—0960–0701. Section 311* of the *Social Security Independence and Program Improvements Act of 1994* directs SSA to provide support to health researchers involved in epidemiological research. Specifically, when we determine a study contributes to a national health interest, SSA furnishes information to determine whether a study subject appears in SSA administrative records as alive or deceased (vital status). SSA charges a small fee per request for providing this information. Web-posted questions solicit the information SSA needs to provide the data and to collect the fees. The requestors are scientific researchers who are applying to receive vital status information about individuals from Social Security administrative data records.

Type of Request: Revision of an OMB-approved information collection.

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
State & Local Government	15	1	120	30
Private Entities	13	1	120	26
Federal Entities	2	1	120	4
Totals	30			60

Cost Burden:

Average annual cost per respondent (based on SSA data): $3,665.

Total estimated annual cost burden: $109,950.

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections 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 December 13, 2010. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Statement of Agricultural Employer (Year Prior to 1988; and 1988 and Later)—20 CFR 404.702, 404.802, 404.1056—0960–0036.* SSA collects information on Forms SSA–1002–F3 and SSA–1003–F3 to resolve discrepancies when farm workers allege their employers did not report their wages, or reported the wages incorrectly. If an agricultural employer incorrectly reported wages, or failed to report any wages for an employee, SSA must attempt to correct its records by contacting the employer to obtain convincing evidence of the wages. The respondents are agricultural employers who have information about their employees' wages.

Type of Request: Revision of an OMB-approved information collection.

Form No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–1002	7,500	1	30	3,750
SSA–1003	25,000	1	30	12,500
Total	32,500			16,250

2. *Student Reporting Form—20 CFR 404.367 & 404.368—0960–0088.* Sections 20 CFR 404.367 and 404.368 of the Code of Federal Regulations provide a student beneficiary must attend an educational institution full-time to qualify for Social Security benefits. SSA requires beneficiaries to report events that may cause a reduction, termination, or suspension of their benefits. SSA collects information on Form SSA–1383 to determine if the change or event a student reports affects continuing entitlement to Social Security benefits. We also use the information to determine the correct benefit amounts. The respondents are Social Security student beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Form No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–1383	74,887	1	6	7489
SSA–1383–FC	113	1	6	11
Total	75,000			7,500

3. *Protection and Advocacy for Beneficiaries of Social Security (PABSS)—Grant Awardees/Protection and Advocacy for Beneficiaries of Social Security (PABSS)— Beneficiaries—20 CFR 435.51–435.52—0960–0768.* In August of 2004, SSA announced its intention to award grants to establish community-based protection and advocacy projects in every State and U.S. Territory, as authorized under section 1150 of the *Social Security Act.* Potential awardees were protection and advocacy organizations (under Title I of the *Developmental Disabilities Assistance and Bill of Rights Act*) that submitted a timely application conforming to the requirements shown in the 2004 announcement. The projects SSA funds under the PABSS program are part of SSA's strategy to increase the number of beneficiaries who return to work and achieve self-sufficiency as the result of advocacy or other services. The overall goal of the program is to provide information and advice about obtaining vocational rehabilitation and employment services, and to provide advocacy or other services a beneficiary with a disability may need to secure, maintain, or regain gainful employment.

The PABSS Semi-Annual Program Performance Report collects statistical information from the various protection and advocacy (P&A) projects to manage program performance. SSA uses the information to evaluate the efficacy of the program and to ensure beneficiaries are receiving the dollars appropriated for PABSS services. The project data is valuable to SSA in its analysis of, and future planning for, the Social Security Disability Insurance (SSDI) and SSI programs. The respondents are the 57 designated P&A project system sites (in each of the 50 States, the District of Columbia, and the U.S. Territories), and beneficiaries of SSDI and SSI programs.

Type of Request: Revision of an OMB-approved information collection.

Type of respondent	Number of respondents	Frequency of response	Number of annual responses	Average burden per response (minutes)	Estimated annual burden (hours)
PABSS Program Grantees	57	2	114	60	114
Beneficiaries	5,000	1	1	15	1,250
Totals	5,057				1,364

Dated: November 8, 2010.

Liz Davidson,

Center Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–28511 Filed 11–10–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7165]

Overseas Security Advisory Council (Osac) Renewal

The Department of State has renewed the Charter of the Overseas Security Advisory Council. This advisory council will continue to interact on overseas security matters of mutual interest between the U.S. Government and the American private sector. The Council's initiatives and security publications provide a unique contribution to protecting American private sector interests abroad. The Under Secretary for Management has determined that the Council is necessary and in the public interest.

The Council consists of representatives from four (4) U.S. Government agencies and thirty (30) American private sector companies and

organizations. The Council will follow the procedures prescribed by the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Meetings will be open to the public unless a determination is made in accordance with Section 10(d) of the FACA, 5 U.S.C. 552b(c)(1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Bureau of Diplomatic Security, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: October 15, 2010.

Jeffrey W. Culver,

Director of the Diplomatic Security Service.

[FR Doc. 2010–28506 Filed 11–10–10; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2010 Special 301 Out-of-Cycle Reviews of the Philippines and Thailand: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242) requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (The provisions of Section 182 are commonly referred to as the "Special 301" provisions of the Trade Act.) The USTR is required to determine which, if any, of these countries should be identified as Priority Foreign Countries. In addition, USTR has created a "Priority Watch List" and "Watch List" under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

In the 2010 Special 301 Report (*http://www.ustr.gov*), USTR announced that, in order to monitor progress on specific IPR issues, Out-of-Cycle Reviews would be conducted for the Philippines and Thailand. USTR requests written submissions from the public concerning any act, policy, or practice that is relevant to the decision regarding whether the Philippines and Thailand should be identified under Section 182 of the Trade Act.

DATES: Submissions from the general public must be received on or before 10 a.m. on Friday, December 10, 2010. Foreign governments who choose to make written submissions may do so on or before 10 a.m. on Friday, December 17, 2010.

ADDRESSES: All comments should be sent electronically to *http://www.regulations.gov*, [docket number USTR–2010–0035]. Submissions should contain the term "2010 Special 301 Out-of-Cycle Review" in the "Type comment & Upload file" field on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *Jared Ragland,* Director, Intellectual Property and Innovation, Office of the United States Trade Representative, at (202) 395–4510.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act. USTR may not identify a country as a Priority Foreign Country if that country is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property rights. In addition, USTR has created a "Priority Watch List" and "Watch List" under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR requests that, where relevant, submissions mention particular regions, provinces, States, or other subdivisions of a country in which an act, policy, or practice deserve special attention. Submissions may report positive or negative developments with respect to these entities.

Requirements for Comments: Comments should include a description of the problems experienced by the submitter and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English. All comments should be sent electronically to *http://www.regulations.gov*, [docket number USTR–2010–0035].

To submit comments to *http://www.regulations.gov*, enter docket number [USTR–2010–0035] on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page).

The *http://www.regulations.gov* site provides the option of providing comments by filling in a "Type comment & Upload file" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type comment & Upload file" field. However, all submissions should contain the term "2010 Special 301 Out-of-Cycle Review" in the "General Comments" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each

succeeding page, and should indicate using brackets the specific information which is confidential. Any comment containing business confidential information must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on the 2010 Special 301 Out-of-Cycle Review, accessible to the public. The public file will include non-confidential comments received by USTR from the public, including foreign governments, with respect to the 2010 Special 301 Out-of-Cycle Review.

Public Inspection of Submissions: Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number [USTR–2010–0035] in the search field on the home page.

Stanford K. McCoy,

Assistant USTR for Intellectual Property and Innovation.

[FR Doc. 2010–28435 Filed 11–10–10; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1065X]

Indiana Southwestern Railway Co.—Abandonment Exemption—in Posey and Vanderburgh Counties, IN

Indiana Southwestern Railway Co. (ISW) filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon 17.2 miles of interconnecting rail lines extending between (1) milepost 227.5 at Poseyville, Ind., and milepost 240.2 near German Township, Ind. (approximately 12.7 miles); and (2) milepost 277.5 at Cynthiana, Ind., and milepost 282.0 at Poseyville, Ind. (approximately 4.5 miles). The line traverses United States Postal Service Zip Codes 47612, 47620, 47633, 47708, 47720, and 47725.

ISW 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 to be rerouted; (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 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line—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 be effective on December 14, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 22, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 2, 2010, 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 ISW's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

ISW has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by November 19, 2010. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), ISW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by ISW's filing of a notice of consummation by November 12, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: November 4, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–28359 Filed 11–10–10; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0246]

Pipeline Safety: Request for Comments of a Previously Approved Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on September 1, 2010 (75 FR 53733). No comments were received.

ADDRESSES: Send comments regarding the burden estimate, including

suggestions for reducing the burden, to OMB, *Attention:* Desk Officer for PHMSA, 725 17th Street, NW., Washington, DC 20503.

DATES: Comments must be submitted on or before December 13, 2010.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: *Title:* National Pipeline Mapping Program.

OMB Control Number: 2137–0596.

Type of Request: Renewal of a previously approved information collection.

Abstract: Each operator of a pipeline facility (except distribution lines and gathering lines) must provide contact information and geospatial data on their pipeline system. This information should be updated on an annual basis. The provided information is incorporated into the National Pipeline Mapping System (NPMS) to support various regulatory programs, pipeline inspections, and authorized external customers. The periodic updates of operator pipeline data inform the NPMS of any changes to the data over the previous year and allow PHMSA to maintain and improve the accuracy of the information.

Affected Public: Operators of pipeline facilities (except distribution lines and gathering lines).

Estimated Number of Responses: 894.

Estimated Total Annual Burden Hours: 16,312 hours.

Frequency of Collection: Annual.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of the date of publication in the **Federal Register**.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on November 8, 2010.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2010–28537 Filed 11–10–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0708]

Evidence for Transfer of Entitlement of Education Benefits; Correction

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in a **Federal Register** on November 4, 2010, that contained an error. The notice incorrectly stated that servicemembers on active duty may request to designate up to a maximum of 18 months of their educational assistance entitlement to their spouse, one or more of their children or a combination of the spouse and children. This document corrects the error to remove "up to a maximum of 18 months of".

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202–461–7485.

Correction

In FR Doc. 2010–27814, published on November 4, 2010, at 75 FR 213, make the following correction. On page 68035, in the third column, under abstract, first sentence, remove up to a maximum of 18 months of.

Dated: November 8, 2010.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–28448 Filed 11–10–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
November 12, 2010

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1141

Required Warnings for Cigarette Packages and Advertisements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1141

[Docket No. FDA–2010–N–0568]

RIN 0910–AG41

Required Warnings for Cigarette Packages and Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to add a new requirement for the display of health warnings on cigarette packages and in cigarette advertisements. The proposed rule would implement a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany the nine new textual warning statements that will be required under the Tobacco Control Act. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act (FCLAA) to require each cigarette package and advertisement to bear one of nine new textual warning statements. This proposed rule, once finalized, would specify the color graphics that must accompany each of the nine new textual warning statements.

DATES: Interested persons may submit either electronic or written comments on this proposed rule by January 11, 2011. See section IV.G of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0568 and/or RIN number 0910–AG41, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerie Voss or Kristin Davis, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373, *gerie.voss@fda.hhs.gov* or *kristin.davis@fda.hhs.gov.*

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I. Legal Authority and Background

The Tobacco Control Act was enacted on June 22, 2009, amending the Federal Food, Drug, and Cosmetic Act (FD&C Act) and FCLAA, and providing FDA with the authority to regulate tobacco products (Pub. L. 111–31; 123 Stat. 1776). Section 201 of the Tobacco Control Act modifies section 4 of FCLAA (15 U.S.C. 1333) to require that nine new health warning statements appear on cigarette packages and in cigarette advertisements:

- WARNING: Cigarettes are addictive
- WARNING: Tobacco smoke can harm your children

• WARNING: Cigarettes cause fatal lung disease
• WARNING: Cigarettes cause cancer
• WARNING: Cigarettes cause strokes and heart disease
• WARNING: Smoking during pregnancy can harm your baby
• WARNING: Smoking can kill you
• WARNING: Tobacco smoke causes fatal lung disease in nonsmokers
• WARNING: Quitting smoking now greatly reduces serious risks to your health.

Section 201 also states that "the Secretary [of Health and Human Services] shall issue regulations that require color graphics depicting the negative health consequences of smoking" to accompany the nine new health warning statements.

Section 202(b) of the Tobacco Control Act amends section 4 of FCLAA (15 U.S.C. 1333) to add a new subsection [1] that permits FDA to, after notice and an opportunity for the public to comment, adjust the format, type size, color graphics, and text of any health warning statement if such a change would promote greater public understanding of the risks associated with the use of tobacco products. Similarly, section 202(b) of the Tobacco Control Act permits FDA to adjust the format, type size, and text of any other disclosures required under the FD&C Act, using the same process and upon the same basis as for adjusting the health warning statements.[2] Among the provisions of the FD&C Act that provide authority to require disclosures is section 906(d) (21 U.S.C. 387f(d)). This provision authorizes FDA to issue regulations restricting the sale or distribution of cigarettes and other tobacco products, including restrictions on the advertising and promotion of such products, if FDA determines the restriction is appropriate for protecting the public health.

These requirements are supplemented by the FD&C Act's misbranding provisions, which require that product advertising and labeling include proper warnings. For example, a tobacco product is deemed misbranded under section 903(a)(1) or (a)(7)(A) of the FD&C Act (21 U.S.C. 387c(a)(1) or (a)(7)(A)) if its labeling or advertising is false or misleading in any particular. Under section 201(n) of the FD&C Act (21 U.S.C. 321(n)), in determining whether labeling or advertising is misleading, the agency considers, among other things, the failure to reveal material facts concerning the consequences that may result from the customary or usual use of the product. Similarly, under section 903(a)(8)(B) of the FD&C Act (21 U.S.C. 387c(a)(8)(B)), a tobacco product is deemed misbranded unless the manufacturer, packer, or distributor includes in all advertisements and other descriptive printed matter a brief statement of, among other things, the relevant warnings. Moreover, a tobacco product is deemed misbranded under section 903(a)(7)(B) of the FD&C Act (21 U.S.C. 387c(a)(7)(B)) if it is sold or distributed in violation of regulations prescribed under section 906(d) of the FD&C Act. Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), FDA has authority to issue regulations for the efficient enforcement of the FD&C Act.

Cigarette smoking kills an estimated 443,000 Americans each year, most of whom began smoking when they were under the age of 18 (Ref. 1). Tobacco use is the foremost preventable cause of premature death in America, and has been shown to cause cancer, heart disease, and other serious adverse health effects (Ref. 2). In enacting the Tobacco Control Act, Congress found that providing FDA with authority to regulate tobacco products, including the advertising and promotion of such products, would result in significant benefits to the American public in human and economic terms (section 2(12) of the Tobacco Control Act). The U.S. government has a substantial interest in reducing the number of Americans, particularly children and adolescents, who use cigarettes and other tobacco products in order to prevent the life-threatening health consequences associated with tobacco use (section 2(31) of the Tobacco Control Act). Virtually all new users of tobacco products are minor children and a reduction in tobacco use by this population alone could significantly reduce tobacco-related death and disease in the United States (Ref. 3 at pp. 5–6).

In 1964, the Surgeon General of the Public Health Service issued the landmark report titled "Smoking and Health," which comprehensively assessed the available scientific evidence relating to the health effects of cigarette smoking and concluded that cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action. Subsequently, Congress passed the Federal Cigarette Labeling and Advertising Act (FCLAA) of 1965 (Pub. L. 89–92); this legislation required that a printed warning appear on cigarette packages to warn consumers of the potential hazards of cigarette smoking. This warning requirement was modified by later amendments to FCLAA, including the Comprehensive Smoking Education Act (CSEA) of 1984 (Pub. L. 98–474), which extended the warning requirement to cigarette advertising. The current requirements for cigarette package and advertising warning statements are set forth in FCLAA.

Although FCLAA has required the inclusion of textual health warnings on cigarette packages and in cigarette advertisements for many years, there is considerable evidence that the current warnings are given little attention or consideration by viewers (*Id.* at p. 168). These warnings, which have not changed in over twenty-five years, have been described as "invisible" and fail to convey relevant information in an effective way (Ref. 4; Ref. 5 at p. 291). The current warnings also fail to include any graphic component. In proposing this current regulation, FDA examined the scientific literature and found substantial evidence indicating that prominent warnings including a graphic component would offer significant public health benefits over the current warnings used in the United States (*see* Section III). FDA also found evidence of a strong worldwide consensus that effective tobacco health warnings should be large and should include a graphic image component. For example, the World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC),[3] an evidence-based treaty that provides a regulatory strategy for addressing the serious negative impacts of tobacco products, calls for warnings that are rotating, "large, clear, visible and legible." The treaty recommends that the warnings occupy 50 percent or more of the principal display areas, and states that they may be in the form of or include pictures or pictograms. WHO FCTC art. 11.1(b). Worldwide, over 30 countries/jurisdictions have implemented pictorial warnings on tobacco packages and requirements for pictorial warnings are pending in several other countries/jurisdictions.[4]

[1] Section 202(b) of the Tobacco Control Act amends section 4 of FCLAA (15 U.S.C. 1333) to add a new subsection (d), "Change in Required Statements." However, section 201 of the Tobacco Control Act also amends section 4 of FCLAA to add a new subsection (d), "Graphic Label Statements."

[2] Provisions regarding adjustments to the health warnings and other disclosures are also in sections 4(b)(4) and 4(d) of FCLAA, as amended by section 201 of the Tobacco Control Act.

[3] There are 168 signatories to the WHO's Framework Convention on Tobacco Control as of August 2010. At this time, the United States is a signatory but has not ratified this treaty.

[4] Countries/jurisdictions that have implemented pictorial warning requirements for tobacco packaging include: Australia; Belgium; Brazil; Brunei; Canada; Chile; Colombia; Cook Islands; Djibouti; Egypt; Hong Kong; India; Iran; Jordan;

Continued

Therefore, as directed by section 201 of the Tobacco Control Act, and in the interest of the public health, we are proposing to modify the required warnings that appear on cigarette packages and in cigarette advertisements to include color graphics depicting the negative health consequences of smoking. Specifically, we are proposing to add a new part 1141 to Title 21 of the Code of Federal Regulations, which would require new warnings on cigarette packages and in cigarette advertisements. These new required warnings would consist of the nine textual warning statements set forth in section 201 of the Tobacco Control Act accompanied by color graphics depicting the negative health consequences of smoking. As required by section 201 of the Tobacco Control Act, the new warnings would appear prominently on packages and in advertisements, occupying at least 50 percent of the area of the front and rear panels of cigarette packages and 20 percent of the area of advertisements. Under sections 201 and 202 of the Tobacco Control Act, FDA may adjust the type size, text, and format of the textual warning statements. For example, under section 4(d) of FCLAA (as amended by section 201 of the Tobacco Control Act), FDA may adjust the type size, text, and format as FDA determines appropriate so that both the textual warning statements and the accompanying graphics are clear, conspicuous, legible and appear within the specified area. Such adjustments, including adjustments to the text of some of the textual warning statements, are included for some of the new warnings FDA is proposing.

These proposed modifications to the warnings currently required in the United States would promote greater public knowledge of the health risks of using cigarettes and would help reduce the initiation of smoking and the prevalence of cigarette use among Americans, and thus help prevent the life-threatening health risks posed by cigarettes. Specifically, the new required warnings are designed to clearly and effectively convey the negative health consequences of smoking on cigarette packages and in cigarette advertisements, which would help both to discourage nonsmokers, including minor children, from initiating cigarette use and to encourage current smokers to consider cessation to greatly reduce the serious risks that smoking poses to their health.

II. Cigarette Use in the United States and the Resulting Health Consequences

In the United States, cigarette smoking is the leading cause of preventable death and disease (Ref. 6), resulting in more deaths each year than AIDS, alcohol, illegal drug use, homicide, suicide, and motor vehicle crashes combined (Ref. 7). Each day, an estimated 6,600 Americans (nearly 4,000 of them under the age of 18) become new smokers (Ref. 8 at p. 59), and due to the highly addictive nature of cigarettes, many will find it difficult to quit smoking, despite the severe health risks associated with cigarette use. Most smokers begin smoking before they are 18 years old (Ref. 3 at p. 6)—more than 80 percent of established adult smokers began smoking before age 18 (Ref. 9)—and about half of adolescents who continue to regularly smoke will eventually die from smoking-attributable disease (Ref. 10). Smoking causes at least 443,000 premature deaths annually in the United States, and each year cigarettes are responsible for approximately 5.1 million years of potential life lost, direct health care expenditures of approximately $96 billion, and at least $96.8 billion in annual productivity losses in the United States (Ref. 1). The public health benefits that would result from reducing the number of Americans who smoke, and thus preventing the life-threatening consequences associated with cigarette use, are substantial.

A. Smoking Prevalence Among Adults and Children

Adults. A significant percentage of U.S. adults are cigarette smokers. For example, results from the 2009 National Health Interview Survey (NHIS) indicate that approximately 46.6 million U.S. adults (or 20.6 percent of the adult population) are cigarette smokers (Ref. 6). Among these adult smokers, the vast majority—78.1 percent, or approximately 36.4 million people—smoke every day (*Id.*). There are also subsets of the adult population with smoking prevalence rates that are significantly higher than the overall average. For example, the highest prevalence rates have been observed in adults with low education levels. Data indicate that 49.1 percent of adults with a General Education Development certificate (GED) and 28.5 percent of adults with less than a high school diploma were current smokers in 2009, compared with 5.6 percent of adults with a graduate degree (*Id.*).

Children. Among children, data from the 2009 Youth Risk Behavior Survey (YRBS), a nationally representative survey of students in grades 9–12 in the United States, showed that almost half (46.3 percent) of U.S. high school students had tried cigarette smoking, and an estimated 19.5 percent of students were current cigarette smokers (Ref. 11 at p. 10). Of these current cigarette smokers, 7.8 percent reported that they had smoked more than 10 cigarettes per day on the days they smoked (*Id.* at p. 11). Overall, approximately 7.3 percent of high school students in 2009 were frequent cigarette users, and 11.2 percent of students under the age of 18 had been daily smokers at some point during their lifetime (*Id.* at pp. 10–11). Furthermore, follow-up studies of youth smokers have indicated that a significant number of students who are light smokers (*i.e.,* students who are not daily smokers or who smoke less than 10 cigarettes per day) in high school will become heavy smokers after leaving high school (Ref. 12).

Trends. During the period of 1998–2009, the proportion of U.S. adults who were current cigarette smokers declined from 24.1 percent to 20.6 percent. However, the proportion did not decline from 2008 to 2009 (20.6 percent in both years), and during the five-year period of 2005 to 2009, rates showed virtually no change (20.9 percent in 2005 and 20.6 percent in 2009) (Ref. 6).

For children, data from the YRBS show that smoking prevalence rates increased rapidly in the early 1990s, peaking around 1997. Prevalence then declined during the late 1990s, but the rate of decline slowed during 2003–2009 (Ref. 13). According to 2009 data from the University of Michigan's Monitoring the Future survey, cigarette smoking rates among 8th, 10th, and 12th grade U.S. students declined only slightly from 2007 to 2009, at a much slower pace than observed previously. Specifically, over the two-year time period from 2007 to 2009, smoking prevalence fell by just 0.6, 0.9 and 1.5 percentage points among 8th, 10th, and 12th graders, respectively (Ref. 12). Data from this survey also indicate that the proportion of students who perceive a great risk associated with being a smoker has leveled off in the past several years (*Id.*).

B. Initiation of Smoking Among Adults and Children

As discussed in section II.A, roughly one-fifth of Americans are current cigarette smokers. Although the cigarette industry regularly loses customers through user cessation and

Latvia; Malaysia; Mauritius; Mexico; Mongolia; New Zealand; Pakistan; Panama; Paraguay; Peru; Romania; Singapore; Switzerland; Taiwan; Thailand; Turkey; United Kingdom; Uruguay; and Venezuela. Countries/jurisdictions with pending requirements include: France; Guernsey, Honduras; Malta; Norway; Philippines; and Spain.

through deaths caused by smoking, each year millions of U.S. adults and children become new smokers.

For example, results from the 2008 National Survey on Drug Use and Health (NSDUH) indicate that the number of persons aged 12 or older who smoked cigarettes for the first time within the past 12 months was 2.4 million (Ref. 8 at p. 59). This estimate was similar to the 2007 estimate (2.2 million) but statistically significantly higher than the estimates for 2002 (1.9 million), 2003 (2.0 million) and 2004 (2.1 million) (*Id.*). This 2008 estimate averages out to approximately 6,600 new cigarette smokers every day (*Id.*). Most of these new cigarette smokers (nearly 4,000) were under the age of 18 (*Id.*). However, it is also notable that the number of people who began smoking at age 18 or older showed a significant increase over the last several years, jumping from approximately 600,000 in 2002 to 1 million in 2008 (*Id.* at p. 60).

In addition, data from the 2008 NSDUH indicate that almost 1 million Americans aged 12 or older had started smoking cigarettes daily within the past 12 months. Of these new daily smokers, 37.2 percent (350,000 persons) were younger than age 18 when they started smoking daily. In other words, each day in 2008 approximately 1,000 U.S. children became new daily smokers (*Id.*). This is particularly concerning from a public health perspective, as studies suggest that the age individuals begin smoking can greatly influence how much they smoke per day and how long they smoke, which will ultimately influence their risk of tobacco-related disease and death (Refs. 14 through 16). Data from animal studies also suggest that nicotine can cause permanent brain changes in the adolescent brain that lead to addiction and that these changes are greater in adolescents than in adults (Ref. 17). Furthermore, data from human studies indicate that the younger smokers start, the more likely they are to become addicted (*Id.*).

C. Costs to Society and Health Effects of Cigarettes

Cigarettes are responsible for premature deaths from a variety of diseases, a substantial burden on the U.S. healthcare system, and significant economic losses to society (Ref. 1). Smoking is the primary causal factor for at least 30 percent of deaths from cancer, including 90 percent of deaths from lung cancer, almost 80 percent of deaths from chronic obstructive pulmonary disease (COPD), and nearly one-fifth of all deaths from cardiovascular disease (Ref. 1 and Ref. 2 at pp. 39 and 43).

1. Costs of Smoking to Society

Data from the Centers for Disease Control and Prevention's (CDC) Smoking-Attributable Mortality, Morbidity, and Economic Costs (SAMMEC) system for 2000–2004, the most recent years for which analyses are available, indicate that cigarette smoking and exposure to cigarette smoke are responsible for at least 443,000 premature deaths each year (Ref. 1). For every person who dies from smoking, approximately 20 more people (8.6 million persons) suffer from at least one serious smoking-related illness, primarily heart disease and COPD (Ref. 18). The three leading causes of smoking-attributable death for current and former smokers were lung cancer, ischemic heart disease, and COPD (Ref. 1). Cigarettes also have significant deleterious effects on nonsmokers. For example, maternal smoking during pregnancy resulted in an estimated 776 infant deaths annually during 2000–2004, and each year an estimated 49,400 lung cancer and heart disease deaths were attributable to exposure to secondhand smoke (*Id.*).

Overall, each year cigarettes are responsible for approximately 5.1 million years of potential life lost, direct health care expenditures of approximately $96 billion, and at least $96.8 billion in productivity losses due to premature deaths in the United States (*Id.*). The total costs of smoking to society are much higher, as this estimate of productivity losses does not include costs associated with smoking-related disability, employee absenteeism, or costs associated with secondhand-smoke attributable disease morbidity and mortality (*Id.*). These health care expenditures and productivity losses result in a combined economic burden from cigarette smoking of approximately $193 billion per year (*Id.*). There are also costs to the smoker and his or her family. One study estimated that the total cost of smoking over a lifetime, including private costs to the smoker and costs imposed on society (*e.g.,* second hand-smoke and costs of Medicare, Medicaid, and Social Security) come to nearly $40 per pack of cigarettes smoked (Ref. 19 at p. 11).

2. Negative Health Effects of Cigarettes

The healthcare burdens, productivity losses, and deaths attributed to smoking are related to an array of diseases and health conditions caused by cigarettes. Beginning with the landmark 1964 report "Smoking and Health," the U.S. Surgeon General has issued a series of reports addressing the health consequences of smoking and nicotine addiction. According to the most recent Surgeon General's Report, "The Health Consequences of Smoking," which summarizes thousands of peer-reviewed scientific studies and is itself peer-reviewed, smoking remains the leading preventable cause of death in the United States, and cigarettes have been shown to cause an ever-expanding number of diseases and health conditions (Ref. 2 at pp. 9 and 25). As stated in the 2004 Report, "[s]moking harms nearly every organ of the body, causing many diseases and reducing the health of smokers in general * * * [and] [q]uitting smoking has immediate as well as long-term benefits, reducing risks for diseases caused by smoking and improving health in general" (*Id.* at p. 25). The following discussion presents a summary of some of the diseases and conditions caused by cigarettes, and of the impact smoking cessation has on some of these conditions.

Cancer. Cigarette smoking has long been tied to a variety of cancers. For example, there is overwhelming evidence that smoking causes lung cancer, and that the worldwide epidemic of lung cancer is attributable largely to smoking (*Id.* at p. 43). Studies indicate that the risk for developing lung cancer can be 20 or more times higher for smokers compared to lifelong nonsmokers, and the risk of lung cancer increases in smokers with the duration of smoking and the number of cigarettes smoked (*Id.*). There are extensive data showing that quitting smoking decreases the risk of lung cancer, and that this risk continues to decline as the duration of not smoking increases in comparison to the risk among continuing smokers (*Id.* at p. 49). However, the risk does not decline to the level of risk for those who have never smoked, even after 15 to 20 years of not smoking *(Id.* at p. 43).

It also has been established for some time that cigarette smoking also causes a variety of other cancers, including laryngeal cancer, oral cavity and pharyngeal cancers, esophageal cancer, and bladder cancer (*Id.* at pp. 62, 67, 116, and 167). Furthermore, smoking has also been shown to cause pancreatic cancer, kidney cancer, stomach cancer, cervical cancer, and acute myeloid leukemia (*Id.* at p. 25).

For all of these cancers, increasing smoking prevention and cessation would cause a significant decrease in the risk (*Id.* at ch. 2). For example, smoking cessation halves the risk for cancers of the oral cavity and esophagus as soon as five years after cessation (*Id.* at p. 117).

Cardiovascular disease. Smoking is causally related to all of the major

clinical cardiovascular diseases, with higher levels of smoking and longer duration of smoking increasing the risk of disease (*Id.* at p. 397). Heart disease and stroke are the main types of cardiovascular disease caused by smoking and represent the first and third leading causes of death in the United States (*Id.* at p. 363). Studies have shown that smokers have a 70 percent greater death rate from coronary heart disease than nonsmokers, a twofold to fourfold greater incidence of coronary heart disease, and a twofold to fourfold greater risk of sudden death than nonsmokers (Ref. 20 at pp. 58–59). The beneficial impact of smoking cessation on these risks has also been well established. For example, one year after quitting smoking, a former smoker's additional risk of heart disease compared to a person who has never smoked is reduced by about half and, after 15 years of abstinence, this risk is similar to that of a person who never smoked (Ref. 2 at p. 363).

Current smoking is also associated with a twofold to fourfold increase in the risk of stroke; smoking cessation steadily decreases this risk and, after 5 to 15 years of not smoking, the risk of stroke is indistinguishable from that for lifetime nonsmokers (*Id.* at p. 394).

Smoking has also been shown to cause abdominal aortic aneurysm. Studies have shown that the risk of death from abdominal aortic aneurysm was increased more than fourfold in current smokers and twofold in former smokers; smoking is one of the few avoidable causes of this frequently fatal condition (*Id.* at pp. 396–97).

Respiratory diseases. Smoking has negative effects on the entire lung—it impairs lung defenses against infection and causes the sustained lung injury that leads to COPD (*Id.* at p. 423). Cigarettes have been shown to cause a range of acute respiratory illnesses, including increased risk of pneumonia, and chronic respiratory diseases, which are leading causes of illness and death in the United States and worldwide (*Id.* at pp. 423, 508–509).

For example, cigarette smoking is the leading cause of COPD in the United States, and this major public health problem could be almost completely prevented by smoking abstinence (*Id.* at p. 501). Although smoking cessation reduces the risk of COPD, the risk of COPD mortality among former smokers, even after 20 years or more of abstinence, remains elevated compared with the risk among people who have never smoked (*Id.*).

Maternal smoking during pregnancy causes a reduction in lung function in infants, and children who smoke experience impaired lung growth and an early onset of lung function decline (*Id.* at pp. 508–509). Smoking during adulthood also leads to a premature onset of accelerated age-related decline in lung function, while smoking cessation can return the rate of lung function decline to that of persons who have never smoked (*Id.* at pp. 480 and 509). Results from several investigations suggest that the benefits of smoking cessation for FEV1 decline (a measure of the air capacity of the lungs) are greatest for persons who stop smoking at younger ages (*Id.* at p. 480).

Smoking also results in poor asthma control and it causes a range of respiratory symptoms in children, adolescents, and adults, including coughing, phlegm, wheezing, and shortness of breath (*Id.* at p. 509). Smoking cessation reduces the rates of these respiratory symptoms and of respiratory infections (*Id.* at p. 467).

Reproductive effects. Smoking has well-documented negative effects on fertility, on pregnancies, and on infants and children born to women who smoke. For example, studies show that women who smoke have reduced fertility (*Id.* at p. 541). Women who smoke during pregnancy are more likely to experience premature rupture of the membranes, placenta previa, and placental abruption (*Id.* at p. 576). Smoking also increases rates of preterm delivery and shortened gestation, and studies have indicated that women who smoke are twice as likely to have low birth weight infants as women who do not smoke (*Id.* at pp. 576 and 569). Smoking also causes an increased risk of sudden infant death syndrome (SIDS) for infants whose mothers smoke during and after pregnancy (*Id.* at pp. 587 and 601).

Other effects. Smoking has been shown to have a variety of other negative health effects. For example, cigarette smokers have poorer overall health status compared to nonsmokers; this may manifest as increased absenteeism from work and increased use of medical care services (*Id.* at p. 818). Smokers have an increased risk of adverse surgical outcomes related to wound healing and respiratory complications compared to nonsmokers (*Id.*). In postmenopausal women who smoke, smoking is associated with low bone density (*Id.* at p. 716). Smokers are also at an increased risk for hip fractures, which account for a significant proportion of the morbidity and mortality associated with osteoporosis (*Id.* at pp. 717–719). Smoking also increases the risk for periodontitis, cataract, and for the occurrence of peptic ulcer disease in persons who are *Helicobacter pylori* positive (*Id.* at pp. 736, 777, 780 and 813). Furthermore, smokers are at a greater risk of dying from peptic ulcer disease than nonsmokers (*Id.* at p. 807).

Addiction. Nicotine addiction is another negative effect of cigarette smoking. Nicotine is the primary chemical compound in tobacco that causes addiction, and the magnitude of public health harm caused by cigarettes is inextricably linked to the addictive nature of these products (Ref. 21 at p. 14; Ref. 5 at p. xi). Nicotine is psychoactive (mood altering) and can provide pleasurable effects; it also causes physical dependence characterized by withdrawal symptoms that usually accompany nicotine abstinence (Ref. 21 at p. 14). The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine (*Id.* at p. 9). Smokers develop tolerance to the effects of nicotine over time as well as a physical dependence on these effects, and as a result need greater amounts of nicotine over time to produce the same effects; thus smokers tend to smoke more over time to avoid withdrawal symptoms (*Id.* at pp. 50, 197–98). Withdrawal symptoms are common among persons attempting to quit smoking—in one study, 78 percent of subjects reported significant withdrawal symptoms (*Id.* at pp. 201–202).

In addition to physical dependence, nicotine addiction also results in conditioned behavior in smokers in response to situations and environmental stimuli associated with cigarette use. Smokers typically use cigarettes in certain patterns—*e.g.,* upon waking in the morning, after a meal, with a cup of coffee or an alcoholic beverage—and this patterned behavior is strongly reinforced by the pleasurable effects of nicotine (*Id.* at pp. 306–308; Ref. 17). Other stimuli associated with smoking itself, such as the smell of cigarette smoke or the sight of cigarette-associated paraphernalia, also become part of the conditioning process by repeated association with the desired physiological effects of nicotine (Ref. 21 at p. 307; Ref. 17). As these processes repeat over time as a result of regular smoking, these situations and stimuli become a powerful cue to smoke due to their association with the rewarding effects of nicotine, and the desire to smoke triggered by these situations can persist long after withdrawal symptoms subside (Ref. 17).

As a result of nicotine addiction, only a minority of smokers can achieve permanent abstinence in an initial quit

attempt. There are data suggesting that more than 70 percent of smokers in the United States report that they want to quit, and approximately 44 percent report that they try to quit each year (Ref. 19 at p. 15). This estimate is likely a significant underestimate of the actual number of quit attempts because unsuccessful quit attempts, particularly if short-lived or in the past, are often not reported in surveys. One study reported that at three months, 90.1 percent of quit attempts lasting less than one day, 63.7 percent of those lasting between a day and one week, and 38.9 percent of those lasting between one week and one month failed to be reported to researchers conducting surveys (Ref. 22). Many of the quit attempts that are reported are unsuccessful. For example, among the 19 million adults who reported attempting to quit in 2005, epidemiologic data suggest that only 4 to 7 percent were successful (Ref. 19 at p. 15). Similarly, the Institute of Medicine (IOM), considering data for 2004, found that although approximately 40.5 percent of adult smokers reported attempting to quit in that year, only between 3 and 5 percent were successful (Ref. 5 at p. 82). Furthermore, adults with education levels at or below the equivalent of a high school diploma have the highest smoking prevalence levels but the lowest quit ratios (*i.e.*, the ratio of persons who have smoked at least 100 cigarettes during their lifetime but do not currently smoke to persons who report smoking at least 100 cigarettes during their lifetime) (Ref. 23).

Adolescents also experience low success rates when attempting to quit. Most Americans who use tobacco products begin using when they are under the age of 18 and become addicted before reaching the age of 18 (Refs. 3 and 7). Although many adolescents believe "they can quit [smoking] at any time and therefore avoid addiction," nicotine dependence can be rapidly established (Ref. 5 at p. 89; see also Ref. 19 at p. 158). Research has shown that some adolescents report symptoms of withdrawal and craving within days or weeks of beginning to smoke (Ref. 24). As a result, many adolescents are nicotine dependent despite their relatively short smoking histories (Ref. 25). An analysis of data from the 2007 YRBS found that 60.9 percent of high school students who ever smoked cigarettes daily tried to quit smoking, but only 12.2 percent were successful (*Id.*). Research among adolescents also highlights their poor understanding of the difficulty of quitting smoking—for example, one study found that only 3 percent of 12th grade daily smokers estimated that they would still be smoking in 5 years, while in reality 63 percent of this population is still smoking daily 7 to 9 years later (Ref. 5 at p. 91).

Benefits of reduced prevalence. Dramatic declines in the deaths caused by the conditions discussed above can be achieved by further reducing smoking prevalence rates. Smoking cessation has major and immediate health benefits for men and women of all ages, regardless of health status (Ref. 26 at p. i). Smoking cessation decreases the risk of the health consequences of smoking, and former smokers live longer than continuing smokers. For example, persons who quit smoking before age 50 have one-half the risk of dying in the next 15 years compared with continuing smokers (*Id.* at p. v).

More importantly, preventing nonsmokers, particularly children, from starting smoking in the first instance would allow them to avoid nicotine addiction and the severe adverse health consequences of smoking. Preventing initiation would result in enormous public health benefits. As Congress found when enacting the Tobacco Control Act, "reducing the use of tobacco by minors by 50 percent would prevent well over 10,000,000 of today's children from becoming regular, daily smokers, saving over 3,000,000 of them from premature death due to tobacco-induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs" (section 2(14) of the Tobacco Control Act).

III. Data Concerning Health Warnings

A. Current Warnings on Cigarette Packages and Advertisements Are Inadequate

Section 201 of the Tobacco Control Act requires FDA to issue regulations mandating the use of color graphics depicting the negative health consequences of smoking to accompany the nine warning statements that are specified in section 4(a)(1) of FCLAA (15 U.S.C. 1333(a)(1)). The warning statements must be randomly displayed (*i.e.,* in each 12-month period, all of the different warnings must appear in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed) on cigarette packages and rotated quarterly in alternating sequence in cigarette advertisements, as provided by sections 4(c)(1) and 4(c)(2) of FCLAA (15 U.S.C. 1333(c)(1), (2)), as amended by the Tobacco Control Act. Congress directed that stronger and larger warning statements, accompanied by graphics, would replace the current text-only requirements. Data from studies indicate the current warnings on cigarette packages and advertisements are ineffective at communicating health risk information to consumers.

Cigarette packages and advertisements can be effective channels for communication of important health information. The warning on a cigarette package can provide a clear, visible vehicle to communicate risk at the most crucial time for smokers and potential smokers. Pack-a-day smokers are potentially exposed to warnings more than 7,000 times per year (Refs. 27–29). When utilized effectively, cigarette packages and advertisements can serve as an important channel for communicating health information to broad national audiences that include both smokers and nonsmokers.

The inclusion of strong health warnings on packages and in advertisements can thus provide a critical opportunity to educate consumers about the health risks of cigarettes, support intentions among current smokers who want to quit or decrease cigarette consumption, and discourage nonsmokers, particularly youth, from initiating cigarette use. Prominent displays of warnings increase their effectiveness; larger warnings, with pictures, are more likely to be noticed by consumers, communicate information about health risks to consumers, and reinforce intentions among tobacco users who want to quit (Ref. 30).

However, cigarette warnings in the United States have not been changed or improved in more than 25 years. The unchanging nature of these warnings, as well as their relatively small size and lack of a graphic image component, severely impairs their ability to effectively communicate to consumers. Research has repeatedly illustrated that the current warnings used in the United States frequently go unnoticed or fail to convey relevant information regarding health risks.

1. Current Warnings Have Not Changed in More Than Twenty-Five Years

In response to the Surgeon General's first major report on smoking and health in 1964, Congress passed FCLAA to require warning labels on all cigarette packages. The warning, which was required to be conspicuous and legible, was written in small print and located on one of the side panels of each cigarette package. It stated "CAUTION: Cigarette Smoking May Be Hazardous to

Your Health." This language appeared on all cigarette packs sold from January 1, 1966, through October 31, 1970. In 1969, Congress passed the Public Health Cigarette Smoking Act (Public Law 91–222), which slightly modified the warning statement on cigarette packages, but did not yet require any warnings on cigarette advertisements. The new warning language, "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Health," appeared on cigarette packages sold in the United States from November 1, 1970, through October 11, 1985. In 1972, the Federal Trade Commission (FTC) issued consent orders requiring six major cigarette manufacturers and distributors to include in all their cigarette advertisements a clear and conspicuous disclosure of the warning required to be on packages (Ref. 31 at 460–65).

In 1981, the FTC issued a report to Congress that concluded that the then-current health warning labels had little effect on public awareness and attitudes toward smoking. The FTC stated that the existing warning likely was ineffective because it "(1) is overexposed and worn out, (2) lacks novelty, (3) is too abstract, and (4) lacks personal relevance" (Ref. 32 at pp. 7–16).

Subsequently, Congress again modified cigarette warnings by passing the CSEA, which required the following four rotational health warnings on packages and advertisements [5]:

- "SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy."
- "SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health."
- "SURGEON GENERAL'S WARNING: Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth and Low Birth Weight."
- "SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide."

In addition, the law established the location and format for these warning statements and mandated that the warnings be rotated quarterly, which helped keep them from becoming stale. Despite a FTC recommendation to change the size and shape of warnings, Congress retained the size and rectangular format of previous warnings.

More than twenty-five years have passed since these last changes, and there is a substantial body of evidence that these warnings do not effectively communicate information about the adverse health effects of smoking to the American public, as discussed in more detail below. Given the extreme hazards cigarettes pose to the public health, the revised warnings required under section 4 of FCLAA (15 U.S.C. 1333) and provided in this proposed rule are critical to the effective communication of the health risks of smoking, and should encourage current smokers to consider cessation and discourage nonsmokers from initiating use of cigarettes.

2. Current Warnings Often Go Unnoticed

The CSEA requires the current warnings to be "conspicuous and legible" with the same package location and font size required on the date of enactment (*i.e.,* October 12, 1984). However, researchers have found that these health warnings go largely unnoticed and unconsidered by both smokers and nonsmokers. For example, a major study into tobacco policy in the United States by the IOM in 2007 concluded that U.S. package warnings are both "unnoticed and stale" (Ref. 5 at p. 291). The Chair of the IOM's Committee on Reducing Tobacco Use has described the warnings on cigarette packs as "invisible" (Ref. 4).

Research regarding warning statements in cigarette advertisements has shown similar results. For example, one study of the recall and eye-tracking of adolescents viewing tobacco advertisements found: 43.6 percent of adolescents did not even look at the warning statement included in the advertisement; just 36.7 percent looked at the warning long enough to read any of its words; and the average viewing of the warning only accounted for 8 percent of the total viewing time (Ref. 33). Researchers in this study also determined that adolescents are unable to recall the content of the current cigarette warnings or to correctly recognize the warnings from a list, indicating that the current warnings are likely to be ineffective among younger consumers (*Id.*).

Another study of adolescents also found that they are not seeing, reading, and remembering health warnings on cigarette packages and advertisements (Ref. 34). In this study of ninth-grade students, only 32 percent of regular smokers recalled seeing one of the current warnings which states: "Quitting Smoking Now Greatly Reduces Serious Risks To Your Health" (*Id.*). In addition, almost 20 percent incorrectly reported having seen a simulated health warning that is not among one of the four current required warnings (*Id.*).

Data from a 1989 study indicate that consumers also fail to notice or read health warnings on outdoor billboards and taxicab cigarette advertisements (though these advertising media are no longer in common use). According to this study, which was published in the Journal of the American Medical Association, drivers only read the entire warning message on 5 percent of highway billboard advertisements and were only able to fully read the health warning on 18 of the 39 street advertisements used in this study (Ref. 35). Participants were unable to read, even partially, the Surgeon General's warnings in any of the 47 taxicab advertisements used in this study (*Id.*). Yet, those same consumers were able to identify the brand name and imagery on 100 percent of the highway billboards (*Id.*). Likewise, these participants were able to identify the brand name in 100 percent and the imagery in 95 percent of the taxicab advertisements (*Id.*). These results indicate that the current warnings are not appropriately conspicuous in advertisements compared to the rest of the advertising message, as discussed in more detail below.

3. Current Warnings Fail To Convey Relevant Information in an Effective Manner

Even when consumers notice and contemplate the current health warnings on cigarette packages and in advertisements, there is clear evidence that these warnings fail to appropriately convey crucial information such as the nature and extent of the health risks associated with smoking cigarettes. The current small, wordy text-based messages are ambiguous, providing less health information than is provided regarding many other consumer goods that have significantly less harmful impact on people's health (Ref. 36).

In its 2007 Report, the IOM concluded that the current U.S. warnings fail to convey relevant health information in an effective way (Ref. 5 at p. 291). The IOM cited an International Tobacco Control Policy Evaluation Study, which found that 85 percent of Canadian respondents cited packages (which, in Canada, contain prominent text and graphic health warnings) as a source of health information, while only 47 percent of U.S. smokers cited packages as a health information source (*Id.* at 294, citing Ref. 37).

Studies also have shown that the current warnings do not motivate consumers to look at them long enough to consider the concept being communicated. For example, researchers have found that the warning

[5] Slightly different health warnings were required on outdoor billboard advertisements.

statements fail to attract attention or to make the consumer appropriately aware of the health risks of smoking (Ref. 38). In a study of U.S. and Canadian smokers and nonsmokers, researchers found that participants voluntarily examined warnings on Canadian packages, which include prominent text and graphics, for longer durations than U.S. package warnings, because the current text-only messages used in the United States are not memorable for consumers (*Id.*). The mere textual presentation of vague hazard information in the current U.S. warnings is not sufficient to motivate perceptions of risk (*Id.*).

The content and format of the current warnings have failed to successfully draw and hold consumers' attention, especially when placed in competition with the other text, images, and graphics that cigarette companies have used on packaging and in advertising, which have been thoroughly tested, regularly updated, and artfully crafted by tobacco companies. According to the most recent data from the FTC, tobacco companies spent approximately $12.49 billion on advertising and promotion in 2006 (Ref. 39 at p. 1). Tobacco companies frequently have employed marketing and advertising experts to craft campaigns with messages targeted to certain demographics (Ref. 40 at p. 7). The messages developed by companies in cigarette advertisements cover 96 percent of the space, are continuously updated to incorporate current trends, and are targeted based on market research. In contrast, the current health warnings cover only 4 percent of advertising space, are solely textual, are not targeted to any population group, and consist of only four rotating messages that have not been updated for more than two and a half decades. On cigarette packages, these warnings appear only on one side panel. As a result, the important health messages frequently are functionally invisible in comparison to the rest of the advertisement and package (Ref. 33 at p. 88).

Moreover, even if consumers notice the current warnings, those with less education may not be able to adequately comprehend the text-only messages. In its 2007 Report, the IOM expressed concern about the ability of consumers with less education to recall the information included in text-based messages (Ref. 5 at p. 295). The IOM cited a study of Canadian smokers' knowledge about the country's prior warning requirements, which, like the current U.S. health warnings, only contained four textual warning statements. In that study, researchers noted that comparatively few women with lower educational attainment were aware of messages warning of the impacts of smoking on life expectancy, heart disease, or pregnancy (Ref. 41). Because the current U.S. smoking population has various levels of education (including a high percentage of people with low educational attainment) and includes teenagers (who have yet to complete their education), the current text-only warnings are inadequate.

B. Larger, Graphic Warnings Communicate More Effectively: International Experience

In 2001, Canada introduced graphic health warnings depicting the adverse health consequences of smoking on the upper 50 percent of the two primary panels of cigarette packages. Those warnings, like the warnings proposed here, include a photograph or other image, a marker word "WARNING," and a warning statement. By mid-2009, 28 countries also required graphic warnings and more countries are planning to do so.

In its 2007 Report, the IOM concludes that the available scientific evidence indicates that larger, graphic health warnings would promote greater public knowledge of the health risks of using tobacco and would help reduce consumption (Ref. 5 at p. 295). Similarly, an article published by WHO concludes that, taken as a whole, the research on graphic health warnings show that they are (1) more likely to be noticed than text-only warnings, (2) more effective for educating smokers about the health risks of smoking and for increasing the time smokers spend thinking about the health risks, and (3) associated with increased motivation to quit smoking (Ref. 42).

1. Getting Consumers' Attention

Several design features are associated with greater salience (*i.e.,* noticeability and readability) of health warnings, including the size and position of warnings on the cigarette package. Smokers are more likely to recall larger warnings, as well as warnings that appear on the front of packages (Ref. 5 at p. C–3). Warnings that include pictures or graphics likewise are more noticeable and more likely to be recalled than text-only warnings (*Id.* at p. C–4).

In Canada, awareness of warnings on cigarette packages was almost universal among smokers and very high even among nonsmokers after that country required cigarette packages to display large, graphic warnings on the front and rear panels. In a 2001 cross-sectional survey sponsored by the Canadian Cancer Society, 90 percent of Canadian smokers and 49 percent of nonsmokers noticed changes to the Canadian health warnings after the introduction of pictorial warnings (Ref. 43). Similarly, a survey of youth sponsored by Health Canada showed that 73 percent of those who have never smoked, 86 percent of "puffers" (*i.e.,* those who had tried smoking but never smoked a whole cigarette), and 90 percent of those who have smoked beyond puffing reported seeing health warnings on cigarette packages in 2002, a year after the introduction of graphic warnings in Canada (Ref. 44). In a study of young adults, 98.5 percent of smokers, 88.9 percent of occasional smokers, and 67.5 percent of those who have never smoked reported that they were aware of the Canadian graphic health warnings (Ref. 45).

Survey evidence also shows that awareness of health warnings on cigarette packages increased significantly after Australia required large, graphic warnings in 2006. In one study, smokers were more likely to report that over the past month they noticed the enhanced warnings and read or looked closely at them compared to the old warnings (Ref. 46). Among students in year levels 8 to 12 in Melbourne, cognitive processing of cigarette warnings (*i.e.,* reading, attending to, thinking and talking about the warnings) increased in the year that Australia adopted graphic warnings (Ref. 47). Developmental focus group research conducted for Australia as it considered whether to require graphic warnings similarly reported that graphic warnings on cigarette packs were potentially more likely to help people remember the health effects and warnings (Ref. 48).

Experimental studies also indicate that requiring large, graphic warnings would significantly increase the salience of health warnings on cigarette packages. In one experimental study, U.S. college students were shown images of the Canadian cigarette warnings and the current warnings appearing on cigarette packs sold in the United States. Compared to the U.S. warnings, the Canadian graphic warnings significantly increased aided recall of the warnings, increased depth of message processing, and increased the perceived strength of the message (Ref. 49). Similarly, in focus group research conducted among young adults in the United States, participants reported that the Canadian warnings were more visible and more informative than the warnings appearing on cigarette packages in the United States (Ref. 50).

2. Influencing Consumers' Awareness of Cigarette-Related Health Risks

Large, pictorial warnings graphically convey the harm and danger that tobacco use causes, eliciting an immediate impact. Effective communication of the health risks associated with cigarette use is critical from a public health perspective, as smokers who perceive a greater health risk from smoking are more likely to want to quit and to be successful in their quit attempts (Ref. 37). National surveys conducted on behalf of Health Canada indicate that approximately 95 percent of youth smokers and 75 percent of adult smokers report that the Canadian pictorial warnings have been effective in providing them with important health information (Ref. 5 at p. 294). The 2001 survey conducted by the Canadian Cancer Society found that the country's pictorial warnings, which had recently been introduced, resulted in 58 percent of smokers reporting that they thought about the health effects of smoking more frequently than previously (Ref. 43). Among Canadian adult smokers in Ontario, 51 percent of study participants reported that the pictorial warnings made them think about the health effects of smoking (Ref. 51). Canadian smokers were more likely to report cigarette packages as a source of information about the health risks of smoking than smokers in the United States and other countries with text-only warnings (Ref. 37).

Similarly, a study conducted for officials in Australia found that graphic warnings increased participants' knowledge and awareness of the health risks of smoking, especially among current smokers and recent quitters (Ref. 52). A street intercept study in Australia suggests that graphic warnings may also increase smokers' perceptions of their personal risks of smoking. In that study, 51 percent of participants stated that the graphic warnings on cigarette packs increased their perceived risk of dying from smoking (Ref. 53).

Graphic warnings appear to influence risk perceptions among youth as well as adults. In a cross-sectional survey of middle and high school students in Greece, participants were shown several graphic warnings prepared by the European Union as well as text-only warnings. Study participants consistently selected the graphic warnings as more effective in making them think about the effects of smoking on health (Ref. 54). Similarly, in a youth survey conducted by Health Canada, approximately two-thirds of youth nonsmokers reported looking at the pictorial warnings at least once a week and, as indicated above, 95 percent agreed that the warnings had been effective in providing them with important information about the health effects of smoking (Ref. 5 at p. C–5).

In an Internet-based study of current and former young adult smokers in the United States, the Canadian graphic warnings were rated as significantly more effective than the current U.S. warnings on cigarette packs for conveying concerns about the health risks of smoking (Ref. 55).

3. Impacting Smoking Intentions and Behaviors

In addition to increasing consumer awareness of the health risks of smoking, the proposed graphic warnings also seek to impact changes in smoking behavior. There are some studies indicating that large, graphic warnings increase smokers' intentions to quit smoking or motivate them to quit smoking.

The 2001 survey sponsored by the Canadian Cancer Society shows that 44 percent of adult smokers stated that the Canadian graphic health warnings increased their motivation to quit smoking (Ref. 43). In another study of Canadian young adults (ages 20 to 24), 37 percent of male participants and 48 percent of female participants reported that the warnings on cigarette packs led them to think about quitting smoking (Ref. 45). In this same study, 36 percent of male participants and 34 percent of female participants also indicated that the cigarette warnings might make young people less likely to start smoking. Some studies indicate that exposure to graphic warnings increases quit intentions among youth smokers as well. A study of Australian adolescents shows that experimental and established youth smokers thought more about quitting after the introduction of graphic warnings in Australia (Ref. 47).

There is also evidence suggesting that graphic warnings may be more effective at preventing youth initiation than text-only warnings. For example, in a cross-sectional survey of middle and high school students in Greece where participants were shown several graphic warnings prepared by the European Union as well as text-only warnings, the adolescents rated the graphic warning labels as more effective in preventing them from smoking (Ref. 54).

A few studies also indicate that large graphic health warnings may increase quit attempts. In Canada, smokers who quit smoking after the introduction of graphic warnings were 2.78 times more likely to identify health warnings as a motivation for their quitting than former smokers who quit during the two years before graphic warnings appeared on Canadian cigarette packages (Ref. 29). In one Australian study, participants reported increased attempts to quit smoking after cigarette packs displayed graphic warnings, although there was no association with short-term quit success (Ref. 46).

Some studies also indicate that large, graphic warnings may induce individual smokers to reduce consumption. The Canadian Cancer Society survey indicated that 21 percent of smokers reported that on one or more occasions they chose not to smoke a cigarette due to the warnings on cigarette packages (Ref. 43). The survey also indicated that 27 percent of participants reported that the then-new graphic warnings motivated them to smoke less inside their homes (*Id.*). In another study involving young adults in Canada, 22.6 percent of current male smokers and 26.6 percent of current female smokers reported that in the past month, noticing the warning on cigarette packages led them to decide not to have a cigarette (Ref. 45). In a study of Australian youth smoking behavior, adolescents who were experimenting with smoking or were established smokers indicated that they thought more about forgoing cigarettes after graphic warnings appeared on cigarette packages in 2006 (Ref. 47).

One study suggests that graphic warnings may help persons who have quit smoking remain abstinent from smoking. In that study, 26 percent of former smokers in Canada reported that the then-new graphic warnings on cigarette packages helped them remain abstinent (Ref. 29).

Canadian national survey data also suggest that graphic warnings may reduce smoking rates. Smoking prevalence among Canadians aged 15 or older dropped from 24 percent in 2000 (before the graphic warnings were introduced) to 22 percent in 2001 and 21 percent in 2002 (Ref. 56). It is not possible to draw a direct causal connection between the graphic warnings and these data because other smoking control initiatives, including an increase in the cigarette tax and new restrictions on public smoking also occurred during the same period. At the same time, however, these data are suggestive that large graphic warnings may reduce smoking consumption.

After considering the available scientific evidence, the IOM concluded in its 2007 Report that "[o]n the basis of the evidence accumulated thus far, [larger,] graphic warnings of the kind required in Canada, Brazil and Thailand 'would promote greater public understanding of the risks' of using

tobacco and would help reduce consumption" in the United States (Ref. 5 at p. 295).

C. Benefits of FDA's Proposed Required Warnings

FDA has carefully assessed the scientific literature studying the impact of graphic images on the salience (*i.e.,* noticeability and readability) of warnings, on the effective communication of the health risks of smoking, and on changes to smoking behavior. Although much of the available research involved comparisons of warnings that differ in more than one aspect (*i.e.,* text size, use of graphics, and number of images), the overall body of available research has illustrated that the use of large text, color graphics, and multiple rotating health statements will significantly improve the communication of the health risks of smoking to the general public in the United States and delay wear-out of these important health messages.

Our assessment of the literature and our experience as a public health agency provide support for requiring that the nine textual warning statements listed in section 4(a)(1) of FCLAA (15 U.S.C. 1333(a)(1)) appear on cigarette packages and in cigarette advertisements, and that each textual warning statement be accompanied by a specified color graphic image. It also supports the proposal that the required warnings should comprise the top 50 percent of the area of each of the front and rear panels of cigarette packages and 20 percent of the area of cigarette advertisements in the United States in accordance with section 4 of FCLAA (15 U.S.C. 1333(b)). The statute and this proposal is consistent with the international consensus reflected in the WHO's Framework Convention on Tobacco Control, *i.e.,* the proposed warnings would be rotating, large, clear, visible, and legible, and would occupy "50 percent or more of the principal display areas" of packages. WHO FCTC art. 11.1(b). Further, we believe that the available evidence demonstrates that the addition of color graphics to the nine new textual warning statements would ensure that warnings on packages and in advertisements effectively provide critical information to consumers while continuing to afford tobacco manufacturers and retailers ample space (over 50 percent of packages and 80 percent of advertisements) to convey other information regarding the product.

1. The Addition of Graphic Images Will Have a Significant, Positive Impact on Public Health

As summarized in section III.B, research on cigarette warnings with a graphic component has found that they are more effective in educating consumers about smoking risks than text-only warnings (Ref. 42), and are more likely to be effective in impacting smoking behaviors (Ref. 27). Moreover, the available scientific literature suggests that cigarette packages with larger, text-only warnings are inferior to cigarette warnings with a graphic component in both communicating health information and encouraging smoking cessation.

For example, data comparing the Canadian graphic warnings and the United Kingdom (UK) text-only warnings, after the UK substantially increased the number and size of its warnings (from 6 warnings that covered 6 percent of the front and back of cigarette packages to 16 warnings that covered 30 percent of the front and 40 percent of the back of the packages), found that the Canadian pictorial warnings had a greater impact on smokers than the new UK warnings (Ref. 36). Specifically, data collected 2.5 years after the implementation of the Canadian pictorial warnings and 2.5 years after the implementation of the larger, text-only UK warnings found that, while the UK respondents reported greater levels of salience (*i.e.,* noticing and reading the warnings) than Canadian smokers, Canadian smokers were significantly more likely to stop smoking a cigarette as a result of the graphic warnings and to report that the graphic warnings had led them to think about quitting. Canadian smokers also were significantly more likely than those in the UK to report that the warnings made them think about the health risks of smoking.

Likewise, data comparing the impact of Australia's graphic warnings (introduced in 2005) and the UK's larger, text-only warnings showed similar support for the use of a graphic component (Ref. 46). Specifically, researchers found greater increases in the two strongest predictors of subsequent quitting—cognitive responses (*i.e.,* thinking about the health risks of smoking) and foregoing cigarettes—after Australia introduced its graphic warnings than after the UK introduced its enhanced text-only warnings. This is especially noteworthy, given that when the border is taken into account, the graphic warnings on the front of the packages in Australia were smaller than the UK's text-only warnings on the front of the packages.

It is worth noting that the UK amended its Tobacco Products (Manufacture, Presentation and Sale) (Safety) regulations in 2007 to require graphic warnings to appear on all cigarette packages as of October 2009.

Furthermore, although both text and graphic cigarette warnings are subject to wear-out over an extended period of time, research has shown that graphic warnings maintain their impact longer than text-only warnings. Approximately four years after the introduction of the 16 Canadian graphic warnings, youth and adult smokers reported little or no decrease in their effectiveness (Ref. 42; Ref. 36; Ref. 5 at C–4). Similarly, the use of color graphics in the proposed required warnings, coupled with the increase in the number of rotating health statements required under section 4 of FCLAA (15 U.S.C. 1333) and this proposed rule from four to nine, will help ensure that the new cigarette health warnings being proposed will retain beneficial effects over time (Ref. 5 at C–4).

2. The Revised Textual Statements Will Communicate More Effectively

The proposed required warnings would also modify the textual warning statements currently required on cigarette packages and in advertisements. Section 201(a) of the Tobacco Control Act sets forth nine text statements that will replace the four statements currently required under FCLAA once any final rule becomes effective. These nine statements objectively communicate some of the major health risks associated with smoking in a more effective manner compared to the warning statements currently required in the United States. As the IOM explained, specific, unambiguous warnings (*e.g.,* "cigarettes cause lung cancer") are more likely to be noticed and less likely to be discounted than vague warnings (*e.g.,* "cigarettes are hazardous to your health"), and warnings should target an appropriate literacy level (*Id.* at C–3). The new textual warning statements set forth in the Tobacco Control Act represent an improvement over the current warnings in that they are specific and unambiguous and they succinctly describe documented outcomes of cigarette use and exposure. For example, the vague warning that "Cigarette Smoke Contains Carbon Monoxide" will no longer be used, and two of the longer warnings currently in use, "Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy" and "Smoking

by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight," will be replaced with shorter, more readable statements (*e.g.,* "Cigarettes cause fatal lung disease," "Cigarettes cause cancer," "Cigarettes cause strokes and heart disease," "Smoking during pregnancy can harm your baby," and "Smoking can kill you"). The proposed required warnings also will be easier to understand because of the addition of the graphic component (*Id.* at 295).

Thus, the nine specific textual warning statements set forth in section 201(a) of the Tobacco Control Act would effectively convey the major health risks of smoking, which will help discourage nonsmokers from initiating cigarette use, and encourage current smokers to consider cessation, particularly when combined with graphic images depicting the negative consequences of smoking. We intend to monitor the effects of these required warnings once they are put into use. In addition, there will continue to be social science research conducted regarding the relative efficacy of various required warnings. We will use the results of our monitoring and such research to determine whether any of the textual warning statements or accompanying graphic images should be revised in a future rulemaking.

D. FDA's Process for Development and Plan for Selection of the Required Warnings

Section 4(d) of FCLAA (15 U.S.C. 1333(d)), as amended by section 201 of the Tobacco Control Act, requires FDA to issue "regulations that require color graphics depicting the negative health consequences of smoking" to accompany the textual warning statements specified in section 4(a)(1) of FCLAA (15 U.S.C. 1333(a)(1)). In considering and developing appropriate color graphics to accompany the textual warning statements, FDA assessed the graphic warnings that other countries have required for tobacco products. In addition, FDA worked with various experts in the fields of health communications, marketing research, graphic design and advertising to develop the required warnings published with the proposed regulation.

The proposed required warnings, consisting of the color graphics FDA developed and the textual warning statements, are available as electronic files in portable document format (PDF) in this docket and on FDA's Web site at *http://www.fda.gov/cigarettewarnings.* For the final rule, the required warnings will be contained in documents titled "Cigarette Required Warnings—English and Spanish" and "Cigarette Warnings—Other Foreign Language Advertisements," as is further discussed in section IV.D. Drafts of these two documents are included in the docket as well.

The set of required warnings available with this proposed rule encompasses a variety of themes and graphic techniques. The required warnings are designed to communicate risk information to a diverse range of audiences, including youth, young adults, and adults, and of smokers as well as potential smokers. The images in some of the required warnings are photographic while others are graphic illustrations. Some images are more visually disturbing than others. The fonts, typography, and layouts vary.

FDA believes that the graphics in the proposed required warnings appropriately depict the negative health consequences of smoking. Further, FDA believes that these graphics are consistent with the types of pictorial warnings required or developed by other international governmental authorities, such as Canada, the European Union, and Australia, whose sets of warnings include a balance of images, some more visually disturbing than others. FDA also believes that including a varied set of warnings is consistent with the existing scientific literature concerning the effectiveness of graphic health warnings.

The existing research shows that the effectiveness of health warnings in communicating the health risks of smoking may vary according to the audience, reflecting factors such as socioeconomic background, gender, age, and smoking status and behavior (Ref. 57 at p. 22). A variety of health warnings facilitates better targeting of specific groups whose primary concerns about smoking tend to vary (*Id.* at p. 46). Specific issues that may make smoking desirable (or undesirable) for one group might be quite different for another group (*Id.* at p. 44). Similarly, using a variety of different warnings has been found to be significant in counteracting over-exposure and wear-out of health warnings (*Id.* at p. 46). In addition, in some cases, the strength of the content of the message is what determines its impact, while in other cases, peripheral factors, such as how and where the message is delivered and its visual impact are the most significant determinants (*Id.* at p. 28). In order to be effective with a broad audience, health warnings should be developed with these different factors in mind (*Id.*).

The existing research indicates that a balanced set of graphic warnings that includes a range and variety of images is effective. For example, the use of health warnings with "frightening" or "disturbing" tonal qualities appears effective (*Id.* at pp. 37–39). Consistent with this research, some of the images published with the proposed regulation are more "frightening" or visually disturbing than others.

Research also indicates that other types of graphic warnings, including those that do not include "frightening" or "disturbing" imagery, can be effective (Ref. 52 at pp. 24–25). For example, graphic health warnings that convey the risks of secondhand smoke for babies and children without being "frightening" or "disturbing" appear to have widespread impact (*Id.;* Ref. 57 at pp. 34–35). The set of proposed required warnings includes health warning statements and accompanying images that convey the risk of secondhand smoke on children and babies and the risk of smoking while pregnant.

Similarly, evidence also shows that warnings about specific health risks, such as cancer, heart disease, and stroke, are more effective than general warnings, and that the effectiveness of graphic warnings relating to specific health concerns tends to vary for different smoker groups, reflecting their perceived relevance (Ref. 52 at pp. 24–25; Ref. 57 at p. 34). The statements and images published with this proposed rule portray specific health risks using a variety of themes and techniques in order to reach different smoker groups.

According to the existing research, graphic warnings that focus on the benefits of quitting may also be effective (Ref. 57 at p. 35). The set of published images includes warnings addressing the benefits of quitting.

In addition to the types of messages and images, the salience or noticeability of health warnings is enhanced by the use of larger type size, contrasting colors, and different typography (*Id.* at p. 28). Research assessing responses to warnings on tobacco product packaging, as well as responses to safety warnings generally, indicate that the effectiveness of warnings is enhanced through techniques such as larger font sizes, upper case lettering, and bold type (*Id.* at p. 33). A number of the proposed required warnings utilize these techniques.

Although FDA expects that any final rule will include a total of nine different required warnings, it has developed a larger set of images for the proposed rule. FDA is seeking comments on what required warnings to include in the final rule, including comments on the color graphics that are included in this proposal.

In addition to seeking comment on what color graphics to require in the final rule, FDA is conducting research on the proposed required warnings. The larger set of required warnings developed for this proposed rule will allow for more productive research into the relative efficacy of the different proposed color graphics. The research will: (1) Measure consumer attitudes, beliefs, and intended behaviors related to cigarette smoking in response to the proposed color graphics and their accompanying textual warning statements; (2) determine whether consumer responses to the proposed color graphics and their accompanying textual warning statements differ across various groups based on smoking status, age, or other demographic variables; and (3) evaluate the relative effectiveness of the proposed color graphics and their accompanying textual warning statements at conveying information about various health risks of smoking, and additionally, at encouraging smoking cessation and discouraging smoking initiation (*See* 75 FR 7604 (February 22, 2010); 75 FR 52352 (August 25, 2010)). FDA is in the process of conducting this research. Once the research is complete and final analyses of the results are available, FDA will place a report of the results of the analyses in the docket and announce the report's availability by a notice in the **Federal Register** so the public has an opportunity to comment on the results.

After considering the public comments, research results, and scientific literature, FDA plans to select a set of nine required warnings for the final rule, each of which is comprised of one color graphic that is paired with one of the nine textual warning statements. Thus, FDA intends to select nine images from among the larger set of images in this proposed rule for actual use. The agency believes that nine required warnings will be sufficient to achieve its goal of effectively communicating the health risks of smoking and to prevent wear-out of the proposed required warnings for several years.

In addition, another set of color graphics is proposed for use solely in advertisements with a small surface area (*i.e.,* less than 12 square inches). The color graphics in this set differ in their composition from the other color graphics in that the details of the images should be clear, conspicuous, and legible even when the graphics are reduced in size to be placed on surfaces with a relatively small area. FDA proposes that the final version of "Cigarette Required Warnings—English and Spanish" also contain graphics from this set, which would only be used in advertisements with a small surface area. But even an advertisement with a relatively small surface area would need to be large enough so that the required graphic and accompanying textual warning statement are clear, conspicuous, and legible.

IV. Description of Proposed Regulations

The Tobacco Control Act mandates that FDA issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany the nine health warning statements that must appear on cigarette packages and in cigarette advertisements under FCLAA (15 U.S.C. 1333). FDA proposes to implement this requirement for cigarette packages and advertisements by adding a new part 1141 to title 21 of the Code of Federal Regulations governing cigarette package and advertising warnings.

The graphic warnings rule, when finalized, is intended to help educate consumers about the health risks of cigarettes, to support intentions among current smokers to quit or decrease cigarette consumption, and to discourage nonsmokers, particularly youth, from initiating cigarette use. We seek comment on the proposed part 1141 described below. If you have comments on specific provisions of the proposed regulation, we request that you identify these provisions in your comments. In addition, if you have concerns that would be addressed by alternative text, we request that you provide this alternative text in your comments.

A. Section 1141.1—Scope

Proposed § 1141.1 would set forth the scope of the proposed regulations. Proposed § 1141.1(a) explains that part 1141 would set forth the requirements for the display of the health warnings on cigarette packages and advertisements required by section 4 of FCLAA (15 U.S.C. 1333), as amended by the Tobacco Control Act. This paragraph would also indicate that FDA has the authority to require additional statements on cigarette packages and advertisements in accordance with the FD&C Act or other authorities (such as FCLAA). For example, section 4 of FCLAA, as amended by section 206 of the Tobacco Control Act, requires the agency to initiate a rulemaking to determine whether cigarette and other tobacco product manufacturers should be required to disclose the tar and nicotine yields in advertisements and/or on packages. In addition, section 906(d) of the FD&C Act authorizes FDA to issue regulations restricting the sale or distribution of cigarettes and other tobacco products, including restrictions on the advertising and promotion of such products, if FDA determines the restriction is appropriate for protecting public health.

Proposed § 1141.1(b) would limit the applicability of the proposed requirements by clarifying that these requirements would not apply to manufacturers or distributors of cigarettes that do not manufacture, package, or import cigarettes for sale or distribution in the United States.

In accordance with section 4(a)(4) of FCLAA (15 U.S.C. 1333(a)(4)), proposed § 1141.1(c) would provide that a cigarette retailer would not be in violation of the proposed rule if cigarette packages displayed or sold by the retailer do not comply with all the requirements set forth in the proposed rule, so long as the packages contain a health warning, are supplied by a license- or permit-holding tobacco product manufacturer, importer, or distributor, and are not altered by the retailer in a way that materially impacts the display of the required warnings on the packages. Thus, manufacturers, importers, and distributors would have primary responsibility for ensuring that the required warnings on cigarette packages comply with all the provisions of proposed part 1141, but retailers would have some responsibility as well. Specifically, retailers would be responsible for ensuring that all cigarette packages they display or sell contain a warning regarding the health risks associated with smoking cigarettes. In addition, retailers could not alter the warning in a way that is material to the requirements of FCLAA and this proposed rule, including by obscuring the warning (*e.g.,* by placing a sticker or other item on top of it), by shrinking or severing the warning (in whole or in part), or by otherwise changing it in a material way. However, retailers would not be responsible for verifying that the warnings on packages they display or sell contain the combination of textual statements and accompanying color graphics required by FCLAA, or that they comply with other specifications required in FCLAA or proposed part 1141.

Similarly, proposed § 1141.1(d) implements section 4(c)(4) of FCLAA (15 U.S.C. 1333(c)(4)) and would provide that a retailer would not be considered in violation of part 1141 if it posts an advertisement that does not comply with all of the proposed requirements, so long as the advertisement was not created by or on behalf of the cigarette retailer and the

retailer is not otherwise responsible for inclusion of the required warnings. Note that, in accordance with section 4(b) of FCLAA (15 U.S.C. 1333(b)), any manufacturer, distributor, importer, or retailer who is responsible for the creation of a cigarette advertisement is responsible for compliance with FCLAA and proposed part 1141. This paragraph also specifies that this provision would not relieve a retailer of liability if it publicly displays an advertisement that fails to contain a health warning or if it alters an advertisement in a way that materially impacts the display of the required warning. Therefore, except for when it is responsible for the creation of an advertisement or otherwise responsible for the inclusion of the warning, a retailer is not responsible for ensuring that its cigarette advertisements contain the combination of textual statements and accompanying color graphics required by FCLAA, or that they comply with other specifications required in FCLAA or proposed part 1141. However, retailers must ensure that their cigarette advertisements contain a warning of smoking's risks. They are also responsible for complying with the other requirements applicable to retailers, including those in part 1140 of Title 21 of the Code of Federal Regulations.

B. Section 1141.3—Definitions

Proposed § 1141.3 would establish definitions of terms used in the proposed rule.

Proposed § 1141.3 would define the terms "cigarette," "commerce," "package," "person," and "United States," respectively, for the purposes of part 1141, as those terms are defined in section 3 of FCLAA (15 U.S.C. 1332).

Proposed § 1141.3 would define "distributor," for the purposes of part 1141, as any person who furthers the distribution of cigarettes at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. In addition, this paragraph would specify that common carriers are not considered distributors for the purposes of part 1141.

Proposed § 1141.3 would define the terms "front panel" and "rear panel" as the two largest display surfaces of the cigarette package. FDA is proposing this definition to ensure that all entities properly identify the sides or surfaces of the cigarette package on which the required warnings must appear. On almost all cigarette packages, these two panels are oriented directly opposite from one another and are the same size.

Proposed § 1141.3 would define "importer," for purposes of this part, as any person who introduces into commerce any cigarette that (1) was not manufactured in the United States and (2) is intended for sale or distribution to consumers in the United States.

Proposed § 1141.3 would define "manufacturer" as any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette product.

Proposed § 1141.3 would provide a definition of "required warning." This term is used to refer to the combination of one of the textual warning statements and the accompanying color graphic depicting the negative health consequences of smoking required under section 4 of FCLAA and this part.

Proposed § 1141.3 would define "retailer" as any person who sells cigarettes to individuals for personal consumption, or who operates a facility where vending machines or self-service displays of cigarettes are permitted.

C. Section 1141.10—Required Warnings

The Tobacco Control Act directs FDA to require that color graphics depicting the negative health consequences of smoking accompany each of the textual warning statements that must be randomly displayed (*i.e.,* in each 12-month period, all of the different warnings must appear in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed) on cigarette packages and rotated quarterly in alternating sequence in cigarette advertisements under FCLAA. FDA is proposing that cigarette packages and advertisements contain such a combination graphic-textual warning in proposed § 1141.10.

Proposed paragraph (a) would set forth the requirements specific to cigarette packages. Proposed § 1141.10(a)(1) would require that each cigarette package sold, offered for sale, distributed, or imported for sale or distribution within the United States contain a required warning. This required warning would have to appear on both the front and rear panels of the cigarette package. As defined in proposed § 1141.3, this required warning would consist of one of the nine textual warning statements set forth in FCLAA (15 U.S.C. 1333) and the accompanying color graphic depicting the negative health consequences of smoking.

Proposed § 1141.10(a)(2) would provide that the warnings required under paragraph (a)(1) must be obtained from the document titled "Cigarette Required Warnings—English and Spanish." Due to the multi-color nature of the required warnings, they cannot be printed in the Code of Federal Regulations, and due to the visual complexity of the images, it will not be feasible to accurately describe the images and their colors in the Code of Federal Regulations. Thus, FDA proposes to provide the required warnings for regulated entities in "Cigarette Required Warnings—English and Spanish," which will contain downloadable electronic files used to generate each required warning. This approach would also help regulated entities ensure that their packages contain required warnings that are consistent with the requirements of FCLAA and proposed part 1141, when finalized.

Proposed § 1141.10(a)(2) would also mandate that the required warnings be accurately reproduced from the electronic images in "Cigarette Required Warnings—English and Spanish." Thus, regulated entities would have to ensure that the required warnings they place on packages are not distorted or otherwise inaccurately reproduced from the electronic images in "Cigarette Required Warnings—English and Spanish." For example, the colors used to display the required images would have to be reproduced accurately from the colors used in "Cigarette Required Warnings—English and Spanish." The use of the electronic files from "Cigarette Required Warnings—English and Spanish" to generate the required warnings should enable companies to reproduce the warnings with relative ease. FDA recognizes that there may be minor variations in the exact colors used to reprint the required warnings across all cigarette packages due to differences in inks and printing processes, but FDA expects that the colors in the graphics that appear on packages and in advertisements will look the same as the colors in the graphics set forth in "Cigarette Required Warnings—English and Spanish."

Finally, proposed § 1141.10(a)(2) would also specify that the electronic images obtained from "Cigarette Required Warnings—English and Spanish" must be adapted as necessary to meet the requirements of section 4 of FCLAA (15 U.S.C. 1333) and this part, and the electronic files provided in "Cigarette Required Warnings—English and Spanish" would be in a format that could be modified as necessary to comply with this proposed rule. Specifically, regulated entities would be able to modify the size of the required warnings to ensure they are the required

size and occupy the required area of the cigarette package. However, any modifications to such files would need to result in an accurate reproduction of the electronic images contained in "Cigarette Required Warnings—English and Spanish," as proposed by § 1141.10(a)(2). For example, the width-to-height ratio (*i.e.,* the aspect ratio) of the images should be preserved when the images are compressed or expanded, so that the resulting image is not distorted.

Proposed § 1141.10(a)(3) would mandate that the required warnings appear directly on the package and be clearly visible underneath the cellophane or other clear wrapping. In order for the required warnings to appear conspicuously and legibly as mandated by section 4 of FCLAA (15 U.S.C. 1333), they must not be obscured. Thus, any outer wrappings on the package must be clear so that the warnings can be seen and read by consumers. Similarly, any other material that is placed on the outside of packages, such as price information or promotional material (*e.g.,* coupons), must not be placed over or otherwise obscure the required warning.

As required under section 4 of FCLAA (15 U.S.C. 1333), proposed § 1141.10(a)(4) would mandate that the required warnings occupy at least 50 percent of the area of the front panel and rear panel of each cigarette package. These area requirements would help ensure that the required warnings are prominent and conspicuous enough to gain consumers' notice in the first instance, and are easily viewed and read by consumers once they are noticed. This will help ensure that consumers comprehend the critical information conveyed in the required warnings. As to location, proposed § 1141.10(a)(4) states that the required warnings must occupy at least the top 50 percent of the area of the front and rear panels of the packages. For cigarette cartons, where the front and rear panels have significantly longer horizontal than vertical axes, the textual warning statement and accompanying graphic might be distorted if they were placed on the top 50 percent of these panels because the top runs along the longer horizontal axis. Thus, under section 4(b)(4) and (d) of FCLAA, proposed § 1141.10(a)(4) would specify a format for these warnings so that they occupy at least the left 50 percent of the front and rear panels. With this format, the required warnings can be sized for placement on cigarette cartons without distortion.

Proposed § 1141.10(a)(5) would mandate that the required warnings and the other information on the panels be oriented in the same direction. Thus, for example, if the front panel of a cigarette package contains information, such as the brand name of the product, in a left to right orientation, the required warning must not be placed such that it appears at a right angle to this text. Rather, the required warning and its component textual statement should also appear in a left to right orientation. This requirement would help ensure the required warnings on cigarette packages are conspicuous and legible to consumers, as required by section 4 of FCLAA. In addition, FDA is proposing this restriction under section 906(d) of the FD&C Act (21 U.S.C. 387f(d)). Requiring all the text on the panel of a cigarette package that contains a required warning to be oriented in the same direction would help ensure that the warnings are noticed and read by consumers and, therefore, would be appropriate for the protection of the public health.

Proposed paragraph (b) of proposed § 1141.10 would set forth the requirements specific to cigarette advertisements. Proposed § 1141.10(b)(1) would mandate that manufacturers, importers, distributors, and retailers include required warnings in all their cigarette advertising within the United States. Thus, all advertisements, regardless of form—which could include materials such as magazine and newspaper ads, pamphlets, leaflets, brochures, coupons, catalogues, retail or point-of-sale displays (including functional items such as clocks or change mats), posters, billboards, direct mailers, and Internet advertising (*e.g.,* Web pages, banner ads, etc.)—would have to contain required warnings.

Consistent with section 4(b) of FCLAA (15 U.S.C. 1333(b)), proposed § 1141.10(b)(2) would mandate that the textual component of the required warning appear in the English language, with two exceptions. First, per proposed § 1141.10(b)(2)(i), if an advertisement appears in a non-English language publication, the textual portion of the required warning would need to appear in the predominant language of the publication. The predominant language is the primary language used in the non-sponsored content in the publication. For example, in the case of a newspaper where the non-sponsored content (*e.g.,* news stories, articles of opinion, and features) are in a foreign language but the sponsored content (*e.g.,* advertising) is wholly or partially in English, the predominant language would be the foreign language used in the non-sponsored content, and the required warning would have to appear in that foreign language. Because such non-English language publications in the United States are targeted towards consumers who speak the predominant language of the publication, this will help ensure that the required warning effectively communicates to the target audience that will view the advertisement. Second, per proposed § 1141.10(b)(2)(ii), if an advertisement is in an English language publication but is presented in a language other than English, the textual portion of the required warning would need to be presented in the same foreign language principally used in the advertisement. English language publications in the United States are generally targeted towards the consumer population as a whole or towards consumers with a particular interest in the subject matter of the publication rather than towards consumers who speak a particular language; however, foreign language advertisements in English-language publications are targeted towards consumers who speak the foreign language used in the advertisement. Therefore, requiring foreign language advertisements in English-language publications to present the required warning in the same language that is used elsewhere in the advertisement will help ensure that the target audience of the advertisement is able to read and understand both the promotional content and the important warning information.

Proposed § 1141.10(b)(3) would require that English and Spanish language required warnings be obtained and accurately reproduced from "Cigarette Required Warnings—English and Spanish." As discussed above, the required warnings cannot be accurately reprinted or described in the Code of Federal Regulations, and FDA is thus proposing to provide the required warnings for regulated entities in "Cigarette Required Warnings—English and Spanish," which will contain downloadable copies of the electronic files used to generate each required warning. In addition to offering the English-language versions of the required warnings that would be used on all packages and in most advertisements, the document would offer Spanish-language versions of the required warnings for use in advertisements that either appear in Spanish-language publications or that are presented primarily in Spanish (*see* 15 U.S.C. 1333(b)). These versions are offered in recognition of the fact that Spanish is the foreign language most commonly used for cigarette

advertisements in the United States. However, color graphics for other foreign language warnings would need to be obtained from the document titled "Cigarette Required Warnings—Other Foreign Language Advertisements," as is discussed in more detail below. As with cigarette packages, the required warnings placed in cigarette advertisements would have to be accurate reproductions of those set forth in "Cigarette Required Warnings—English and Spanish." In addition, the required warnings would need to be adapted as necessary to meet the requirements of section 4 of FCLAA (15 U.S.C. 1333) and part 1141. The electronic files provided in "Cigarette Required Warnings—English and Spanish" would be in a format that would allow regulated entities to resize the required warnings as necessary to comply with the other provisions of this part, though any modifications made would need to result in an accurate reproduction of the electronic images contained in the documents.

Proposed § 1141.10(b)(4) would require regulated entities to obtain color graphics for foreign language required warnings, other than Spanish language warnings, from the electronic files contained in "Cigarette Required Warnings—Other Foreign Language Advertisements," into which they must insert a true and accurate translation of the textual warning language required by FCLAA. "Cigarette Required Warnings—Other Foreign Language Advertisements" would offer downloadable electronic files of the color graphics and specify (in English) the text that is to accompany each color graphic. These files would allow for insertion of foreign language translations of the required textual statements, so that regulated entities can generate the appropriate required warnings for their foreign language advertisements, as well as for their advertisements that appear in foreign language publications. Advertisers would need to ensure that the required English textual statements are accurately and appropriately translated into the appropriate foreign language. If a warning statement is not accurately translated, the advertisement would be in violation of FCLAA. In addition to ensuring accurate translation, it would be the advertiser's responsibility to ensure that the foreign language text complies with the format specifications set forth in section 4 of FCLAA (15 U.S.C. 1333). Thus, for example, the text should not be placed in a manner that interferes with the accompanying color graphic. Proposed § 1141.10(b)(4) would also mandate that the required warnings be adapted as necessary to meet any other requirements of section 4 of FCLAA (15 U.S.C. 1333) and proposed part 1141. The electronic files provided in "Cigarette Required Warnings—Other Foreign Language Advertisements" would allow regulated entities to resize the required warnings as necessary to comply with the other provisions of part 1141, though any modifications would need to result in accurate reproductions of the electronic images contained in the documents.

As required by section 4 of FCLAA (15 U.S.C. 1333), proposed § 1141.10(b)(5) would mandate that the required warnings comprise at least 20 percent of the area of each advertisement. This will help ensure that the required warnings are appropriately clear, conspicuous, and legible by consumers, so that the important health information in the required warnings can be adequately seen and comprehended. Proposed § 1141.10(b)(5) would also specify that the required warnings are to be placed in accordance with the other requirements set forth in FCLAA for the display of such warnings. For example, section 4 of FCLAA (15 U.S.C. 1333) contains requirements related to the placement of the required warnings, as well as requirements related to the border that must enclose each warning in cigarette advertising. FDA intends to separately address some of these other FCLAA requirements, as well as the provisions in section 4(c) of FCLAA (15 U.S.C. 1333(c)) related to the submission of plans regarding the random display of warnings on packages and rotation of warnings in advertisements.

Proposed § 1141.10(c) would mandate that the required warnings be indelibly printed on or permanently affixed to packages and advertisements. Removable or impermanent warning displays on packages and in advertisements would not comply with the requirements of FCLAA, in that the required warnings could become separated from the package or advertisement and thus would not meet the requirement that they be conspicuous on the package or advertisement. The purpose of the amendments made to FCLAA by the Tobacco Control Act is to strengthen the warnings for greater impact on consumers. Removable warnings would run counter to this purpose. For example, if the required package warning was printed or stickered on a clear outer wrapper, and this wrapper was meant to be removed in order for the package (or cigarettes within the package) to be accessed, the consumer could access the package of cigarettes numerous times without viewing the warning and receiving the impact of the critical health message.

D. Section 1141.12—Incorporation by Reference of Required Warnings

Section 1141.12 proposes that two documents, "Cigarette Required Warnings—English and Spanish" and "Cigarette Required Warnings—Other Foreign Language Advertisements," be incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any final regulation will provide information on how to obtain the two documents. Draft versions of both documents are available in the docket. These draft versions of the documents contain placeholders for the color graphics; once FDA selects the required warnings for the final rule, it intends to include the electronic files for these required warnings in the final versions of both documents. The material incorporated by reference must meet the Office of the Federal Register's requirements for incorporating material by reference, and thus the way these two documents are displayed may be changed for the final rule to meet such requirements.

Section 1141.12(a) proposes the incorporation by reference of "Cigarette Required Warnings—English and Spanish." This document would contain the required warnings that must be included on all cigarette packages, and in cigarette advertisements in which the text of the required warning must be set forth in the English language or the Spanish language. Regulated entities would utilize "Cigarette Required Warnings—English and Spanish" to obtain the required warnings and reproduce them on cigarette packages and in advertisements in accordance with proposed part 1141. This document would offer downloadable electronic files for each of the required warnings.

FDA expects that the final version of "Cigarette Required Warnings—English and Spanish" will provide a total of nine different images, each of which is comprised of one color graphic that is paired with one of the nine textual warning statements set forth in FCLAA. In addition, for each of these nine sets, FDA expects that the final version would include six formatting options in accordance with sections 4(a)(2) and 4(b)(2) of FCLAA (15 U.S.C. 1333(a)(2) and (b)(2)). Specifically, each of the nine sets would have one formatting option where the textual portion of the required warning is presented in black text on a white background and one

formatting option where the textual portion of the required warning is presented in white text on a black background for use on packages. In addition, each of these sets would include a version of the two previous formatting options enclosed in a rectangular border for use in advertisements in accordance with section 4(b)(2) of FCLAA (15 U.S.C. 1333(b)(2)). Furthermore, each of the nine sets would contain an English version of these advertisement formatting options and a Spanish version of these advertising formatting options. FDA is requesting comments on the different proposed required warnings (*i.e.,* the combinations of the textual warning statements and accompanying color graphics). For more information regarding FDA's research analyses, see section III.D.

In addition, FDA is proposing a subset of color graphics for use in advertisements with a small surface area (*i.e.,* less than 12 square inches). These color graphics differ in their composition from the other color graphics in this document. FDA is proposing this subset of color graphics to ensure that the details of the images are clear, conspicuous, and legible even when the image is reduced in size to occupy 20 percent of a surface with an area of less than 12 square inches. FDA proposes that a final version of "Cigarette Required Warnings—English and Spanish" contain such options, which would be used (in combination with one of the nine textual statements) only in advertisements with a small surface area. However, even an advertisement with a relatively small surface area would need to be large enough so that the required graphic and accompanying textual warning statement are clear, conspicuous, and legible.

Section 1141.12(b) proposes the incorporation by reference of "Cigarette Required Warnings—Other Foreign Language Advertisements." This document would contain the electronic files that are to be used to generate the required warnings for advertisements in which the text of the required warning must be set forth in a foreign language (other than Spanish) under proposed § 1141.12(b). Regulated entities would utilize "Cigarette Required Warnings—Other Foreign Language Advertisements" to generate the required warnings for such advertisements. This document will offer downloadable files of the color graphic for each of the required warnings and specify (in English) the text that is to accompany each color graphic. The downloadable files would allow for insertion of foreign language translations of the required textual statements, so that regulated entities can generate the appropriate required warnings for their foreign language advertisements, as well as for their advertisements that appear in foreign language publications.

E. Section 1141.14—Misbranding of Cigarettes

Section 1141.14(a) proposes that a cigarette shall be deemed to be misbranded unless its labeling and advertising bear one of the required warnings. Under section 903(a)(1) and (a)(7)(A) of the FD&C Act (21 U.S.C. 387c(a)(1) and (a)(7)(A)), a tobacco product, including a cigarette, is deemed misbranded if its labeling or advertising is false or misleading in any particular. Under 201(n) of the FD&C Act (21 U.S.C. 321(n)), in determining whether something is misleading, it: "shall be taken into account * * * not only representations made or suggested * * * but also the extent to which the labeling or advertising fails to reveal facts * * * material with respect to consequences which may result from the use of the article to which the labeling or advertising relates * * * under such conditions of use as are customary or usual." The required warnings, which concern risks associated with the use of cigarettes, are clearly material with respect to consequences that may result from the use of cigarettes. These required warnings convey information about the addictive nature of cigarettes (which is inextricably linked to all the health harms caused by cigarettes) as well as the major, potentially deadly health consequences of smoking, including the causal relationship between smoking and cancer (cigarettes have been shown to cause more than 10 different cancers), fatal lung disease (*e.g.,* COPD, which is a major public health problem in the United States), heart disease and stroke (the first and third leading causes of death in the United States), and negative pregnancy outcomes. In addition, the warnings provide information on the negative, potentially fatal health effects cigarettes can have for non-users, including the harm tobacco smoke can cause to children and non-smoking adults (*e.g.,* fatal lung disease). The warnings also provide critical information on the significant health benefits of quitting. Overall, the required warnings provide highly material information that every consumer should know about the consequences of cigarettes under customary conditions of use.

In order to ensure that the required warnings are conspicuous, prominent, and legible, each individual cigarette package or advertisement is required to contain only one of the nine required warnings under this proposed rule, although all nine statements are material for cigarettes in general. It generally would not be feasible to fit all nine statements and their accompanying color graphics and have them be conspicuous, prominent, and legible. Moreover, while any individual package or advertisement will not convey the information from all nine required warnings, all nine warnings will be on public display at any given time as the Tobacco Control Act requires the warnings to be randomly displayed in as equal a number of times as possible on cigarette packages for all cigarette brands and in quarterly rotation in advertisements under section 4(c) of FCLAA (15 U.S.C. 1333(c)). Thus, consumers will be exposed to conspicuous, prominent, and legible displays of all nine warning statements (which apply to all cigarettes) in the marketplace at any given time, and as a result will receive a summary of the major risks of smoking.

It is worth noting that the warning disclosure requirements for tobacco products are different than the disclosure requirements that apply to other products that FDA regulates, as (1) the warning information for cigarettes is different in its applicability than the warning information for other products, (2) the disclosure requirements for other products have a different purpose than the cigarette warnings, and (3) the mechanisms for exposure to warning information are different for tobacco products than for other products FDA regulates. For example, medical products such as drugs and devices have risks that are specified for each particular product; these risks are set forth in the FDA-required product labeling for each product. The statutory and regulatory requirements for prescription and restricted medical products require that each product's labeling and advertising disclose all material risk information about the particular product (*See* 21 U.S.C. 352(a), (c), (f), (n), (q) and (r); 321(n); see also 21 CFR 201.100(d)(1) and (d)(3); 201.105(c)(1); 801.109(d); and 21 CFR part 202). This information also has a different purpose than cigarette warning information. For example, disclosure of all the material risk information associated with a particular prescription or restricted medical product helps healthcare professionals by giving them some of the information they need to

know about the medical product that will enable them to safely use or prescribe it. Similarly, this risk information helps consumers know whether medical products may be appropriate for them as well as what they should tell their healthcare professionals about before taking or using or while taking or using a product. It also lets consumers know what risks they might experience and what steps they need to take for safety reasons (*e.g.,* no driving) because of taking or using a product. It would not be appropriate to provide partial information of this type because the full summary of information is needed to ensure safe use.

In contrast, the warnings for cigarette products set forth in FCLAA apply to every cigarette product. Cigarettes have health risks that are associated with their use generally. Furthermore, there is no safe method of using cigarette products, so this warning information has a different purpose than medical product warning information, in that it is intended to influence awareness of cigarette-related health risks and, as a result, encourage cessation and discourage initiation, rather than to help ensure that a particular cigarette product is safely used.

The exposure to product information is also different for medical products versus cigarette products. For cigarette products, the warnings will be printed prominently and conspicuously on all packages. These required warnings will thus be seen by smokers, such as each time that smokers buy cigarettes or take a cigarette out of its package (as discussed in Section III.A, pack-a-day smokers can be exposed to warnings more than 7,000 times per year). All nine of the required warnings also will be seen by potential smokers each time they are at a point-of-sale considering purchasing a package of cigarettes. The same is not true of prescription or restricted medical products, as the risk information is specific to each product, is not commonly displayed prominently and conspicuously for all products at the point of purchase, and is not likely to be seen by consumers each time they take or use a product.

In addition, section 1141.14(b) proposes that a cigarette advertisement or package will be deemed to include a brief statement of relevant warnings for the purposes of section 903(a)(8) of the FD&C Act (21 U.S.C. 387c(a)(8)) if it bears one of the required warnings. Under section 903(a)(8)(B) of the FD&C Act (21 U.S.C. 387c(a)(8)(B)), a tobacco product is deemed misbranded unless the manufacturer, packer, or distributor includes in all advertisements and other descriptive printed matter a brief statement of, among other things, the relevant warnings. The warnings required by section 4 of FCLAA for cigarette advertising and packages are "relevant warnings" with respect to cigarettes as that phrase is used in section 903. For the purpose of this provision, "descriptive printed matter" includes the product package label, which, under this proposed rule, would be required to bear certain warnings. FDA is thus proposing that packages and advertisements that bear one of the required warnings in accordance with the proposed rule would satisfy the requirement to include a brief statement of the relevant warnings for the purposes of section 903(a)(8). Similarly, FDA is proposing that a cigarette distributed or offered for sale in any State shall be deemed to be misbranded under section 903(a)(8) unless the manufacturer, packer, or distributor includes in all advertisements and packages issued or caused to be issued by the manufacturer, packer, or distributor with respect to the cigarette one of the required warnings.

F. Section 1141.16—Disclosures Regarding Cessation

Section 1141.16 proposes that one or more of the required warnings include specified information about an appropriate smoking cessation resource. The goal would be to provide a place where smokers and other members of the public can obtain smoking cessation information from staff trained specifically to help smokers quit by delivering unbiased and evidence-based information, advice, and support. There are a number of possible alternatives here, including use of an existing or new quitline or Web site, where smokers and other members of the public can obtain current unbiased, factual smoking cessation information. We are proposing that the final rule require that a specified reference to a smoking cessation resource be included in the required warnings. We propose that the resource that is required to be referenced must meet specific criteria designed to ensure that the cessation information, advice, and support provided are unbiased and evidence-based. Specifically, we are proposing that the referenced resource must meet the following criteria:

- It must provide factual information about the harms to health from smoking and the health benefits of quitting.
- It must provide factual information about what to expect when trying to quit smoking (*e.g.,* common withdrawal symptoms and their duration, circumstances that can trigger cravings).
- It must provide practical advice (problem-solving/skills training) about how to deal with common issues faced by users trying to quit (*e.g.,* how to deal with cravings and withdrawal).
- It must provide evidence-based advice about how to formulate a plan to quit smoking.
- It must provide evidence-based information about effective relapse prevention strategies.
- It must provide factual information on smoking cessation treatments, including FDA-approved cessation medications.
- The information, advice, and support provided must be evidence-based; must be unbiased, including with respect to products, services, persons, and other entities; and must be relevant to tobacco cessation. For example, it can include factual information about the health risks of smoking but it cannot include derogatory statements regarding cigarette manufacturers, importers, distributors, or retailers or advocate public policy changes.
- Other than as described in the criteria for what information may or must be provided, the resource must not advertise or promote any particular product or service. The resource may provide one or more FDA-approved over-the-counter cessation products, provided it does so in a manner that does not advertise or promote a particular product.
- It must not selectively present information about a subset of FDA-approved cessation products or product categories while failing to mention other FDA-approved cessation products or product categories or reference any drug or other medical product that FDA has not approved for tobacco cessation.
- It must not encourage the use of any non-evidence based smoking cessation practices.

If the resource chosen is a Web site, we propose that it meet the following additional criteria:

- The Web site must not contain a link to any Web site unless it meets all of the listed criteria.
- The Web site may refer to one or more toll-free telephone numbers, provided they meet the applicable criteria.

If the resource chosen is a toll-free telephone number, we propose that it meet the following additional criteria:

- The staff that provide smoking cessation information and advice are trained specifically to help smokers quit by delivering unbiased and evidence-based information, advice, and support.
- The service has appropriate controls to ensure the applicable criteria are met.

The smoking cessation information would be included as part of one or more of the required warnings and therefore would not appear outside of the areas specified for the required warning (*i.e.,* 50 percent of the area of each of the front and rear panels of cigarette packages and 20 percent of the area of advertisements). Thus, no additional space on cigarette packages or in advertising would be needed to display this information. Some or all of the images in the two documents that will be incorporated by reference in the final rule would contain this smoking cessation referral information where this information, along with the textual warning statement and accompanying graphic, are clear, legible, and fit within the specified area. FDA requests comments regarding the selection of an appropriate smoking cessation resource and the applicable criteria identified in the bullets above.

Reducing the number of Americans who smoke by increasing the likelihood that smokers will quit smoking would provide substantial public health benefits by reducing the life-threatening consequences associated with continued cigarette use. Moreover, studies have found that health warnings are more effective if they are combined with cessation-related information (Ref. 5 at p. C–7). Thus, FDA is proposing to require information about an appropriate smoking cessation resource under section 906(d) of the FD&C Act as appropriate for the protection of the public health.

G. Proposed Effective Date

Section 201(b) of the Tobacco Control Act specifies that the requirements for health warnings on cigarette packages and advertisements for cigarettes are effective fifteen months after the issuance of the regulations that FDA is proposing in this proposed rule, and that a final rule must be issued not later than 24 months after the date of enactment of the Tobacco Control Act. Therefore, FDA proposes that any final rule will become effective fifteen months after the date the final rule publishes in the **Federal Register**. During this time, parties should take whatever steps they need to plan and implement business operations that will comply with the final rule. As of the effective date, no tobacco product manufacturer, importer, distributor, or retailer of cigarettes may advertise or cause to be advertised within the United States any cigarette product unless the advertising complies with the final regulation. Also, cigarette packages that do not comply with the requirements of the final rule must not be manufactured for sale or distribution in the United States as of the effective date.

As specified in section 201(b) of the Tobacco Control Act, however, if a packaged cigarette product was manufactured prior to the effective date of the final rule but does not contain the warning statements and graphics required under the final rule, the product may be introduced into commerce in the United States within thirty days from such effective date. Therefore, manufacturers, distributors, importers, and retailers may continue to introduce into domestic commerce existing inventory that may not contain the warning statements and graphics required under the final rule for an additional thirty days after the effective date of any final rule. After the 30-day period, manufacturers must not introduce into domestic commerce any cigarette packages that do not contain the warning statements and graphics required under the final rule, irrespective of the date of manufacture. While this limitation only applies to manufacturers, we note that keeping products without the new, updated warnings on the market for an extended period of time is not in the interest of public health. We request comments regarding mechanisms for enforcing this rule and its effective date, such as ways to differentiate cigarette packages sold from existing inventory from those that were manufactured after the effective date.

V. Paperwork Reduction Act of 1995

The required warning disclosures are the "public disclosure of information originally supplied by the Federal government to the recipient for th[at] purpose," and are, therefore, not within the scope of the Paperwork Reduction Act. *See* 5 CFR 1320.3(c)(2).

VI. Executive Order 13132: Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would 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. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Environmental Impact

FDA has determined under 21 CFR 25.30(k) 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.

VIII. Analysis of Impacts

A. Introduction and Summary

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). This proposed rule would be an economically significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This proposed rule would have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would result in a 1-year expenditure that would meet or exceed this amount.

FDA's estimate of the benefits of the proposed rule is determined by the predicted reduction in the number of U.S. smokers and the consequent reduction in the number of people who will ultimately become ill or die from causes related to smoking. FDA estimates that this proposed rule will reduce the number of smokers by 537,000 in 2013, with small additional reductions over the following 20 years. We estimate the present value of the rule-induced benefits at a 3 percent discount rate to be $10.1 to $28.4

billion, including $8.96 to $26.89 billion in gained life-years, $202.1 to $606.2 million in reduced non-fatal emphysema, $393.1 million in reduced fire losses, and $498.9 million in medical cost reductions. At a 7 percent discount rate, our estimates of total benefits become $2.29 to $6.03 billion, including $1.80 to $5.41 billion due to the increase in life-years, $64.9 to $194.7 million in reduced emphysema, $180.6 million in reduced fire losses and $244.0 million in medical cost reductions. The annualized benefits range from $676.0 million to $1.91 billion with a 3 percent discount rate and from $216.6 to $569.6 million with a 7 percent discount rate. Most of the public health benefits from the proposed rule would be realized in the future; perhaps several decades after the rule took effect. In other words, the benefits estimated here for the typical dissuaded smoker consist of health gains to be realized decades in the future.

The estimated totals may understate the full public health benefits of the proposed rule because they fail to quantify reductions in smokers' non-fatal illnesses other than emphysema, the reduction in external effects attributable to passive smoking, and the reduction in infant and child fatalities caused by mothers' smoking during pregnancy.

TABLE E1—BENEFITS OF REGULATION

Impacts of the rule	Annualized benefits ($ mil)					
	3 percent			7 percent		
	Low	Medium	High	Low	Medium	High
Smokers' Life-Years Saved	602.5	1,205.0	1,807.5	170.4	340.7	511.1
Emphysema Reductions	13.6	27.2	40.7	6.1	12.2	18.4
Fire Loss Averted	26.4	26.4	26.4	17.1	17.1	17.1
Medical Expenditure Reduction	33.5	33.5	33.5	23.0	23.0	23.0
Total	676.0	1,292.1	1,908.2	216.6	393.1	569.6

Note: Table entries are annualized over twenty years, but many of the benefits represented will not be realized until well beyond the twentieth year of the proposed rule's implementation.

The total estimated costs of the final rule include $219.2 million to $529.5 million in one-time costs and $6.2 million in annual costs. Annualized over 20 years, the total costs range from $20.3 million to $40.6 million with a 3 percent discount rate and from $25.1 million to $52.5 million with a 7 percent discount rate, as shown in Table E2. These costs will arise primarily due to the need to change cigarette package labels and remove point-of-sale promotions that do not comply with the new restrictions. FDA could not quantify every regulatory cost. Some commercial sectors will experience costs for short-term dislocations of current business activities, but the costs would be mitigated for those businesses that anticipate the industry's adjustments.

In addition to the costs described above, the rule will lead to private costs in the form of reduced revenues for many firms in the affected sectors. These sector-specific revenue reductions are for the most part distributional effects and cannot be counted as social costs.

TABLE E2—COSTS OF REGULATION

Requirements of the rule	Annualized costs ($ mil)					
	3 percent			7 percent		
	Low	Medium	High	Low	Medium	High
Private Sector						
Labeling Change	11.0	20.0	29.2	14.9	27.0	39.4
Market Testing	0.3	0.7	2.4	0.4	1.0	3.3
Point-of-Sale Advertising	3.0	3.0	3.0	4.0	4.0	4.0
Subtotal	14.3	23.7	34.6	19.3	32.0	46.7
Government						
FDA	6.0	6.0	6.0	5.8	5.8	5.8
Subtotal	6.0	6.0	6.0	5.8	5.8	5.8
Total	20.3	29.7	40.6	25.1	37.8	52.5

As tobacco industry revenues decline, state and Federal tobacco tax revenues will also fall. If excise tax rates on tobacco products remain at current levels, annual state tax revenues would fall by approximately $106.1 million and annual Federal tax revenues by $80.5 million.

B. Need for Rule

According to the nation's health experts, tobacco use remains the most important preventable cause of morbidity and premature mortality in the United States, accounting each year for over 400,000 deaths (Ref. 58; Ref. 1). Written with the goal of ameliorating the enormous toll on the public health that is directly attributable to the consumption of cigarettes, the Tobacco

Control Act mandates the publication of this proposed rule. Section 201 of the Tobacco Control Act modifies section 4 of FCLAA (15 U.S.C. 1333) to require that nine new health warning statements, along with color graphics depicting the negative health consequences of smoking, appear on cigarette packages and in cigarette advertisements. In the following analysis, we estimate the costs and benefits of this statutory requirement.

C. Benefits

We estimate the benefits of the proposed rule by comparing expected life-cycle events of smokers with those of nonsmokers. Nonsmokers tend to live longer and contract fewer lung and other diseases, so the benefits in our analysis include the discounted value of life-years gained, cases of emphysema avoided and medical services freed for other uses. We also include an estimate of the monetary value of the property and lives saved as a result of the rule-induced reduction in the number of accidental fires caused by smoking.

1. Reduced Smoking Rates

The changes outlined in this proposed rule are projected to decrease smoking initiation and increase smoking cessation. For each of the first twenty years of the proposed rule's implementation (2012–2031),[6] FDA calculates the predicted decrease in the number of U.S. smokers by multiplying together the following:

(a) The estimated effect (a percentage point change) of cigarette warning labels on the national smoking rate, and

(b) The population in a particular year in the absence of the proposed regulation (as projected by the U.S. Census Bureau).

To obtain estimates of the effect of cigarette warning labels on smoking rates (item (a) in the list above), we look to the experience of Canada, which has required the use of graphic warning labels since December, 2000 (Ref. 59). The advantage of this approach lies in our ability to observe actual consumer behavior—in the form of changes in smoking rates—before and after a graphic warning label requirement went into effect. The warning labels to be required in the proposed rule are generally similar to those developed by Health Canada and other international authorities. As in Canada, the labels required by the proposed rule would occupy at least half the front and rear display panels of a cigarette package. Moreover, under the proposed rule, there would be a mix of warning statements and images that depict the negative consequences of smoking. Although the proposed rule would follow much the same approach as the Canadian warning label requirements, it would differ in some ways: Canada has 16 labels in rotation, rather than 9; warning statements appear in English on one side of a package and in French on the other; and health and cessation information is included on leaflets within Canadian cigarette packages (Ref. 60). These details, combined with general differences in legal and social trends, indicate that Canada's experience with warning labels can give only a general idea of the changes in smoking rates to be expected as a result of the proposed rule. In addition, other smoking control initiatives, including an increase in the cigarette tax and new restrictions on public smoking also occurred in both the United States and Canada during the period of our analysis. These and other confounding factors make our estimate of the effect of proposed warning labels highly uncertain.

Health Canada (Ref. 61) reports Canadian smoking rates for ages 15 and above for each year from 1999 through 2008. FDA obtained smoking rates for adults, aged 18 and above, in the United States from the National Health Interview Survey (Ref. 62). We used the results from these two reports to calculate the U.S.-Canada smoking rate difference for each year.

Using data from Health Canada (Ref. 63), the National Institutes of Health (Ref. 64) and the National Health Interview Survey (Ref. 62), FDA finds that Canadian smoking rates followed a roughly linear downward trend from 1985–2000, while U.S. smoking rates declined logarithmically over the same time period; the predicted smoking rate decrease was 0.67 percentage points per year in Canada and, as of the year 2000, 0.24 percentage points per year in the United States. Using the estimated trends, we predict smoking rates for the United States and Canada, and the difference between them, for each year up to 2008. We then subtract the predicted U.S.-Canada smoking rate differences from the actual differences observed in the data. Implicit in this method is the assumption that these otherwise unexplained differences may be attributed solely to the presence in Canada of graphic warning labels. We do not account for potential confounding variables; our method is therefore a rudimentary approach to estimating the smoking reduction that would be effected by the proposed warning labels and may be producing results that are off by one or more orders of magnitude. FDA requests comments on this issue.

Using this rudimentary approach, FDA estimates that the average unexplained difference between the United States and Canada in national smoking rates is 0.212 percentage points higher for the 2001–2008 period than for 1999–2000. Applying this estimate to population projections (Ref. 65) and summing over all age groups yields an estimate that the rule would reduce (either through cessation or avoided initiation) the United States' smoking population by approximately 537,000 in 2013, with the total decrease rising to approximately 619,000 in 2031 due to population growth.

2. Expected Life-Years Saved

The largest health consequence of smoking is the increased rate of mortality from cardiovascular disease, cancer, and certain other illnesses. As a result, the largest benefits of this proposed rule stem from the increased life expectancies for those individuals who, in the absence of this proposed rule, would be smokers and thus susceptible to premature mortality from one of these often-fatal diseases. We calculate the number of life-years saved using differences in the probabilities of survival for smokers and nonsmokers. Sloan *et al.* (Ref. 66) construct life tables for various categories of individuals, including "non-smoking smokers" and typical 24-year-old smokers. A non-smoking smoker is someone who does not use cigarettes but otherwise exhibits the lifestyle and personal characteristics[7] of the average smoker. A typical 24-year-old smoker does not necessarily smoke for his or her entire life, but instead faces cessation probabilities that are in line with values observed for all ages in the National Health Interview Survey; the life expectancy effects of cessation at older ages are netted out of life expectancy effects of avoiding smoking at age 24 (results reported below). Sloan *et al.*'s life tables allow us to calculate how many additional deaths, per 100,000 population, may be expected among typical smokers than among non-smoking smokers between the 24th and 25th birthdays, the 25th and 26th, and so on until the 100th birthday. (To simplify the calculation, FDA assumes

[6] The effects of anti-smoking policies occur over a long period of time, so we want to include at least one full generation in our analysis. Using a twenty-year time horizon allows us to do this while still avoiding the extreme uncertainty regarding effects occurring in the more distant future.

[7] In their multivariate regression analysis, Sloan *et al.* control for alcohol intake, body mass index, financial planning horizon, race, education and marital status.

that differences in survival probabilities for smokers and nonsmokers are negligible below age 24 and above age 100.) Overall, Sloan *et al.* find that a typical 24-year-old female smoker can expect to live another 55.5 years, while a comparable nonsmoker can expect another 57.8 years of life, producing an overall regulation-induced gain of 2.4 life-years per individual who is prevented from starting to smoke. Comparing male 24-year-old typical and non-smoking smokers, life expectancy increases from 49.8 to 54.2 years, producing a gain of 4.4 years. The gap between male and female life expectancy results may be due to different physiological responses to equal amounts of smoking, different lifetime cessation patterns or different smoking intensities. Taylor *et al.* (Ref. 67), for instance, find that male smokers are more likely than female smokers to consume more than a pack a day. Sloan *et al.* do not report how much of the male-female difference in their estimated life expectancy effects may be attributed to each possible mechanism.

While FDA considers Sloan *et al.'s* methodology to be the most suitable in the literature for purposes of the present analysis, several other studies of survival probabilities among smokers who quit early in life compared with smokers who persist in smoking into later decades suggest that the average life expectancy gains of not smoking may be much higher for both males and females. Since these other studies have found larger increases in life expectancy attributable to smoking avoidance, the Sloan *et al.* results may be considered conservative.

We assume that each person who reaches age 24 during the twenty years (2012–2031) of our analysis and is dissuaded from smoking extends his or her life by the gender-specific amount Sloan and co-authors report. For older individuals, whose post-smoking cessation survival probabilities cannot be plausibly assumed to equal those of individuals who were nonsmokers at age 24, we predict life extensions using former smoker life tables that we construct using Sloan *et al.'s* results and cessation probabilities from the 1998 National Health Interview Survey (Ref. 62).

3. Benefits of Reduced Premature Mortality

OMB Circular A–4 (Ref. 68) advises that the best means of valuing benefits of reduced fatalities is to measure the affected group's willingness-to-pay to avoid fatal risks. Three life-year values (also known as values of a statistical life-year, or VSLY) used frequently in the literature and in previous analyses are $100,000, $200,000 and $300,000 (Ref. 69; Ref. 70; 74 FR 33030, July 9, 2009), which we update to $105,000, $210,000 and $315,000 in 2009 prices. These values constitute our estimates of willingness-to-pay for a year of life preserved in the present. The economic assessment of a future life-year requires discounting its value to make it commensurate with the value of present events. For this analysis, we use 3 percent and 7 percent discount rates to calculate the present value of the life-years we predict will be saved.

For each dissuaded smoker, we multiply a VSLY by the relevant age- and gender-specific life extension and then discount appropriately to arrive at a per-person value of reduced mortality. For 24-year-olds, this value ranges from $9,166 (for a female applying a VSLY of $105,000 and a 7 percent discount rate to her 2.4 life-years gained due to smoking avoidance) to $358,864 (for a male applying a VSLY of $315,000 and a 3 percent discount rate to his 4.4 life-years gained due to smoking avoidance). Multiplying the per-person values by the predicted number of dissuaded smokers yields estimates of rule-induced mortality benefits that range from $3.61 to $53.78 billion.

This range tends to overstate the net benefits of reduced smoking because it does not account for lost consumer surplus associated with the activity of smoking. Cutler (Ref. 69) suggests that lost consumer surplus might equal around fifty percent of the dollar value of life-year gains, which necessitates dividing the estimated gross benefits in half. This adjustment is based on a very simple linear model of cigarette demand that is not definitive; a more data-intensive model may produce an adjustment factor very different from fifty percent. FDA requests comments, additional data and research on this adjustment. Net benefits estimates, for all VSLY ($105,000, $210,000 and $315,000) and both discount rates (3 percent and 7 percent) and produced using the Cutler adjustment factor, appear in Table E3.

These totals may understate the full value of rule-induced reductions in mortality because they fail to quantify any reduction in either the external effects attributable to passive smoking or the infant and child fatalities caused by mothers' smoking during pregnancy. Sloan *et al.* (Ref. 66) indicate that, historically, the inclusion of spouse and infant deaths increased estimates of smoking's mortality effects by approximately 26.3 percent. We do not incorporate this adjustment into our analysis, however, since recent public smoking restrictions and educational campaigns have reduced external smoking exposure to well below historical levels, though not to zero.

TABLE E3—PRESENT VALUE OF LIFETIME REDUCED SMOKER MORTALITY

Value of a Statistical Life-Year = $105,000		Value of a Statistical Life-Year = $210,000		Value of a Statistical Life-Year = $315,000	
3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
$8,963,863,457	$1,804,953,192	$17,927,726,915	$3,609,906,384	$26,891,590,372	$5,414,859,576

4. Reduced Emphysema

In the previous section, we estimated the benefits that will accrue as a result of the rule-induced reduction in premature deaths from lung cancer, cardiovascular disease and other smoking-related illnesses. Cigarette smoking is also a major risk factor for diseases that are less immediately fatal. As with premature death, individuals are assumed to be willing to give up valuable resources in the present in order to avoid the pain and distress associated with these non-fatal illnesses.

Emphysema, a form of COPD,[8] is perhaps the most notable such illness. Sloan *et al.* (*Id.*) estimate young smokers' lifetime illness profiles and report that smoking has a larger effect on expected years with emphysema than on expected years with cancer, coronary heart disease or any of the

[8] Chronic obstructive bronchitis is a smoking-related illness that is closely related to emphysema so that the two conditions are now generally categorized together as chronic obstructive pulmonary disease (COPD). Because the sources we use in this section only report the health and welfare effects of emphysema, our resulting benefits estimates include only a portion of the total social gains associated with rule-induced COPD reductions.

other conditions they study.[9] In order to quantify the value of rule-induced reductions in years spent experiencing emphysema, we scale our estimates of the value of a statistical life-year ($105,000, $210,000 and $315,000, as discussed in section VIII.C.3) by a ratio representing the tradeoff individuals are willing to make between perfect health and the state of having emphysema. Sullivan and Ghushchyan (Ref. 71) estimate this tradeoff with a regression of EQ–5D health index scores on disease indicators. EQ–5D survey responses—to questions about five areas of health, including mobility, pain, and ability to perform usual activities—are mapped so that a score of one represents best-measurable health, a score of zero represents death, and fractional values represent intermediate levels of health. Sullivan and Ghushchyan's regression analysis indicates that a year with emphysema decreases, on average, a patient's welfare as much as the loss of 0.0667 years of perfect health. Multiplying this average welfare loss by life-year values of $105,000, $210,000 and $315,000 yields estimates of $7,000, $14,000 and $21,000 for the amounts individuals are willing to pay to avoid a year of emphysema.

Sloan *et al.* (Ref. 66) estimate that a 24-year-old smoker can expect, on average, an extra 0.46 discounted years (using a discount rate of 3 percent) or 0.22 discounted years (using a discount rate of 7 percent) of emphysema over his or her lifetime, as compared with an otherwise equivalent nonsmoker. Sloan and co-authors do not report the effect of smoking on emphysema years for members of other age cohorts, so FDA takes the conservative approach of estimating benefits only for those individuals who reach age 24 sometime during the first twenty years of the proposed rule's implementation. (Smoking cessation brought about by this rule will almost certainly reduce emphysema for some individuals who are over age 24 at the time of the rule's implementation. However, due to data constraints, we omit the benefits to these older individuals; this is why we describe our estimate as conservative.)

Multiplying our predictions of per-smoker decreased discounted disease-years by Sullivan and Ghushchyan's welfare loss per year of emphysema and FDA's estimates of the rule-induced reduction in the number of smokers (*see* section VIII.C.1 for a discussion of methodology), discounting appropriately, and dividing in half (per Ref. 69) yields a rule-induced welfare gain of $64.9 to $606.2 million. Results appear in Table E4. Smokers also suffer from other non-fatal illnesses but we do not include those losses in this analysis. Since we do not quantify reductions in smokers' non-fatal illnesses other than emphysema, these estimates represent lower bounds on the value of rule-induced morbidity reductions.

TABLE E4—PRESENT VALUE OF 24-YEAR-OLDS' LIFETIME REDUCED EMPHYSEMA

Value of a Statistical Life-Year = $105,000		Value of a Statistical Life-Year = $210,000		Value of a Statistical Life-Year = $315,000	
3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
$202,075,479	$64,886,926	$404,150,958	$129,773,852	$606,226,437	$194,660,778

5. Reduced Fire Costs

Each year, fires started by lighted tobacco products kill and injure people and destroy structures and other property. In the United States in 2007, civilian deaths caused by smoking-related fires totaled 720, with direct property damage of $530 million (Ref. 72). A reduction in the number of smokers, and the coinciding number of cigarettes smoked, will reduce the number of future fires.

The percentage reduction in fires may not equal the percentage reduction in cigarette consumption, however, because since 2003 forty-nine states have passed legislation that requires cigarettes to be self-extinguishing or fire-safe (with the effectiveness dates of some of these state laws extending into 2011). FDA acknowledges some uncertainty in the effectiveness rate of fire-safe cigarettes;[10] for this analysis, we estimate that 50 percent of apparently rule-induced future fire reductions would have been avoided even without the proposed rule due to fire-safe cigarette design.

Using a $7.9 million value of a statistical life (Ref. 75, which is the 2006 value updated to 2009 dollars using Ref. 76), FDA projects fire-cost savings of $393.1 million (at a three percent discount rate) or $180.6 million (at a seven percent discount rate); of these totals, 9.7% consists of averted property damage and the rest of lives saved. These estimated savings may significantly underestimate the potential benefits because they exclude the value of reduction in fire-caused non-fatal injuries.

6. Medical Services

Sloan *et al.* (Ref. 66) estimate that smokers use more medical services over their life cycles than do comparable nonsmokers, with a specific net cost of $3,757 per female 24-year-old smoker and $2,617 per male 24-year-old smoker (in 2000 dollars and with a 3 percent discount rate). If these payments are distributed equally from ages 24 to 100, given FDA's projected 20-year reductions in smoking prevalence, smoking-related medical expenditures would fall by $1.87 billion, of which $997.7 million would be realized as savings by smokers themselves and $870.6 million by nonsmokers (in the form of decreases in private insurance premiums or taxes used to fund government health programs such as Medicare). With a 7 percent discount rate, the total decrease in expenditure becomes $915.5 million, with $488.0 million of those savings accruing to smokers and $427.5 million to nonsmokers.

In the absence of the rule, some portion of smoking-related medical expenditures accrues to health service providers as economic rent (also known as producer surplus). Any reduction of this portion would not contribute to the social benefit of the rule but would instead be a transfer of value from producers to consumers and other payers. If, however, the supply of smoking-related medical services is highly elastic, especially in the long run, producer surplus would be small. For this reason, FDA does not adjust for potential rent transfer. We do, however, include only the decrease in medical expenditure by smokers as a contribution to the rule's benefits.

[9] Due to the slow progressive nature of emphysema, patients with emphysema experience a diminished quality of life for longer periods than do patients with other smoking-related illnesses, which more rapidly progress to death.

[10] One of the first states to enact these laws, New York, requires cigarettes to self-extinguish 75% of the time (Ref. 73). First-year (2004) data in New York show a reduction in smoking-caused fires by about 33% from the average of the three previous years of complete data (Ref. 74).

Because nonsmokers' payments take the form of a subsidy for smoking-related medical services, some portion of their expenditure in the absence of the rule is greater than smokers' own willingness-to-pay for medical services. Hence, the avoidance of this portion of the spending would transfer value from smokers to nonsmokers but not contribute to an overall social benefit of the rule. We do not know the size of this portion relative to nonsmokers' overall rule-induced expenditure change, so we take the conservative approach of excluding nonsmokers' expenditures from our benefits calculation.

As a final adjustment, we divide the remaining expenditure change in half to account for smokers' lost consumer surplus associated with the activity of smoking. This yields a rule-induced benefit of $498.9 million (at a 3 percent discount rate) or $244.0 million (at a 7 percent discount rate).

7. Summary of Benefits

The discussion above demonstrates the considerable magnitude of the economic benefits available from smoking reduction efforts. Estimates are summarized in Table E5. FDA requests comments on the sources and methods used to produce these results.

TABLE E5—PRESENT VALUE OF BENEFITS ($ MIL)

	VSLY = $105,000		VSLY = $210,000		VSLY = $315,000	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Life-Years	8,963.9	1,805.0	17,927.7	3,609.9	26,891.6	5,414.9
Non-Fatal Emphysema	202.1	64.9	404.2	129.8	606.2	194.7
Fire Loss	393.1	180.6	393.1	180.6	393.1	180.6
Medical Expenditure Reduction	498.9	244.0	498.9	244.0	498.9	244.0
Total	10,057.9	2,294.5	19,223.8	4,164.3	28,389.8	6,034.1

8. Uncertainty Analysis

Estimation of the effectiveness of the proposed rule (on reducing the future U.S. smoking rate) is subject to a large uncertainty that is not fully reflected in the benefits estimates appearing in the preceding sections, which only reflect different estimates of the value of a statistical life year. In this section, we show the uncertainty associated with our estimate of the effectiveness of the proposed rule.

Our primary estimate, that the U.S. smoking rate will decrease by 0.212 percentage points, was calculated in the following steps. First, we found the decrease in Canadian smoking rates since 1999 over and above what would have been expected using the pre-2001 trend. We then subtracted the analogous unexplained decrease in the U.S. smoking rate over the same period. This middle step was driven by the idea that the U.S. experience could proxy for recent social or policy changes (such as public smoking restrictions) that may have had effects on Canada's smoking rate and thus needed to be subtracted in order to isolate the effect of graphic warning labels. The last step was to calculate the difference between U.S. and Canadian unexplained decreases in smoking before and after graphic warning labels were introduced in Canada. We attributed the remaining unexplained difference to graphic warning labels.

However, the U.S. social and policy climate may have been so different from Canada's during the years 1999–2008 that this proxy is inappropriate. To account for this possibility, we calculate the unexplained difference in Canadian smoking rates before and after graphic warning labels were introduced, this time omitting any U.S. adjustments. (Anti-smoking policies and programs other than the graphic warning labels are assumed to be incorporated in the pre-2001 trend, with no additional effects of these variables occurring post-introduction of graphic warning labels.) This approach indicates that graphic warning labels may have been responsible for a 1.648 percentage point decrease in the Canadian smoking rate. If the proposed rule were to achieve this effectiveness level in the United States, benefits would be approximately eight times larger than those reported earlier in this analysis.

On the other hand, because FDA has had access to very small data sets, our effectiveness estimates are in general not statistically distinguishable from zero; we therefore cannot reject the possibility that the proposed rule would not change the U.S. smoking rate. In this case, the proposed rule would not generate any quantifiable benefits, so the appropriate lower bound on benefits is zero. Ranges of benefits, representing the zero-effect case and the Canada-only modeling approach, appear in Table E6. The wide ranges shown in the table highlight the uncertainty inherent in our approach.

TABLE E6—PRESENT VALUE OF BENEFITS, RANGES ($ BILLION)

	VSLY = $105,000		VSLY = $210,000		VSLY = $315,000	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Life-Years	[0, 69.7]	[0, 14.0]	[0, 139.3]	[0, 28.1]	[0, 209.0]	[0, 42.1]
Non-Fatal Emphysema	[0, 1.6]	[0, 0.5]	[0, 3.1]	[0, 1.0]	[0, 4.7]	[0, 1.5]
Fire Loss	[0, 3.1]	[0, 1.4]	[0, 3.1]	[0, 1.4]	[0, 3.1]	[0, 1.4]
Medical Expenditure Reduction	[0, 3.9]	[0, 1.9]	[0, 3.9]	[0, 1.9]	[0, 3.9]	[0, 1.9]
Total	[0, 78.2]	[0, 17.8]	[0, 149.4]	[0, 32.4]	[0, 220.1]	[0, 46.9]

D. Costs

The proposed rule would create new burdens for cigarette manufacturers. In particular, manufacturers would incur the large up-front costs associated with a major labeling change.[11] Cigarette manufacturers and retailers would be responsible for the removal of noncompliant point-of-sale advertising. Consumers are likely to ultimately bear a share of these costs in the form of increased prices. In addition, the tobacco industry and possibly other sectors will experience lost sales and employment, but these revenue transfers will be offset by gains to other sectors, as discussed in the "Distributional Effects" section of this document.

1. Number of Affected Entities

Labeling and advertising requirements would affect domestic cigarette manufacturers and importers of foreign-made cigarettes. Statistics of U.S. Businesses' data show that there were 24 cigarette manufacturing firms in the United States in 2007 (Ref. 77). An undetermined number of importers would also be affected.

Noncompliant point-of-sale advertising would be removed by manufacturers (or importers) and retailers. We use detailed data from the 2002 Economic Census report on product line sales for establishments with payroll to estimate the percentage of various types of retail establishments that sell tobacco products. Searching by the Economic Census product line 20150 (cigars, cigarettes, tobacco, and smokers' accessories), we find accommodation and food service establishments (NAICS 72) and retail trade establishments (NAICS 44–45) that report tobacco sales (Ref. 78, Ref. 79). Although some establishments in other industries may have unreported sales of tobacco products, the product line sales data provide a reasonable basis to determine which types of establishments would be affected by the proposed rule.

TABLE E7—ESTABLISHMENTS WITH PAYROLL THAT SELL TOBACCO PRODUCTS, 2002 ECONOMIC CENSUS

Kind of business	NAICS	Number in NAICS	Number selling tobacco products	Percentage selling tobacco products
General merchandise	452	40,723	6,991	17
Food & beverage	445 excluding 44512.	119,592	65,255	55
Convenience [a]	44512	29,212	24,871	85
Gasoline stations with convenience [a]	44711	93,691	86,152	92
Gasoline stations	44719	27,755	8,745	32
Health & personal care	446	81,797	17,761	22
Other retail establishments	(a)	595,558	3,470	1
Accommodation and food services	72 excluding 7224.	516,734	12,347	2
Drinking places	7224	48,856	11,490	24
Tobacco stores	453991	6,184	6,184	100
Nonstore retailers	454	49,000	848	2
Vending machine operators	4542	5,921	892	15
Total		1,615,023	245,006	15

[a] Includes NAICS 441, 443, 444, 448, 451, 453 excluding 453991.
Sources: Ref. 79; Ref. 78.

Because the 2007 Census data on product line sales for retail establishments with employees are not yet available, we update the number of various types of retail establishments using 2007 Statistics of U.S. Businesses data but assume the share of establishments selling tobacco products is unchanged (since 2002) within each category. Likewise, we lack 2007 Census data on product line sales for nonemployer establishments. Without additional information, we assume that, within a NAICS category, the share of establishments selling tobacco products will be the same for nonemployer establishments in 2007 as for establishments with payroll in the 2002 Census. As shown in Table E8, we estimate that about 249,000 retail establishments with payroll and 126,000 nonemployer establishments sell tobacco products.

TABLE E8—ESTABLISHMENTS THAT SELL TOBACCO PRODUCTS

Kind of business	NAICS	Percentage selling tobacco products [a]	Establishments with payroll		Nonemployer establishments	
			Number [b]	Estimated number selling tobacco products	Number [c]	Estimated number selling tobacco products
General merchandise stores	452	17	47,456	8,147	32,978	5,661
Food & beverage stores	445 excluding 44512.	55	122,858	67,037	104,026	56,761
Convenience stores	44512	85	28,173	23,986	(e)	
Gasoline stations with convenience stores.	44711	92	95,389	87,713	(e)	

[11] All of the up-front costs of this rule are assumed to occur at the beginning of the first period of the time horizon of this rule (2011). The cost tables present raw undiscounted calculations of these up-front costs. For summary tables requiring a present value, these costs are discounted 1 year to the present (2010).

TABLE E8—ESTABLISHMENTS THAT SELL TOBACCO PRODUCTS—Continued

Kind of business	NAICS	Percentage selling tobacco products [a]	Establishments with payroll		Nonemployer establishments	
			Number [b]	Estimated number selling tobacco products	Number [c]	Estimated number selling tobacco products
Gasoline stations	44719	32	20,144	6,347	9,454	2,979
Health and personal care stores	446	22	89,406	19,413	138,800	30,138
Other retail stores	([d])	1	600,537	3,499	735,266	4,284
Accommodation and food services	72 excluding 7224.	2	585,541	13,991	281,104	6,717
Drinking places	7224	24	46,948	11,041	27,170	6,390
Tobacco stores	453991	100	6,458	6,458	([e])	
Nonstore retailers	454 excluding 4542.	2	42,565	737	782,759	13,547
Vending machine operators	4542	15	5,158	777	27,595	4,157
Total		15	1,690,633	249,147	2,139,152	126,477

[a] Percentage of establishments with payroll from Table E7.
[b] Ref. 77.
[c] Ref. 80.
[d] Includes NAICS 441, 443, 444, 448, 451, 453 excluding 453991.
[e] Data on nonemployer establishments unavailable for this NAICS category.

2. Costs of Changing Cigarette Labels

In order to estimate the cost of changing cigarette labels to comply with the proposed rule, FDA used three sources. The "Methodology Report" for the forthcoming "Model to Estimate Costs of Using Labeling as a Risk-Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration" provided the basic framework (Ref. 81). The Methodology Report contains few numerical values, but we obtained preliminary estimates of several cost components and updated product counts through personal communication with our contractor, RTI International (Ref. 82). Because the forthcoming model is not yet complete, we filled in missing pieces using the RTI Final Report entitled "FDA Labeling Cost Model," which describes an earlier model developed by RTI for FDA to estimate the cost of food label changes (Ref. 83). We were able to combine the models because the older food labeling model serves as the basis for the forthcoming general labeling model.

The front and back of every cigarette package must be redesigned to incorporate graphic warnings occupying the entire top half. This type of change requires what is known as a complete redesign in the 2003 model or as a major change in the forthcoming model. In addition, the requirement to incorporate 9 different warnings will increase costs beyond what the labeling models estimate. FDA accounted for the additional warnings by first calculating the cost of a complete redesign for cigarettes and then inflating the specific cost components expected to increase due to the requirement for 9 warnings.

The RTI labeling models incorporate three potential cost components of a labeling change: label design costs (incurred on a per-UPC basis), testing costs (incurred on a per-formulation basis), and inventory costs (incurred on a per-unit basis). For this analysis, we restrict the calculation of market testing costs to the largest firms and perform certain other modifications to make the estimated cost match the likely effects of the proposed rule. The large cigarette manufacturers can plausibly be expected to conduct quantitative studies and focus group testing for each of their brands to gauge the effect of the new graphic warnings and to study how they might best be able to mitigate their effects. By contrast, small manufacturers with lower sales revenues are highly unlikely to conduct expensive market testing in response to the new requirements.

We estimate that 3,234 cigarette UPCs (Ref. 82), would be affected by this proposed rule. FDA conservatively assumes that because the required change is so radical, none of the labeling changes can be coordinated with a previously-scheduled labeling change.

Based on communication with RTI about the forthcoming model (*Id.*), FDA estimates that, per UPC, administrative labor costs are $375 to $1,014, graphic design labor costs are $1,120 to $3,206, prepress labor costs are $1,482 to $3,816, recordkeeping labor costs are $33 to $434, prepress materials costs are $100 to $2,439, and printing plate costs are $4,840 to $10,580.[12] Summing these costs yields a per-UPC design cost of $7,950 to $21,489. Multiplying by the number of affected UPCs and inflating by 10 percent to account for rush charges associated with a compliance period shorter than 24 months results in total label design costs of $28 million to $76 million (Ref. 83).

Manufacturers incur inventory costs if they discard unused inventory at the end of the compliance period. Because cigarette manufacturers do not keep large inventories of labels, FDA assumes that all inventory will be exhausted during the 15-month compliance period, leaving no inventory cost. Table E9 summarizes the total costs of a standard label redesign for cigarettes.

[12] Rotogravure, the most expensive printing method, is used for cigarette labeling.

TABLE E9—COST OF A LABEL REDESIGN FOR CIGARETTES

	Low	Medium	High
Label Design Cost[a]			
Number of UPCs	3,234	3,234	3,234
Administrative labor cost ($)	375	695	1,014
Graphic design labor cost ($)	1,120	2,163	3,206
Prepress labor cost ($)	1,482	2,649	3,816
Recordkeeping labor cost ($)	33	234	434
Prepress materials ($)	100	1,225	2,439
Printing plate cost ($)	4,840	7,710	10,580
Cost per product UPC ($)	7,950	14,676	21,489
Total label design cost, 24-month compliance ($)	25,710,300	47,462,184	69,495,426
Total label design cost, < 24-month compliance ($)	28,281,330	52,208,402	76,444,969
Total Cost ($)	28,281,330	52,208,402	76,444,969

[a] Undiscounted costs assumed to be incurred at the start of the first period of the time horizon of this rule.

Administrative costs, recordkeeping costs, and labor costs associated with graphic design and prepress activities would probably be unaffected by the requirement to use 9 different picture-warning pairs. By contrast, we expect printing plate costs and prepress materials costs to be 9 times as large as previously calculated because of the requirement for 9 warnings. Table E10 shows the total costs of the cigarette labeling change, adjusted for the 9 warnings. The labeling cost increases to $169 million to $447 million.

TABLE E10—COST OF A LABEL REDESIGN WITH NINE WARNING LABELS

	Low	Medium	High
Label Design Cost[a]			
Number of UPCs	3,234	3,234	3,234
Administrative labor cost ($)	375	695	1,014
Graphic design labor cost ($)	1,120	2,163	3,206
Prepress labor cost ($)	1,482	2,649	3,816
Recordkeeping labor cost ($)	33	234	434
Prepress materials ($)	900	11,025	21,951
Printing plate cost ($)	43,560	69,390	95,220
Cost per UPC ($)	47,470	86,156	125,641
Total label design cost, 24-month compliance ($)	153,517,980	278,628,504	406,322,994
Total label design cost, < 24-month compliance ($)	168,869,778	306,491,354	446,955,293
Total Cost ($)	168,869,778	306,491,354	446,955,293

[a] Undiscounted costs assumed to be incurred at the start of the first period of the time horizon of this rule.

3. Market Testing Costs Associated With Changing Cigarette Package Labels

As stated above, FDA expects that only the large manufacturers will conduct market tests for their brands. Using several state directories of certified tobacco products, FDA estimates that 75 brands are marketed by the 4 largest domestic manufacturers (Refs. 84–89). The cost of focus group tests is estimated to range from $18 to $42 thousand; the cost of a quantitative study is estimated to range from $47 to $453 thousand (Ref. 82). The total cost of both types of market testing is estimated to be $65 to $495 thousand per brand. Multiplying by 75 brands yields a total cost estimate ranging from $5 to $37 million with a medium estimate of $11 million, as shown in Table E11. We assume that the requirement to use 9 different warning-text pairs does not affect these costs.

TABLE E11—COST OF MARKET TESTING

	Low	Medium	High
Market Testing Cost[a]			
Number of brands to be tested	75	75	75
Cost of focus group testing ($)	18,000	30,000	42,000
Cost of quantitative studies ($)	47,000	114,000	453,000
Market testing cost per brand ($)	65,000	144,000	495,000
Total Market Testing Cost ($)	4,875,000	10,800,000	37,125,000

[a] Undiscounted costs assumed to be incurred at the start of the first period of the time horizon of this rule.

4. Advertising Restrictions: Removal of Noncompliant Point-of-Sale Advertising

The principal effect of the restrictions on advertising in the proposed rule stem from the requirement that retailers and manufacturers of cigarettes remove any point-of-sale advertising for cigarettes that fails to conform to the requirements. In this analysis, we estimate the social resource costs for the removal. In the analysis of FDA's 1996 final tobacco rule, we based much of our estimate of the cost of removing noncompliant point-of-sale advertising on a report from the Barents Group that

used average removal costs for seven types of retail establishments, calculated using in-store surveys conducted by A.T. Kearney, Inc (61 FR 44580). We use the same baseline and retain our assumptions from 1996 about the level of effort required. We acknowledge, however, that this approach may overstate or understate the costs for a particular action or type of business.

Table E12 regroups the information from Table E8 according to the categories studied by AT Kearney. Because our analysis considers only the removal of point-of-sale advertising from physical retail locations, we do not include non-store establishments. Table E13 shows that in current dollars one-time per-establishment costs range from about $12 for "other establishments" to about $198 for convenience stores. To estimate the total costs to comply with the restriction on point-of-sale advertising, we apply the updated per-establishment costs from Table E13 to affected establishments. As shown in Table E14, the one-time costs to remove point-of-sale materials would total $45.4 million.

TABLE E12—ESTIMATED NUMBER OF ESTABLISHMENTS SELLING CIGARETTE PRODUCTS AFFECTED BY THE PROPOSED RULE

Kind of business	Establishments with payroll [a]	Nonemployer establishments [a]	Total
AT Kearney Category			
General Merchandise	8,147	5,661	13,808
Supermarket & Grocery	67,037	56,761	123,799
Convenience Stores	23,986	.....	23,986
Convenience Stores with Gas	87,713	.....	87,713
Service Stations	6,347	2,979	9,326
Drug Stores	19,413	30,138	49,552
Specialty Tobacco Stores	6,458	.....	6,458
Other establishments [b]	28,531	17,391	45,922
Total	247,633	112,931	360,564

[a] Source: Table E8.
[b] Includes miscellaneous retail establishments and accommodations and food services establishments (including drinking places), but excludes nonstore retailers.

TABLE E13—ESTIMATED AVERAGE PER-ESTABLISHMENT COSTS TO REMOVE PROHIBITED MATERIALS [a]

AT Kearney business category	Remove promotional materials ($)	
	1996 dollars	Current dollars
General Merchandise	23.42	30.94
Supermarket & Grocery	125.14	165.30
Convenience Stores	150.02	198.16
Convenience Stores with Gas	146.43	193.42
Service Stations	36.09	47.67
Drug Stores	11.72	15.48
Specialty Tobacco Stores	123.21	162.75
Other establishments [b]	9.37	12.38

[a] Sources: 61 FR 44585, Table 8; 1996 to 2009 (most recent) GDP deflator rose 32.1% (Ref. 76).
[b] Excludes adult-only establishments, nonstore retailers and vending machine operators.

TABLE E14—ESTIMATED ONE-TIME COSTS TO REMOVE POINT-OF-SALE MATERIALS FROM AFFECTED ESTABLISHMENTS

A.T. Kearney category	Number of establishments	Average cost ($)	Total one-time costs [b] ($ million)
General Merchandise	13,808	30.94	0.4
Supermarket & Grocery	123,799	165.30	20.5
Convenience Stores	23,986	198.16	4.8
Convenience Stores with Gas	87,713	193.42	17.0
Service Stations	9,326	47.67	0.4
Drug Stores	49,552	15.48	0.8
Specialty Tobacco Stores	6,458	162.75	1.1
Other establishments [a]	45,922	12.38	0.6
Total	360,564	.....	45.4

[a] Excludes adult-only establishments and non-store retailers.
[b] Undiscounted costs assumed to be incurred at the start of the first period of the time horizon of this rule.

Sources: Tables E12 and E13.

5. Government Administration and Enforcement Costs

FDA's estimated internal costs for administering and enforcing this regulation are uncertain. As a best estimate, however, FDA projects that 25 full-time equivalent employees (FTEs) would be needed to implement the proposed rule. Fully loaded employee costs vary with the type of employee (*e.g.* field inspectors versus administrative), but an average of $247,049 per FTE places the dollar cost at approximately $6.2 million per year.

6. Summary of Costs

Table E15 summarizes the cost estimates from the preceding sections and Table E16 displays the present value and annualized value of costs.

TABLE E15—SUMMARY OF COSTS

Requirements of the rule	Annual ($m) [a]	One-Time ($m) [b]		
		Low	Medium	High
Private Sector				
Labeling Change	.....	168.9	306.5	447.0
Market Testing	.....	4.9	10.8	37.1
Point-of-Sale Advertising	.....	45.4	45.4	45.4
Subtotal	.....	219.2	362.7	529.5
Government				
FDA	6.2	.....	.....	.....
Subtotal	6.2	.....	.....	.....
Total	6.2	219.2	362.7	529.5

[a] Undiscounted annual costs assumed to be incurred at the end of each period for a total of 20 years.
[b] Undiscounted one-time costs assumed to be incurred at the start of the first period of the time horizon of this rule.

TABLE E16—PRESENT VALUE AND ANNUALIZED VALUE OF COSTS [a]

Requirements of the rule	Present value ($ mil)						Annualized costs ($ mil)					
	3 percent			7 percent			3 percent			7 percent		
	Low	Med.	High	Low	Med.	High	Low	Med.	High	Low	Med.	High
Private Sector												
Labeling Change	164.0	297.6	433.9	157.8	286.4	417.7	11.0	20.0	29.2	14.9	27.0	39.4
Market Testing	4.7	10.5	36.0	4.6	10.1	34.7	0.3	0.7	2.4	0.4	1.0	3.3
Point-of-Sale Advertising	44.1	44.1	44.1	42.5	42.5	42.5	3.0	3.0	3.0	4.0	4.0	4.0
Subtotal	212.8	352.2	514.1	204.8	339.0	494.9	14.3	23.7	34.6	19.3	32.0	46.7
Government												
FDA	89.2	89.2	89.2	61.2	61.2	61.2	6.0	6.0	6.0	5.8	5.8	5.8
Subtotal	89.2	89.2	89.2	61.2	61.2	61.2	6.0	6.0	6.0	5.8	5.8	5.8
Total	302.0	441.4	603.3	266.0	400.2	556.0	20.3	29.7	40.6	25.1	37.8	52.5

[a] The present value of upfront costs differs from previous tables because here these costs have been discounted 1 year back to 2010. Similarly, annual costs have been discounted back to 2010 before being annualized, resulting in a slight difference between annual and annualized costs.

E. Cost-Effectiveness Analysis

We measure the effectiveness of the proposed rule as the sum of saved life-years and quality-adjusted life years. In order to assess the cost-effectiveness of the proposed rule, we must adjust the costs to account for effects that are not captured by life-years or quality-adjusted life years. As shown in detail in the previous section, we calculated the first twenty years' costs attributable to the proposed rule and found present values of $266.0 to $556.0 million (using a 7 percent discount rate) or $302.0 to $603.3 million (using a 3 percent discount rate). We add to each total the estimated monetary value of lost consumer surplus (previously netted out of life-years and emphysema benefits estimates); this yields overall costs of $2.14 to $6.17 billion (using a 7 percent discount rate) or $9.47 to $28.10 billion (using a 3 percent discount rate). In order to focus on the costs associated with extensions of quality-adjusted life (see Ref. 68 at pp. 11–12), we then subtract both medical cost reductions and the value of property savings due to reductions in accidental fires and arrive at a net cost of $1.88 to $5.91 billion (using a 7 percent discount rate) or $8.93 to $27.57 billion (using a 3 percent discount rate).

Discounting over the same twenty-year time period, we calculate that this proposed rule would lead to 476,000 to 549,000 discounted smoking preventions or cessations. Similarly, we find that 34,627 to 171,660 discounted quality-adjusted life-years would be saved (this includes both fractional life-years associated with reduced emphysema and full life-years associated with reduced premature

mortality).[13] This yields a cost per smoking prevention of $3,940 to $50,204, and a cost per life-year saved of $52,047 to $170,552.

TABLE E17—COST-EFFECTIVENESS

Cost ($)	3 Percent			7 Percent		
	Low	Medium	High	Low	Medium	High
Per Smoking Prevention	16,271	33,217	50,204	3,940	8,149	12,403
Per Life-Year Saved	52,047	106,255	160,594	54,176	112,050	170,552

F. Distributional Effects

This proposed rule would bring about a variety of distributional effects not yet discussed in detail. Sectors affiliated with tobacco and tobacco products would lose sales revenues. Simultaneously, non-tobacco-related industries would gain sales, because dollars not spent for tobacco products would be spent on other commodities.

1. Tobacco Manufacturers, Distributors, and Growers

FDA estimates that implementation of the proposed regulation may reduce the annual cigarette consumption of U.S. smokers by 80 million packs. Meanwhile, the FTC (Ref. 39) reports that, in 2006, 1.75 billion cigarette packs were manufactured and distributed to consumers. These numbers imply that tobacco manufacturer revenues would be 0.68 percent lower in the rule's first year, and 0.79 percent lower in 2031, than they were in 2006. The U.S. Census Bureau (Ref. 92) reports that tobacco manufacturers' revenues totaled $41.6 billion in 2006; hence, the rule-induced decrease in annual tobacco sales would range from approximately $284 to $328 million. These estimates would rise somewhat higher if we were accounting for the decrease in price that accompanies the decrease in demand for a good (in this case, cigarettes). Experimental evidence from Mexico (Ref. 93) indicates that graphic warning labels may decrease smokers' willingness-to-pay for cigarettes by 17 percent; however, without supply elasticity data, we cannot determine how much this decline in willingness-to-pay would change cigarettes' market price.

We estimate that the tobacco manufacturing, warehousing and wholesale trade sectors employ about 74,000 full-time workers (Ref. 77). Under the assumption of constant production-to-employment ratio, we project that a 0.68–0.79 percent reduction in sales would result in the displacement of 500–600 jobs among manufacturers, warehouses, and wholesalers.

Effects of the rule would also be observed in the agricultural sector. According to USDA's 2007 Census of Agriculture (Ref. 94), there are 16,234 tobacco farms. Upon implementation of the proposed rule, these farms may shift some of their acreage from growing tobacco to producing other agricultural products.

2. National and Regional Employment Patterns

Several studies estimate the contribution of tobacco to the U.S. economy or, alternatively, the losses to the U.S. economy that would follow a decline in tobacco-related consumption. Economists have shown both theoretically and empirically that, for the nation as a whole, employment gains from spending on other products would offset any employment losses from reduced spending on tobacco products (Ref. 95). The major tobacco-growing states, however, would experience some adverse economic effects. An economic simulation of the regional impacts of spending on tobacco products carried out in 1994 found that after 8 years, a 2 percent per year fall in tobacco consumption (which substantially exceeds the FDA forecast for this regulation) would cause the loss of 36,600 jobs for the Southeast Tobacco region of the United States (0.2 percent of regional employment), whereas the nontobacco regions of the United States would gain 56,300 jobs (Ref. 96). That study, if carried out today, would find a much smaller net effect because total employment in tobacco-related industries has fallen. Overall, FDA finds that the income and employment impacts associated with reduced tobacco consumption would be quite small.

3. Retail Sector

As would tobacco growers, distributors and manufacturers, tobacco retailers would be affected by any decrease in cigarette sales. Retailers would, however, be in a position to shift shelf space and promotional activities to non-tobacco products, in order to take advantage of the increase in demand for other products that would be expected to accompany the decrease in spending on cigarettes.

4. Advertising Industry

The overall impact of the proposed rule on the advertising industry is uncertain. Advertiser revenue may decrease because advertisements with graphic warning labels are less desirable from a cigarette seller's standpoint and thus tobacco manufacturers would choose to conduct less advertising. On the other hand, advertising industry revenue may increase due to cigarette sellers' need to re-design ads to accommodate new warning labels and to devise new promotional strategies. In either case, few net social costs or benefits would be generated. Moreover, the effect on advertising would likely be relatively small since spending on cigarette advertising has been declining substantially in recent decades. By 2006, expenditures on magazine advertising had fallen to about $50 million and outdoor advertising to under $1 million. Most of the remaining affected advertising expenditures were point-of sale promotions, which totaled $240 million (Ref. 39).

5. Excise Tax Revenues

In 2009, Federal tobacco tax revenues totaled $16.3 billion, while state and local tax revenues totaled $16.5 billion (Ref. 97). The proposed rule would decrease government tobacco tax revenues as fewer Americans consume cigarettes.

FDA estimates this change in excise tax revenues by multiplying together the percentage change in smoking, whose calculation was described in section C1, the projected population in a given year (Ref. 65), age-appropriate discounted lifetime cigarette consumption (in

[13] This total reflects reduced premature mortality for smokers themselves and for others caught in the path of cigarette-related fires. The National Fire Protection Association (Ref. 90) reports the percentages of fire fatalities by age category; along with the CDC's estimate of average American life expectancy (Ref. 91), these data allow FDA to calculate that the expected number of life-years lost by fire victims is 37.3.

packs) per smoker, and current Federal and average state tax rates (Ref. 98; Ref. 99). FDA calculates average consumption for 15-year-olds, 16- to 17-year-olds, and 18- to 23-year-olds using the May 2006, August 2006, and January 2007 Tobacco Use Supplements to the Current Population Survey (Ref. 100). Sloan *et al.* (Ref. 66) report lifetime discounted consumption for typical 24-year-old smokers.

FDA estimates that annual rule-induced decreases in excise tax collections would be approximately $106 million for state governments and $80.5 million for the Federal government. Assuming that excise taxes rise, on average, at the rate of inflation allows us to sum these values over the time horizon of our analysis, yielding an overall revenue loss to state governments of $1.35 to $2.93 billion and to the Federal government of $1.03 to $2.23 billion. Given inelastic cigarette demand (Ref. 95), some state governments could raise tobacco product excise rates to offset these revenue losses.

G. International Effects

Of the $87.9 billion worth of tobacco products consumed in the United States in 2009 (Ref. 101), only $156 million consisted of imported cigarettes, with another $897 million imported as tobacco in a less-processed state (Ref. 102; Ref. 103). As in the United States, foreign manufacturers, distributors, and growers of tobacco and tobacco products would lose revenue as a result of the proposed rule, though their loss would be a small fraction of the overall revenue loss. As consumers who would have been smokers purchase other products, there would be a shift in patterns of international trade. If the preferred substitute products are American-made, there would be a (very small) decrease in overall imports into the United States; otherwise, there would be a small increase in imports from the source countries of the newly-demanded goods and services and a corresponding decrease in imports from tobacco-producing countries.

The proposed rule does not apply to cigarettes manufactured for export, whose value totaled $417 million in 2009 (Ref. 102).

H. Regulatory Alternatives

We compare the proposed rule to two hypothetical alternatives: An otherwise identical rule with a 24-month compliance period and an otherwise identical rule with a 6-month compliance period. Even though we estimate costs and benefits for these alternatives, they do not provide viable regulatory options, as they are inconsistent with FDA's statutory mandate.

1. 24-Month Compliance Period

The cost of the labeling changes for this proposed rule depends far less than most labeling rules on the compliance period. The main effect of a longer compliance period would be to eliminate the 10 percent premium for overtime and rush charges added to the per-UPC label design activities for compliance periods shorter than 24 months (Ref. 83). All other costs are the same as in the 15-month analysis.

Table E18 shows that extending the compliance period to 24 months would reduce the up-front labeling change cost by $15 to $41 million, to a total of $154 to $406 million.

TABLE E18—COST OF A CIGARETTE LABEL REDESIGN WITH NINE WARNINGS WITH A 24–MONTH COMPLIANCE PERIOD [a]

	Low	Medium	High
Label Design Cost			
Number of UPCs	3,234	3,234	3,234
Administrative labor cost ($)	375	695	1,014
Graphic design labor cost ($)	1,120	2,163	3,206
Prepress labor cost ($)	1,482	2,649	3,816
Recordkeeping labor cost ($)	33	234	434
Prepress materials ($)	900	11,025	21,951
Printing plate cost ($)	43,560	69,390	95,220
Cost per product UPC ($)	47,470	86,156	125,641
Total label design cost, 24-month compliance ($)	153,517,980	278,628,504	406,322,994
Total Cost ($)	153,517,980	278,628,504	406,322,994
Change from 15-month Compliance Period	−15,351,798	−27,862,850	−40,632,299

[a] Undiscounted costs assumed to be incurred at the start of the first period of the time horizon of this rule.

Extending the compliance period to 24 months would delay the accrual of health and fire reduction benefits by nine months. An approximation of the effect of this delay may be found by discounting, at three and seven percent discount rates, the previously-calculated total benefits. As shown in Table E19, FDA finds that a 24-month compliance period would decrease benefits by between $113.5 and $622.5 million.

TABLE E19—PRESENT VALUE OF BENEFITS WITH 24-MONTH COMPLIANCE PERIOD ($ MIL)

	VSLY = $105,000		VSLY = $210,000		VSLY = $315,000	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Life-Years	8,767.3	1,715.6	17,534.7	3,431.3	26,302.0	5,146.9
Non-Fatal Emphysema	197.6	61.7	395.3	123.4	592.9	185.0
Fire Loss	384.5	171.7	384.5	171.7	384.5	171.7
Medical Expenditure Reduction	487.9	231.9	487.9	231.9	487.9	231.9
Total	9,837.4	2,180.9	18,802.4	3,958.3	27,767.3	5,735.6

TABLE E19—PRESENT VALUE OF BENEFITS WITH 24-MONTH COMPLIANCE PERIOD ($ MIL)—Continued

	VSLY = $105,000		VSLY = $210,000		VSLY = $315,000	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Change from 15-Month Compliance Period	−220.5	−113.5	−421.5	−206.0	−622.5	−298.6

2. Six-Month Compliance Period

In the 2003 labeling-cost model, overtime and rush charges equal 10 percent of the per-UPC label design costs with a 6-month compliance period. The model further assumes that 12 months is the shortest compliance period that can be met without resorting to covering up the old labels with stickers as a temporary solution. Therefore, the cost of discarded inventory is the same as under a 12-month compliance period, but there is an additional cost for applying appropriate stickers to cover the old package label design for a period of 6 months.

FDA assumes that no additional inventory will remain unused after 6 months of applying stickers. The number of units sold annually is about 10.7 billion.[14] Therefore, 5.3 billion units would be relabeled with stickers. We estimate the per-unit cost for the sticker and application cost to be between $0.017 and $0.045 (Ref. 83). Reducing the compliance period to 6 months would then increase compliance costs by $91 to $239 million to a total of $259 to $686 million. The use of 9 graphic-text combinations is not expected to materially affect this cost.

TABLE E20—COST OF A CIGARETTE LABEL REDESIGN WITH NINE WARNINGS WITH A SIX-MONTH COMPLIANCE PERIOD [a]

	Low	Medium	High
Label Design Cost			
Number of UPCs	3,234	3,234	3,234
Administrative labor cost ($)	375	695	1,014
Graphic design labor cost ($)	1,120	2,163	3,206
Prepress labor cost ($)	1,482	2,649	3,816
Recordkeeping labor cost ($)	33	234	434
Prepress materials ($)	900	11,025	21,951
Printing plate cost ($)	43,560	69,390	95,220
Cost per product UPC ($)	47,470	86,156	125,641
Total label design cost, 24-month compliance ($)	153,517,980	278,628,504	406,322,994
Total label design cost, < 24-month compliance ($)	168,869,778	306,491,354	446,955,293
Sticker Costs			
Stick and application costs per unit ($)	0.017	0.031	0.045
Number of units sold in 6 months	5,338,051,475	5,338,051,475	5,338,051,475
Total sticker cost ($)	90,501,325	168,073,889	239,182,072
Total Cost ($)	259,371,103	474,565,243	686,137,366
Change from 15-month Compliance Period	90,501,325	168,073,889	239,182,072

[a] Undiscounted costs assumed to be incurred at the start of the first period of the time horizon of this rule.

Reducing the compliance period to six months would hasten the accrual of health and fire reduction benefits by nine months. An approximation of the effect of this change in timing may be found by compounding, at three and seven percent discount rates, the previously-calculated total benefits. As shown in Table E21, FDA finds that a six-month compliance period would increase benefits by between $119.4 and $636.4 million.

TABLE E21—PRESENT VALUE OF BENEFITS WITH SIX-MONTH COMPLIANCE PERIOD ($ MIL)

	VSLY = $105,000		VSLY = $210,000		VSLY = $315,000	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Life-Years	9,164.8	1,898.9	18,329.6	3,797.8	27,494.4	5,696.7
Non-Fatal Emphysema	206.6	68.3	413.2	136.5	619.8	204.8
Fire Loss	401.9	190.0	401.9	190.0	401.9	190.0
Medical Expenditure Reduction	510.0	256.7	510.0	256.7	510.0	256.7
Total	10,283.4	2,413.9	19,654.8	4,381.1	29,026.2	6,348.2
Change from 15-Month Compliance Period	225.5	119.4	430.9	216.8	636.4	314.1

[14] The AC Nielsen data for total equivalent units show sales totaling 38,632 million sticks in 2008 (Ref. 104), whereas The Maxwell Report states that industry volume was 345,300 million sticks in 2008 (Ref. 105). Thus the Nielsen data capture 38,632/345,300 = 11.2 percent of cigarettes sold. Nielsen data show total sales units of 1.195 billion in 2008. Dividing by 0.112 yields an estimate of 10.7 billion sales units per year.

3. Summary of Regulatory Alternatives

Table E22 summarizes the regulatory alternatives by displaying ranges for the present values of the total benefits and total costs. Estimated ranges for the cost ratios (per smoking prevention and per life-year saved) of the proposed rule and its regulatory alternatives appear in Table E23.

TABLE E22—SUMMARY OF REGULATORY ALTERNATIVES

Compliance period	Present value of total benefits ($ mil) [a]		Present value of total costs ($ mil) [b]	
	3%	7%	3%	7%
24-Month Total	9,837.4 to 27,767.3	2,180.9 to 5,735.6	285.2 to 561.9	248.6 to 515.0.
(Proposed Rule) 15-Month Total	10,057.9 to 28,389.8	2,294.5 to 6,034.1	302.0 to 603.3	266.0 to 556.0.
6-Month Total	10,283.4 to 29,026.2	2,413.9 to 6,348.2	391.9 to 837.5	353.8 to 782.7.

[a] Range in benefits is based on a VSLY of $105,000 to $315,000.
[b] Range in costs is based on low cost and high cost values.

TABLE E23—INCREMENTAL COST-EFFECTIVENESS OF REGULATORY ALTERNATIVES

	Discount rate = 3 percent				Discount rate = 7 percent			
	Low	Incremental CE *	High	Incremental CE *	Low	Incremental CE *	High	Incremental CE *
24-Month Compliance:								
Per Smoking Prevention	$16,252	N/A	$50,152	N/A	$3,819	N/A	$12,024	N/A
Per Life-Year Saved	51,986	N/A	160,426	N/A	52,512	N/A	165,336	N/A
15-Month Compliance:								
Per Smoking Prevention	16,271	$17,121	50,204	$52,545	3,940	$9,337	12,403	$29,324
Per Life-Year Saved	52,047	54,768	160,594	168,081	54,176	128,383	170,552	403,225
6-Month Compliance:								
Per Smoking Prevention	16,419	23,021	50,597	68,133	4,207	16,118	13,170	47,376
Per Life-Year Saved	52,521	73,641	161,852	217,946	57,847	221,637	181,095	651,438

* As the compliance period decreases, the number of rule-induced smoking preventions and life-years saved increases. Hence, the incremental costs of 15-Month Compliance are calculated relative to 24-Month Compliance, and the incremental costs of 6-Month Compliance are calculated relative to 15-Month Compliance.

I. Impact on Small Entities

The Regulatory Flexibility Act requires agencies to prepare an initial regulatory flexibility analysis if a proposed rule would have a significant effect on a substantial number of small entities. We expect this proposed rule to have a significant effect on a substantial number of small entities. Consequently, this analysis, together with other relevant sections of this document, serves as the Initial Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

1. Description and Number of Affected Small Entities

The proposed rule would affect small entities in several industries, from tobacco farming to the retail industry. Most of the nation's 16,234 tobacco farms are small; between 90.7 and 95.8 percent (between 14,732 and 15,555) of the farms growing tobacco in 2007 had total farm sales under the U.S. Small Business Administration (SBA) small business size standard of $750,000 (Ref. 94; Ref. 106).

Table E24 shows the breakdown of domestic cigarette manufacturers by employment size. Census data indicate that most cigarette manufacturing firms are small businesses, with only 4 of 24 firms employing more than 500 employees, while the small business size standard established by the SBA for this industry is 1,000, so a minimum of 20 small cigarette manufacturers would be affected (Ref. 77; Ref. 106).

TABLE E24—CIGARETTE MANUFACTURERS BY NUMBER OF EMPLOYEES

Size by number of employees	Number of firms
Less than 20	9
20 to 99	7
100 to 499	4

Source: Ref. 106.
SBA size standard: 1,000 employees.

Statistics of U.S. Businesses data show that 1,067 of 1,159 tobacco wholesale trade firms (92 percent) employ fewer than the 100-employee threshold that constitutes a small business according to the SBA (Ref. 77; Ref. 106). If the size distribution of cigarette importers is similar to that of all tobacco wholesale trade firms, then 92 percent of them would be affected small businesses.

Also likely to be affected by the regulation are small retail and service entities that sell cigarettes. Retail establishments bear shared responsibility with manufacturers for the cost of removing noncompliant advertising. SBA size standards for the retail trade and the accommodations and food services industries differ from size categories used by the U.S. Census. Table E25 shows the 2002 Census size categories that most closely match the SBA size standards. In all cases, the closest Census size category is smaller than the SBA size standard. As a consequence, any estimate based on the Census size categories may underestimate the number of small entities.

TABLE E25—SBA SIZE STANDARDS AND CENSUS SIZE CATEGORIES FOR RETAIL AND SERVICE FIRMS IN NAICS CATEGORIES WITH TOBACCO PRODUCT LINE SALES [a]

NAICS with tobacco product line sales	Description of NAICS category	SBA size standard (employees or $ million)	Census size category (employees or $ million)
General Merchandise			
452990	Other General Merchandise	11	10.
452 excluding 452990	Department, Discount Department, Warehouse Clubs, and Superstores	27	25.
Supermarket and Grocery			
4452 and 4453	Other Food and Beverage Stores	7	5.
445110	Supermarkets and Grocery	27	25.
445120	Convenience Stores	27	25.
447110	Convenience Stores with Gas	27	25.
447190	Service Stations	9	5.
446	Health and Personal Care Stores	7	5.
453991	Specialty Tobacco Stores	7	5.
B	Other Kinds of Business	Varies	Varies.

Source: Refs. 106–108.
[a] Includes only firms with payroll.
[b] Includes NAICS 4413, 443112, 444, 448, 451, 4532, 453998, 72 (excluding 72231), 722310.

The Census reports establishment numbers for business by product line, and establishment and firm size by type of business, but provides no size data by type of business and product line. To estimate the number of affected entities that SBA classifies as small, we begin by counting the number of firms that fall below the Census size standard shown in Table E25, including only firms in NAICS categories with tobacco product line sales. Next, we calculate the percentage of small firms in each NAICS category. Depending on the type of business, the percentage of small firms ranges from 41 percent for Discount Department, Warehouse Clubs, and Superstores to almost 100 percent for Convenience Stores.

TABLE E26—ESTIMATED PERCENTAGE OF SMALL RETAIL AND SERVICE FIRMS IN NAICS CATEGORIES WITH TOBACCO PRODUCT LINE SALES [a]

NAICS	Description of NAICS category	Number of firms	Number of firms below census size standard [b]	Percentage of small firms
General Merchandise				
452110, 452910	Discount Department, Warehouse Clubs, and Superstores	88	36	40.9
452990	Other General Merchandise	7,451	7,320	98.2
General Merchandise Subtotal		7,539	7,356	97.6
Supermarket & Grocery				
445110	Supermarkets & Grocery	34,017	33,328	98.0
4452 and 4453	Other Food and Beverage Stores	34,807	34,082	97.9
Supermarket & Grocery Subtotal		68,824	67,410	97.9
445120	Convenience Stores	18,705	18,676	99.8
447110	Convenience Stores with Gas	37,437	36,848	98.4
447190	Service Stations	19,822	18,103	91.3
4461	Drug Stores	36,198	33,894	93.6
453991	Tobacco Stores	3,238	3,017	93.2
	Other Kinds of Business	589,400	572,619	97.2

Source: Refs. 107, 108, 78, 79.
[a] Includes only firms with payroll.
[b] Based on the Census size standards shown in Table E25.

Finally, we apply the percentages in Table E26 to our current estimate of the number of affected establishments with payroll (Table E7). This approach implicitly assumes that small establishments are similar whether or not they sell tobacco products. In addition, we classify all nonemployer establishments as small. In total, we estimate that about 355,000 small retail and service establishments would be affected by the proposed rule. This number represents about 98 percent of the estimated 361,000 establishments selling tobacco products.

TABLE E27—ESTIMATED NUMBER OF SMALL ESTABLISHMENTS WITH TOBACCO PRODUCT LINE SALES BY KIND OF BUSINESS

Kind of business	Percentage of small [a]	Number with payroll [b]	Small with payroll	Non-employers [b]	Estimated total number of small establishments
General Merchandise	97.6	8,147	7,949	5,661	13,611
Supermarket & Grocery	98.0	67,037	65,679	56,761	122,441
Convenience Stores	99.8	23,986	23,949	0	23,949
Convenience Stores with Gas	98.4	87,713	86,333	0	86,333
Service Stations	91.3	6,347	5,797	2,979	8,775
Drug Stores	93.6	19,413	18,178	30,138	48,316
Specialty Tobacco Stores	93.2	6,458	6,017	0	6,017
Other Establishments	97.2	28,531	27,719	17,391	45,110
Total		247,633	241,621	112,931	354,552

[a] From Table E26.
[b] From Table E12.

2. Description of the Potential Impacts of the Final Rule on Small Entities

a. *Effect on manufacturers.* In order to estimate how much of the label design and inventory costs would be incurred by small domestic cigarette manufacturers, FDA subtracts the proportion of those costs estimated to be incurred by large domestic manufacturers and foreign manufacturers. Scanner data indicate that, approximately 55 percent of UPCs can be readily identified as belonging to a brand marketed by one of the 4 largest cigarette firms by volume (Ref. 105; Refs. 84–89). Because the costs of labeling changes are roughly proportional to the number of UPCs, FDA then attributes 55 percent of the total label design and inventory costs to the 4 firms employing at least 500 people. FDA attributes an additional 3 percent of the labeling change costs to foreign manufacturers.[15] These adjustments leave 42 percent of labeling change costs, or $71 to $188 million, to be incurred by the 20 small manufacturers. Assuming costs are equal among these firms implies a per-firm cost of $3.5 to $9.4 million. Table E28 compares this estimated compliance cost to average annual receipts in order to gauge the potential impact of labeling change requirements on small cigarette manufacturing firms. Because the number of UPCs is probably larger for larger firms, costs are likely greater for larger firms than for smaller firms; if so this method overstates the impact on the smallest firms and understates the impact on the largest firms (within the category of firms employing fewer than 500 people).

TABLE E28—POTENTIAL IMPACT OF LABELING CHANGE COMPLIANCE COSTS ON THE 20 SMALL CIGARETTE MANUFACTURERS

Size by number of employees	Number of firms	Average annual receipts ($1,000)	Average labeling compliance costs ($1,000)		Average labeling compliance costs as a percent of average annual receipts	
			Low	High	Low	High
Less than 20	9	11,195	3,546	9,386	32	84
20 to 99	7	21,265	3,546	9,386	17	44
100 to 499	4	147,896	3,546	9,386	2	6

Source: Ref. 77.
SBA size standard: 1,000 employees.

b. *Effect on retailers.* As shown in Table E29, retail trade businesses account for almost all sales of tobacco products (Ref. 78; Ref. 79). About 90 percent of tobacco product line sales occur at gasoline stations, food and beverage stores, general merchandise stores, or tobacco stores. Convenience stores (with gasoline stations and stand-alone convenience stores) account for about half of all tobacco product line sales.

TABLE E29—SALES OF TOBACCO PRODUCT LINE BY KIND OF BUSINESS AND INDUSTRY SECTOR [a]

Kind of business and industry sector	Sales of tobacco product line by kind of business		Sales of tobacco product line by industry sector	
	($ bil)	(%)	($ bil)	(%)
Retail Trade				
NAICS 447—Gasoline Stations			22.2	43.3
Convenience Stores with Gas	21.2	41.3		

[15] In 2008, 9.9 billion out of 345.3 billion individual cigarettes sold were imported. FDA assumes the same proportion holds for UPCs. These UPCs should not overlap with those produced by the 4 largest domestic producers.

TABLE E29—SALES OF TOBACCO PRODUCT LINE BY KIND OF BUSINESS AND INDUSTRY SECTOR [a]—Continued

Kind of business and industry sector	Sales of tobacco product line by kind of business		Sales of tobacco product line by industry sector	
	($ bil)	(%)	($ bil)	(%)
Gasoline Stations	1.0	2.0		
NAICS 445—Food and Beverage Stores			13.4	26.2
Supermarket & Grocery	7.7	15.0		
Convenience Stores	4.5	8.8		
Liquor Stores	1.2	2.4		
NAICS 452—General Merchandise			7.1	13.9
General Merchandise	7.1	13.9		
NAICS 453—Miscellaneous Store Retailers			5.8	11.3
Tobacco Stores	5.7	11.1		
Miscellaneous store retailers	0.1	0.3		
NAICS 446—Health and Personal Care Stores			1.5	3.0
Drug Stores	1.5	3.0		
NAICS 454—Nonstore Retailers			0.7	1.3
Nonstore Retailers	0.5	1.0		
Vending machine operators	0.2	0.4		
Other Subsectors [b]			0.1	0.2
Other Kinds of Business	0.1	0.2		
Accommodation & Food Services NAICS 72			0.4	0.8
Other establishments	0.3	0.5		
Drinking places	0.1	0.3		
Total			51.2	100

[a] Includes establishments with payroll with tobacco product line sales.
[b] Includes establishments in NAICS 441320, 443112, 444130, 444220, 448110, 448320, 451110, 451211, 451212, and 451220.

To illustrate the effects of the proposed rule on a typical small retail store, we look at one-time costs for a convenience store and a convenience store with gasoline. We select these businesses because, as illustrated in Table E29, sales of tobacco products in these stores account for about 50 percent of all tobacco sales. In addition, tobacco products are an important part of overall revenue for these stores, composing over 12 percent of total sales (as shown in Table E30).

TABLE E30—THE IMPORTANCE OF TOBACCO SALES BY KIND OF BUSINESS: RANKED BY THE PERCENTAGE OF TOTAL SALES FROM TOBACCO PRODUCT LINE

Kind of business	Sales from tobacco product line [a] ($ bil)	Total sales from all product lines ($ bil) [b]	Percentage of total sales from tobacco product line
Tobacco Stores	5.7	6.5	86.9
Convenience Stores	4.5	18.1	25.0
Nonstore Retailers	0.5	2.4	20.3
Convenience Stores with Gas	21.2	173.4	12.2
Vending Machine Operators	0.2	1.7	11.2
Miscellaneous store retailers	0.1	1.2	11.2
Liquor Stores	1.2	12.8	9.7
Other Kinds of Business	0.1	1.4	6.5
Drinking places	0.1	3.9	3.5
Gasoline Stations	1.0	29.4	3.5
General Merchandise	7.1	246.1	2.9
Supermarket & Grocery	7.7	383.5	2.0
Drug Stores	1.5	80.0	1.9
Other Accommodation & Foodservice	0.3	33.3	0.8
Total	51.2	993.9	5.2

[a] Tobacco sales from Table E29.
[b] Includes total sales for firms with tobacco product line sales. Refs. 78, 79.

For both types of convenience stores, Table E31 shows that for the smallest firms with less than $250,000 in annual sales, the one-time costs of the proposed rule would equal less than 2 percent of annual average sales of tobacco products. Furthermore, one-time costs total less than 0.1 percent of annual average sales of tobacco products for stores with $1 million or more in average annual sales. Although the impact on other small retail and service entities is uncertain, this example suggests that the proposed rule would be unlikely to create a significant direct

burden on small retail stores or service establishments.

TABLE E31—ONE-TIME COSTS AS A PERCENTAGE OF AVERAGE SALES OF TOBACCO PRODUCTS FOR CONVENIENCE STORES AND CONVENIENCE STORES WITH GASOLINE

Sales size of firm	Number of establishments	Sales ($ mil)	Sales of tobacco products	
			Average ($ mil)	One-time costs as percentage of average
Convenience Store—NAICS 445120 [a]:				
Less than $250,000	4,231	653	0.0	0.5
$250,000 to $499,999	5,296	1,920	0.1	0.2
$500,000 to $999,999	5,150	3,646	0.2	0.1
$1,000,000 to $2,499,999	3,586	4,915	0.3	0.1
$2,500,000 to $4,999,999	659	1,601	0.6	0.0
$5,000,000 to $9,999,999	324	712	0.5	0.0
$10,000,000 to $24,999,999	215	440	0.5	0.0
Convenience Stores with Gasoline—NAICS 447110 [b]:				
Less than $250,000	2,246	343	0.0	1.0
$250,000 to $499,999	3,801	1,425	0.0	0.4
$500,000 to $999,999	7,667	5,624	0.1	0.2
$1,000,000 to $2,499,999	14,309	22,303	0.2	0.1
$2,500,000 to $4,999,999	7,977	22,786	0.3	0.1

Source: Ref. 108.
[a] Tobacco product line sales account for 25.0 percent of sales for all firms in NAICS 445120 (see Table E30); One-time costs equal $198.16 (see Table E13).
[b] Tobacco product line sales account for 12.2 percent of sales for all firms in NAICS 447110 (see Table E30); One-time costs equal $193.42 (see Table E13).

3. Alternatives To Minimize the Burden on Small Entities

a. *Increase the compliance period to 24 months for small manufacturers or all manufacturers.* Allowing all manufacturers, or only small manufacturers, 24 months to comply with the labeling changes would reduce overtime and rush charges. Under a 24-month compliance period, labeling change costs would fall on average by $0.32 to $0.85 million per small firm. Table E32 compares the reduced estimated compliance cost to average annual receipts in order to gauge the potential impact of this regulatory alternative on cigarette manufacturing firms employing fewer than 500 people. As a comparison with Table E28 shows, this option would provide only modest relief. It would also delay the public health benefits of the proposed rule and be inconsistent with the statutory requirement.

TABLE E32—POTENTIAL IMPACT OF LABELING CHANGE COMPLIANCE COSTS ON THE 20 SMALL CIGARETTE MANUFACTURERS WITH A 24-MONTH COMPLIANCE PERIOD

Size by number of employees	Number of firms	Average annual receipts ($1,000)	Average labeling compliance costs ($,1000)		Average labeling compliance costs as a % of average annual receipts	
			Low	High	Low	High
Less than 20	9	11,195	3,224	8,533	29	76
20 to 99	7	21,265	3,224	8,533	15	40
100 to 499	4	147,896	3,224	8,533	2	6

Source: Ref. 77
SBA size standard: 1,000 employees

b. *Exempt small manufacturers from the labeling change requirements.* Exempting small manufacturers from the labeling change requirements would eliminate their incremental labeling costs (an average reduction of $3.5 to $9.4 million), thus providing maximum relief. The combined market share of the 4 largest manufacturers was 89.7 percent in 2008 (Ref. 105). The immediate impact would therefore be to allow 10.3 percent of cigarettes to be marketed without graphic warning labels when the rule went into effect. This proportion would grow over time, however, as some consumers would be expected to switch to brands marketed without graphic warnings. This approach would be inconsistent with both the statutory mandate and the public health objectives of this rule.

c. *Exempt small cigarette retailers from the point-of-sale advertising requirements.* Exempting small cigarette retailers from the point-of-sale advertising requirements would eliminate their need to remove noncompliant advertising, reducing their direct costs to zero. However, Table E27 shows that the overwhelming majority of retail establishments selling cigarettes are small. Although the few establishments operated by large firms might be expected to have higher volume, a significant proportion of consumers would continue to be exposed to advertising lacking the new graphic warnings. This situation would be inconsistent with the public health

objective of the proposed rule as well as FDA's statutory mandate.

IX. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. As noted above, if you have comments on specific provisions of the proposed regulation, we request that you identify these provisions in your comments. In addition, if you have concerns that would be addressed by alternative text for the regulation, we request that you provide this alternative text in your comments. 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.

X. 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 Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**)

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List of Subjects in 21 CFR Part 1141

Advertising, Incorporation by reference, Labeling, Packaging and containers, Tobacco, and Smoking.

Therefore, under the Federal Cigarette Labeling and Advertising Act, the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of title 21 of the Code of Federal Regulations be amended by adding part 1141 to subchapter K to read as follows:

PART 1141—CIGARETTE PACKAGE AND ADVERTISING WARNINGS

Subpart A—General Provisions

Sec.
1141.1 Scope.
1141.3 Definitions.

Subpart B—Cigarette Package and Advertising Warnings

1141.10 Required warnings.
1141.12 Incorporation by reference of required warnings.
1141.14 Misbranding of cigarettes.

Subpart C—Additional Disclosure Requirements for Cigarette Packages and Advertising

1141.16 Disclosures regarding cessation.

Authority: Secs. 201 and 202, Pub. L. 111–31, 123 Stat. 1776; 15 U.S.C. 1333; 21 U.S.C. 371, 387c, 387f.

Subpart A—General Provisions

§ 1141.1 Scope.

(a) This part sets forth the requirements for the display of health warnings on cigarette packages and in advertisements for cigarettes. FDA may require additional statements to be displayed on packages and in advertisements under the Federal Food, Drug, and Cosmetic Act or other authorities.

(b) The requirements of this part do not apply to manufacturers or distributors of cigarettes that do not manufacture, package, or import cigarettes for sale or distribution within the United States.

(c) A cigarette retailer shall not be considered in violation of this part as it applies to the display of health warnings on a cigarette package if the package:

(1) Contains a health warning;

(2) Is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

(3) Is not altered by the retailer in a way that is material to the requirements of section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(a)) or this part, including by obscuring the warning, by reducing its size, by severing it in whole or in part, or by otherwise changing it in a material way.

(d) A cigarette retailer shall not be considered in violation of this part, as it applies to the display of health warnings in an advertisement for cigarettes if the advertisement is not created by or on behalf of the retailer and the retailer is not otherwise responsible for the inclusion of the required warnings. This paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a health warning or that contains a warning that has been altered by the retailer in a way that is material to the requirements of section 4(b) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(b)), this part, or section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c)), including by obscuring the warning, by reducing its size, by severing it in whole or in part, or by otherwise changing it in a material way.

§ 1141.3 Definitions.

For the purposes of this part,

Cigarette means:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.

Commerce means:

(1) Commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof;

(2) Commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or

(3) Commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, or Johnston Island.

Distributor means any person who furthers the distribution of cigarettes at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for the purposes of this part.

Front panel and *rear panel* mean the two largest sides or surfaces of the package.

Importer means any person who introduces into commerce any cigarette that:

(1) Was not manufactured inside the United States; and

(2) Is intended for sale or distribution to consumers in the United States.

Manufacturer means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette product.

Package means a pack, box, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed to consumers.

Person means an individual, partnership, corporation, or any other business or legal entity.

Required warning means the combination of one of the textual warning statements and its accompanying color graphic, which are set forth in "Cigarette Required Warnings—English and Spanish" and "Cigarette Required Warnings—Other Foreign Languages," which are incorporated by reference at § 1141.12.

Retailer means any person who sells cigarettes to individuals for personal consumption, or who operates a facility where vending machines or self-service displays of cigarettes are permitted.

United States, when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and Johnston Island. The term "State" includes any political division of any State.

Subpart B—Cigarette Package and Advertising Warnings

§ 1141.10 Required warnings.

(a) *Packages*—(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and this part, one of the required warnings on both the front and the rear panel.

(2) The required warning shall be obtained and accurately reproduced from the electronic images contained in "Cigarette Required Warnings—English and Spanish," which is incorporated by reference at § 1141.12, except that it must be adapted as necessary to meet the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and this part.

(3) The required warning shall appear directly on the package and shall be clearly visible underneath the cellophane or other clear wrapping.

(4) The required warning shall be located in the upper portion of the front and rear panels of the package and shall comprise at least the top 50 percent of these panels; *Provided, however,* that on cigarette cartons, the required warning shall be located on the left side of the front and rear panels of the carton and shall comprise at least the left 50 percent of these panels.

(5) The required warning shall be positioned such that the text of the required warning and the other information on that panel of the package have the same orientation.

(b) *Advertisements*—(1) It shall be unlawful for any manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and this part, one of the required warnings.

(2) The text in each required warning shall be in the English language, except that:

(i) In the case of an advertisement that appears in a non-English publication, the text in the required warning shall appear in the predominant language of the publication whether or not the advertisement is in English; and

(ii) In the case of an advertisement that appears in an English language publication but that is not in English, the text in the required warning shall appear in the same language as that principally used in the advertisement.

(3) For English-language and Spanish-language warnings, each required warning shall be obtained and accurately reproduced from the electronic images contained in "Cigarette Required Warnings—English and Spanish," which is incorporated by reference at § 1141.12, except that it must be adapted as necessary to meet the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), including area and other formatting requirements, and this part.

(4) For foreign-language warnings, except for Spanish-language warnings, each required warning shall be the color graphic obtained and accurately reproduced from the electronic images contained in "Cigarette Required Warnings—Other Foreign Language Advertisements," which is incorporated by reference at § 1141.12, and into which a true and accurate translation of the textual warning is inserted in accordance with "Cigarette Required Warnings—Other Foreign Language Advertisements," except that the required warning must be adapted as necessary to meet the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), including area and other formatting requirements, and this part.

(5) The required warning shall occupy at least 20 percent of the area of each advertisement, and shall be placed in accordance with the requirements in the Federal Cigarette Labeling and Advertising Act.

(c) *Irremovable or permanent warnings.* The required warnings shall be indelibly printed on or permanently affixed to the package or advertisement. Such warnings, for example, must not be printed or placed on a label affixed to a clear outer wrapper that is likely to be removed to access the product within the package.

§ 1141.12 Incorporation by reference of required warnings.

Certain material entitled: "Cigarette Required Warnings—English and Spanish," (edition 1.0, June 2011, Food and Drug Administration), appearing in §§ 1141.10(a)(2), (b)(3), and 1141.16(a); and "Cigarette Required Warnings—Other Foreign Language Advertisements," (edition 1.0, June 2011, Food and Drug Administration), appearing in §§ 1141.10(b)(4) and 1141.16(a) are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Food and Drug Administration, Center for Tobacco Products, Office of Compliance, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–CTP–1373, and from the Web sites listed in paragraphs (a) and (b) of this section. Also, this material is available for inspection at the National Archives and Records Administration (NARA). For more information on the availability of the following material, call NARA at 202–741–6030 or go to *http://www.archives.gov/Federal_register/codeof_Federal_regulations/ibr_locations.html*:

(a) "Cigarette Required Warnings—English and Spanish," available from FDA at *http://www.fda.gov/Tobacco*, referred to at §§ 1141.10(a)(2) and (b)(3) and § 1141.16.

(b) "Cigarette Required Warnings—Other Foreign Language Advertisements," available from FDA at *http://www.fda.gov/Tobacco*, referred to at §§ 1141.10(b)(4) and § 1141.16.

§ 1141.14 Misbranding of cigarettes.

(a) A cigarette shall be deemed to be misbranded under section 903(a)(1) of the Federal Food, Drug, and Cosmetic Act unless its labeling bears one of the required warnings in accordance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and this part. A cigarette shall be deemed to be misbranded under section 903(a)(7)(A) of the Federal Food, Drug, and Cosmetic Act unless its advertising bears one of the required warnings in accordance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and this part.

(b) A cigarette advertisement or package will be deemed to include a brief statement of relevant warnings for the purposes of section 903(a)(8) of the Federal Food, Drug, and Cosmetic Act if it bears one of the required warnings in accordance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and this part. A cigarette distributed or offered for sale in any State shall be deemed to be misbranded under section 903(a)(8) of the Federal Food, Drug, and Cosmetic Act unless the manufacturer, packer, or distributor includes in all advertisements and packages issued or caused to be issued by the manufacturer, packer, or distributor with respect to the cigarette one of the required warnings in accordance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and this part.

Subpart C—Additional Disclosure Requirements for Cigarette Packages and Advertising

§ 1141.16 Disclosures regarding cessation.

(a) The required warning shall include a reference to a smoking cessation assistance resource in accordance with, and as specified in, "Cigarette Required Warnings—English and Spanish" (incorporated by reference at § 1141.12) or "Cigarette Required Warnings—Other Foreign Language Advertisements" (incorporated by reference at § 1141.12), whichever is applicable.

(b) The smoking cessation assistance resource required to be referenced by paragraph (a) of this section must:

(1) Provide factual information about the harms to health associated with cigarette smoking and the health benefits of quitting smoking;

(2) Provide factual information about what smokers can expect when trying to quit;

(3) Provide practical advice (problem solving/skills training) about how to deal with common issues faced by users trying to quit;

(4) Provide evidence-based advice about how to formulate a plan to quit smoking;

(5) Provide evidence-based information about effective relapse prevention strategies;

(6) Provide factual information on smoking cessation treatments, including FDA-approved cessation medications;

(7) Provide information, advice, and support that is evidence-based, unbiased (including with respect to products, services, persons, and other entities), and relevant to tobacco cessation;

(8) Other than as described in this section, not advertise or promote any particular product or service;

(9) Not selectively present information about a subset of FDA-approved cessation products or product categories while failing to mention other FDA-approved cessation products or product categories or reference any drug or other medical product that FDA has not approved for tobacco cessation; and

(10) Not encourage the use of any non-evidence-based smoking cessation practices.

(c) If the smoking cessation assistance resource required to be referenced by paragraph (a) of this section is a Web site, it:

(1) Must not contain a link to any Web site unless it meets all of the criteria described in paragraph (b) of this section; and

(2) May include references to one or more toll-free telephone numbers only if they meet the criteria described in paragraphs (b) and (d) of this section.

(d) If the smoking cessation assistance resource required to be referenced by paragraph (a) of this section is a toll-free telephone number, it must:

(1) Ensure that staff providing smoking cessation information, advice, and support are trained specifically to help smokers quit by delivering unbiased and evidence-based information, advice, and support; and

(2) Maintain appropriate controls to ensure the criteria described in paragraph (b) of this section are met.

Dated: November 8, 2010.

Margaret A. Hamburg,

Commissioner of Food and Drugs.

Dated: November 8, 2010.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2010–28538 Filed 11–10–10; 8:45 am]

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Friday,
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Part III

The President

Notice of November 10, 2010—Continuation of the National Emergency With Respect To Iran

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Vol. 75, No. 218
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Presidential Documents

Title 3—

The President

Notice of November 10, 2010

Continuation of the National Emergency With Respect To Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran, 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 situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2010. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
November 10, 2010.

[FR Doc. 2010–28780
Filed 11–10–10; 11:15 am]
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